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Forest supervisor says her boss ignored critical questions about Rosemont Mine

[By Tony Davis Arizona Daily Star](#)

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A former Coronado National Forest chief says her boss forced her a decade ago to stop questioning the legality of the proposed Rosemont Mine. The issues she was trying to raise match those a federal judge just used to bar construction of the mine.

Former Coronado Forest supervisor Jeanine Derby told the Arizona Daily Star last week that she and a top aide were flown from Tucson to the service's Albuquerque regional office for "counseling" to bring her staff in line.

She and her staff had been raising many questions in conversations with higher-ups about whether the mining company could legally dump waste rock and tailings on public land, Derby said.

The upshot of that meeting was that Derby and her staff stopped raising questions internally about key Rosemont issues, she said.

Now long since retired, Derby contacted the Star last week to disclose this incident, shortly after a federal judge overturned the Forest Service's approval of the mine.

"I feel vindicated," Derby said.

Her boss at the time, former Southwestern regional forester Corbin Newman, confirmed last week that he arranged the Albuquerque meeting.

He said he wanted Derby's staff to get moving on a formal environmental impact statement on the mine, rather than being bogged down. He said their concerns conflicted with national Forest Service policy that the agency can't say "no" to a mine except under extreme circumstances.

"They had to get on with the analysis. Let it play out. Let's get on with the work," Newman said.

He denied ever telling Derby and her aide to stop talking about mine issues.

But Derby said he told her "he needed us to get on board and make sure our employees got on board. He didn't want any more internal debate and he didn't appreciate the fact that my employees were asking questions and that I was allowing it."

Derby's revelations represent the first public sign of internal disagreement within the Forest Service about the \$1.9 billion Rosemont project since a Canadian mining company proposed it back in 2006.

The disagreement centered on whether the Forest Service was going too far in holding to its longstanding position that the 1872 Mining Law and later laws and regulations forbade the agency from saying "no" to a mine.

Until that meeting, Derby and her staff had been raising legal and environmental issues, particularly about the mine's potential impacts on water supplies and whether some of the mining company's formal claims on public land for its project were valid.

Their concern was that, because the company hadn't proven those claims were valid, it couldn't use that land for dumping waste rock and tailings.

But for many years, the Forest Service has taken the public position that it doesn't have to analyze claims' validity and that this position was backed up by later laws, regulations and court precedents.

U.S. District Judge James Soto ruled in Tucson on July 31 that the agency was wrong, calling its approval of Rosemont "arbitrary and capricious."

His ruling came a day before the mine was to start construction. It would directly create about 500 high-paying jobs and many more jobs indirectly, while disturbing about 5,430 acres of federal, state and private land in the Santa Rita Mountains, about 30 miles southeast of Tucson.

Hudbay Minerals Inc., which would build the mine, has said it will appeal Soto's ruling. The federal government hasn't said anything about that yet.

Derby, now 80 and living in the Tucson Mountains foothills, contacted the Star by email on Aug. 11, the day the paper reported that Soto's ruling, if upheld in higher courts, had national implications that could make it much harder for the U.S. government to approve new mines on federal land.

She felt vindicated because "there are other people in the world who are willing to look at this from the basic questions that should have been asked from the very first: Is this (mine) appropriate in terms of use of land, and have all the questions been answered?" she said.

She decided to speak out now, she said, because Soto's ruling triggered memories about how she tried, without success, to guide the Forest Service into looking at the "difficult" questions she was raising.

"Until someone starts asking questions, the powerful people won't change," she said.

Since retiring from the Forest Service in 2010, she kept her views on Rosemont under wraps until now because she had walked away from her job, wasn't carrying a grudge and "didn't want to get into a conflict," she said.

Newman, now 65, also retired, and living in Oracle, said he brought Derby and then-Deputy Coronado Forest Supervisor Reta Laford in for the meeting because he wanted more progress on the complex work involving the Forest Service's environmental analysis of Rosemont. He disputed that it was a formal counseling session.

The service started work on the analysis in summer 2008. After publishing a draft and a final Rosemont environmental impact statement, it made a final decision in June 2017.

Then-regional forester Corbin Newman said he wanted Derby's staff to get moving on a formal environmental impact statement on the mine, rather than being bogged down.

Neither Derby nor Newman could recall precisely when their discussion took place. It happened sometime between Newman's arrival as regional forester in late 2007 and Derby's retirement. Newman retired in 2013.

