

## BP, ARCO Seek Out Of Tribal Contamination Suit

By Adam Lidgett

Law360, New York (September 25, 2017, 3:28 PM EDT) -- BP America Inc. and Atlantic Richfield Co. urged a Nevada federal judge on Friday to bar the Yerington Paiute Tribe from suing them in tribal court over environmental damage allegedly caused by ARCO's predecessor at an abandoned copper mine, saying they aren't members of the tribe.

The companies filed a complaint and bid for a preliminary injunction asking the federal court to enjoin the tribe from pursuing claims in the underlying tribal court action, which stems from mining conducted by the Anaconda Mining Co. from the 1950s through 1970s at the Anaconda Copper Mine and contamination that migrated onto tribal property.

In the preliminary injunction bid, the companies said that under U.S. Supreme Court precedent, the tribal court can't exercise subject-matter jurisdiction over the tribe's claims given that the companies aren't tribal members and they aren't alleged to have conducted any of the alleged activity on tribal land.

"Tribal courts have no jurisdiction over conduct occurring outside their reservations, which is dispositive of the tribe's attempt to invoke tribal court jurisdiction here," the companies said. "Moreover, the tribe's allegations fit no exception articulated by the Supreme Court to the basic proposition that tribal courts cannot exercise jurisdiction over non-members even/or conduct within a reservation."

The mine doesn't overlap any tribal territory, ARCO and BP said. According to the companies, the northern boundary of the mine at issue is two miles away from the southern boundary of the tribe's Campbell Ranch property, and the mine's eastern side is a mile west of the tribe's colony in the city of Yerington.

The tribe's complaint was filed in tribal court in August, according to the companies, and claimed that substances from the mine had migrated to surrounding properties.

The tribe had alleged that some of these properties included tribal land and property, according to court documents.

"We do not believe the mine has impacted YPT property and expect to dispute the YPT's allegations if and when the matter of jurisdiction is resolved," ARCO said in a statement

Austin Tighe, who represented the tribe in the tribal court proceeding, said in a statement on Monday that his client intends to move to dismiss the federal lawsuit on sovereign immunity grounds and precedent that requires BP to exhaust jurisdictional arguments in tribal court.

"Suing the tribe is consistent with how BP has acted from the beginning," Tighe said. "They paid \$19 million to the tribe's non-Indian neighbors to settle these same environmental claims, and have given the tribe nothing but some bottles of water."

BP and ARCO are represented by Robert A. Dotson and Jill I. Greiner of Dotson Law and Kenzo Kawanabe, Adam S. Cohen, Constance L. Rogers and Kyle W. Brenton of Davis Graham & Stubbs LLP.

The tribe is represented by Michael Angelovich and Austin Tighe of Nix, Patterson & Roach LLP and Robert F. Saint-Aubin of Saint-Aubin Chtd.

The case is BP America Inc. et al. v. Yerington Paiute Tribe et al., case number 3:17-cv-00588, in the U.S. District Court for the District of Nevada.

--Editing by Kelly Duncan.