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San Carlos Apache Tribe appeals Arizona Supreme Court decision to U.S. Supreme Court

State ruling allows Resolution Copper to discharge copper-contaminated water into polluted Queen Creek contrary to Clean Water Act

San Carlos Apache Reservation, AZ—The San Carlos Apache Tribe has asked the U.S. Supreme Court to review an Arizona Supreme Court decision that allows Resolution Copper Mining, LLC, a joint venture between Anglo-Australian mining giants Rio Tinto and BHP, to discharge copper-contaminated water from its the new mine under development into polluted Queen Creek.

“The Arizona Supreme Court made an egregious error when it ruled that Resolution Copper could avoid meeting the most rigorous Clean Water Act regulations,” said San Carlos Apache Tribe Chairman Terry Rambler. *“The Arizona ruling could have national implications and is a decision the U.S. Supreme Court should reverse.”*

The legal question in the Tribe’s Sept. 25 petition for a [writ of certiorari](#) to the U.S. Supreme Court centers on whether Resolution’s plan to construct one of the largest copper mines in the world will be a new source of pollution under the Clean Water Act or an existing source.

A new source determination would impose the most stringent Clean Water Act regulations on Resolution’s new mine. Resolution would have to prove to the Arizona Department of Environmental Quality (ADEQ) that Queen Creek could return to compliance with clean water standards even with Resolution’s additional copper-contaminated discharges.

An existing source determination, however, would allow Resolution to discharge copper-contaminated water into Queen Creek without meeting the Clean Water Act’s strongest protections.

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The Arizona Supreme Court [ruled](#) in June that discharges from the Resolution mine will be classified an existing source of pollution, allowing Resolution to avoid meeting the highest pollution control standards. The court based its ruling on Resolution's plans to reuse a small number of tunnels and mineshafts that the Magma Copper Company constructed for a defunct mine that was exhausted in 1996.

"It's absurd to consider Resolution an existing source when most of Resolution's mining operations have yet to be built and the copper lode is a mile underground and has never been mined," Chairman Rambler said. *"The Arizona Supreme Court twisted itself in knots to pretend Resolution's mostly unbuilt mining operations somehow already exist."*

The Tribe originally sued the ADEQ in 2017 for treating Resolution as an existing pollution source. A Maricopa County Superior Court affirmed the ADEQ's decision. The Tribe appealed the ruling to the Arizona Court of Appeals, which [reversed the lower court's decision](#) in 2022.

The appeals court determined the ADEQ improperly issued an Arizona Pollution Discharge Elimination System (AZDPES) Permit to Resolution as an existing source rather than as a new source. ADEQ and Resolution appealed that ruling to the Arizona Supreme Court.

The Tribe has vehemently opposed construction of the Resolution mine because it will destroy *Chi'chil Bildagoteel*, also known as Oak Flat, a sacred Apache religious site located in the Tonto National Forest about 70 miles east of downtown Phoenix.

In a separate petition, the non-profit group Apache Stronghold is asking the country's highest court to prevent the United States from transferring Oak Flat to Resolution Copper arguing that the Religious Freedom Restoration Act protects their right to worship at the sacred site.

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