

D.C. Circuit Court Upholds Mill Site Claim Rule Critical to Mining Projects in the United States

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by Wells Parker and Kayla Weiser-Burton

Earlier this summer, the District of Columbia Court of Appeals issued a decision affirming the lower court's decision that the Mining Law of 1872 does not impose a limit on the number of mill sites that a mining claimant may use for ancillary purposes.^[1] Section 42 of the Mining Law of 1872 provides that the holder of a mining claim may also locate nearby non-mineral-bearing-land for the purposes of "mining" and "milling" activities.^[2] In 1997, the Department of the Interior then-Solicitor John Leshy issued a legal opinion concluding that Section 42 prohibits a claim holder from locating more than a total of five acres of mill site land with respect to any one mining claim.^[3] The Solicitor's Office issued a new opinion in 2003, rejecting the conclusion of the 1997 Opinion, and the Bureau of Land Management ("BLM") promulgated a new rule to that effect.^[4] The 2003 rule specified that while a claim holder may not exceed a total area of five acres for a mill site, there is no limit to the number of mill sites that may be located, provided that each site is "reasonably necessary" for "efficient and reasonably compact milling or mining operations."^[5]

A number of environmental plaintiffs challenged the new rule in 2009, asserting that BLM's interpretation of Section 42 of the Mining Law was unreasonable. Key mining industry participants, including National Mining Association, American Exploration and Mining Association, Alaska Miner Association intervened to defend the 2003 rule. In 2020, the Federal District Court for the District of Columbia ruled against the plaintiffs, and they appealed. In its June decision, the majority opinion of the appellate court rejected the 1997 Opinion, finding instead that the 2003 rule was consistent with the history of the administration of the law.^[6] The majority opinion also rejected claims that BLM failed to comply with the National Environmental Policy Act when adopting the 2003 mill site regulation.^[7]

The decision from the D.C. Circuit Court upholding the 2003 rule is an important decision for the mining industry in the United States because the prior rule had the potential to significantly reduce the ability of mining companies to develop mineral deposits on Federal lands by limiting the number of mill site claims that could be located and used for

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[1] *Earthworks, et al. v. Dep't of Interior*, 105 F.4th 449 (D.C. Cir. 2024).

[2] 30 U.S.C. §42(a).

[3] U.S. Dep't of the Interior, Office of the Solicitor, Limitations on Patenting Millsites under the Mining Law of 1872, M-36988 (Nov. 7, 1997) (1997 Opinion).

[4] U.S. Dep't of the Interior, Office of the Solicitor, Mill Site Location and Patenting under the 1872 Mining Law, M-37010 (Oct. 7, 2003); 68 Fed. Reg. 61,046, 61,054 (Oct. 24, 2003).

[5] 68 Fed. Reg. 61,046, 61,070-61,071 (Oct. 24, 2003).

[6] *Earthworks, et al. v. Dep't of Interior*, 105 F.4th 449 at 16 (D.C. Cir. 2024).

[7] *Id.* at 23.