

9th Circuit judges halt expansion of Smoky Canyon Mine

BOISE (AP) — A federal appeals court has temporarily halted the expansion of a phosphate mine in southeastern Idaho that opponents say would damage roadless areas near Yellowstone National Park.

In a ruling handed down late Friday, a three-judge panel of the 9th U.S. Circuit Court of Appeals found that U.S. District Judge Mikel Williams failed to consider whether logging and topsoil removal during expansion of the J.R. Simplot Co.-owned Smoky Canyon phosphate mine would cause irreparable harm to the site.

The mine has supplied about 1.5 million tons of phosphate ore a year to the company's Don plant in Pocatello,

where it is converted into fertilizer. But company officials have said the current site will likely be played out by 2010.

Last June the Bush administration approved a plan to allow the mine to expand into roadless areas of the Caribou-Targhee National Forest, about 100 miles south of Yellowstone.

The mine is in the Webster Range, about 10 miles from Wyoming's western border and 20 miles west of Afton, Wyo.

The Greater Yellowstone Coalition sued last fall, contending the mine has historically sent large amounts of naturally occurring selenium into local waters, which has poisoned or caused birth defects in wildlife and livestock. The environmental groups say

expanding the mine would create a major environmental disturbance and that the decision has not had adequate scientific review.

The appellate panel agreed in part, finding that the environmental groups had raised serious questions about whether the U.S. Forest Service and the Bureau of Land Management had violated the National Environmental Policy Act, the Clean Water Act and the National Forest Management Act in approving the proposed expansion.

Still, the judges said the lower court did not abuse its discretion when it found the environmental groups were unlikely to succeed on the merits of their case.

Attorneys represent-

ing Simplot did not immediately return calls from The Associated Press requesting comment. Previously, company officials have said an adverse ruling would lead to layoffs at the mine and the eventual closure of the fertilizer plant. U.S. Department of Justice spokesman Andrew Ames said only that the department was reviewing the ruling.

Simplot said it would build a 100-foot-wide reinforced road to transport timber and mining equipment to the new mine site, and cut timber and remove topsoil from the areas to be mined, storing it for later use, according to the ruling.

The lower court must consider those actions when deciding if

there will be irreparable harm to the site from the expansion, the appellate panel found.

"In remanding, we emphasize that we do not prejudge the merits of the district court's inquiry, leaving the remaining issues for consideration by the district court in the first instance," the panel ruled.

The crux of the issue was whether the environmental groups had grounds to object to Simplot building the road that would allow access to the proposed expansion, said Timothy Preso, an attorney with the environmental law firm Earthjustice, which represents the Greater Yellowstone Coalition in the case.

"The district court judge basically said, 'Be-

cause you guys are so concerned about selenium contamination from mining, that's all I'm going to consider,'" Preso said. "And our position was that the road building and logging and topsoil removal has no reason for happening except in preparation for the mining."

The 9th Circuit panel found that the connection between the potential impacts of building roads in a roadless area and the possible impacts of mining pollution were close enough that they had to be considered together, Preso said.

"We're pleased that it gives us the chance to try to protect this roadless area from destruction," Preso said.