No authority to change policy

Newman said he thought Derby and Laford's concerns were valid. But he felt their views were colliding with established national Forest Service policy, said Newman, who like Derby worked well over three decades for the Forest Service.

"I had them come in so we had a clear understanding that neither they or we had authority to change national policy, no matter how much they would like to or we would like to," Newman said.

His job was to make sure that "line officers" such as Derby and Laford didn't stray outside national policy made by the Forest Service.

"I felt that we've just gotta come to an understanding about your authority and my authority," he added.

Asked if Derby is right to feel vindicated by Soto's ruling, Newman said, "One court opinion doesn't establish law. It makes an interpretation that's subject to challenge. I don't know how it's going to work out. It sort of depends on how other judges view the law."

Laford, who today is supervisor of Olympia National Forest in Washington state, didn't return an email from the Star seeking comment about this incident.

Derby said she felt Newman's action had a chilling effect on the Coronado forest's ability to raise critical questions about the mine.

From then on, she knew she'd be walking on a "very fine wire" on Rosemont.

“Red lights were flashing in me. I had conflicting thoughts. I needed to be true to myself and also supportive of people working for me. I also needed to perform my job in a manner that was acceptable to the agency.

“I was disappointed at not being trusted, and that I was expected to bring down the hammer on employees who had legitimate questions and deserved a place to speak their truth internally and have better answers than we were getting.”

Derby said she stayed silent because “I’m the sole earner for the family. I had a disabled husband. I needed my job.

“I was well aware particularly after that counseling session that for any misstep, they could start proceedings for insubordination or whatever it would take, to get me out of the way. I toed the line. I didn’t give them any opportunity.”

As for her employees, “I also observed that they were somewhat afraid to make waves and wondered, ‘Would questioning things about Rosemont be considered making waves?’”

Besides no longer raising the mining claim issue, her staff also didn’t push hard for the agency to seriously consider an alternative for Rosemont that would have meant no mine, she said.

Under the National Environmental Policy Act, agencies must analyze and consider what’s known as a “no action” alternative for major projects proposed on federal land that would have significant impacts.

But Derby said that while the environmental impact statement did look at such an alternative, the Forest Service’s position that it can’t say no “negates any analysis” of it.

Jeanine Derby’s revelations represent the first public sign of internal disagreement within the Forest Service about the \$1.9 billion Rosemont project. “He needed us to get on board and make sure our employees got on board,” she said of her boss.

Mine as poster child

From the Albuquerque meeting on, for some time, Derby was required to call Newman every Friday to report on her activities during the week, she said — an act she felt was micromanaging.

Newman, however, said that his office was only asking for weekly updates on where the Coronado National Forest staff was on the Rosemont issue, since the agency was getting regularly questioned on how much money it was spending on it.

Weariness over Rosemont was one factor leading Derby to retire at 72, she said. On that issue and others such as wildfire fighting, “I felt constantly second-guessed, constantly challenged for my leadership.”

But she continued to believe privately, as she now says publicly, that Rosemont was going to become a poster child that would drive home the need to overhaul or reform the 1872 Mining Law, which Congress passed to encourage mining on public lands, she said.

She says the law needs to be changed to better relate to more recent public understanding and concerns about the environment.

Noting that the federal government gets no royalties from private extraction of hard-rock minerals from its land, while it collects royalties from some forms of oil extraction, she said the 1872 law “is allowing devastation to happen with absolutely no benefit to the federal government.”

While not opposed to mining in general, she’s against Rosemont as it’s proceeding today, she added.

While there is a valuable use for the mineral, “for now, the minerals can remain safely in place for future generations, until a time when their extraction can be achieved without unreasonable risk or detriment to the environment,” she said.

Newman, by contrast, called his views on Rosemont and mining in general “nuanced.” Few legal uses on national forests are as destructive as mining, particularly open-pit mining, he said.

But not only were national forests created to allow multiple uses, the critical need for copper and other minerals is obvious, “as you sit in your office and behind your computer.”

“You don’t want to see impacts but there is a voracious appetite for minerals. Where are they going to come from? People want things, but they want the consequences to be elsewhere.”

He agreed with Derby that Rosemont should be a poster child for mining law reform, saying review of the 1872 statute is long overdue. But it’s going to take more than just Rosemont to get that overhaul through Congress, said Newman.

In the past, higher profile mining battles such as one in the 1990s over an aborted plan to build a gold mine near Yellowstone National Park haven’t moved the needle enough to change the 1872 law, he said.

While a review and change of the law would be great, he said, “I personally don’t hold out a lot of hope.”