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Apache group sues to stop Oak Flat land swap, site of a planned copper mine

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The grassroots group Apache Stronghold sued the U.S. Forest Service on Tuesday to stop the federal government from issuing a final environmental impact statement that would clear the way for a huge copper mine on land held sacred by Apache people and other Arizona tribes.

The suit, filed in U. S. District Court in Tucson, alleges among other things that the U.S. Forest Service failed to give sufficient notice to the group or to nearby tribes to prepare a response, and that the land is still Apache land according to an 1852 treaty.

The suit asks for an injunction to stop the release of the environmental impact statement and to hold a jury trial on the mine project.

The group's leader said the lawsuit was necessary to protect the rights of the Apache people.

"What was once gunpowder and disease is now replaced with bureaucratic negligence and mythologized past that treats us, as Native people, as something invisible or gone," Wendsler Nosie said in a statement included with the suit. "We are not."

If the Forest Service issues the environmental review as planned later this week, the clock would start on a land swap that would allow a mining company to extract copper from Oak Flat, a site about 5 miles east of Superior.

Known to the Apache people as Chi'chil Biłdagoteel, Oak Flat is in the Tonto National Forest, and the parcel currently used as a campground has been protected since it was made part of the national forest in 1955.

It also sits on a large copper ore deposit that has been mined off and on for decades. The site of the newest mine, Magma Mine, is visible from the campground.

Previous mining operations drove shafts into the earth to locate the ore, but the newest mine owner, Resolution Copper, a subsidiary of British-Australian firms Rio Tinto and BHP Billiton, wants to use a technique known as block cave mining to extract the ore.

The method involves drilling a shaft about 7,000 feet below ground level and then excavating the ground underneath the ore body, causing it to collapse under its own weight. The rubble is then moved through another tunnel to a processing facility for extracting the copper. Eventually, as the mine is excavated, Oak Flat would turn into a sinkhole.

Mine opponents say the operations would devastate not only one of the Apache people's most significant cultural sites but the ecology and possibly the underground springs that feed nearby Queen Creek and other springs in the area.

Opponents also say that groundwater supplies that Pinal County and part of Gila County depend on could be contaminated, and significant species like the Emory oak and other important plants would die from lack of water and habitat.

The land swap dates back to December 2014, when Sen. John McCain, R-Ariz., attached a rider to a defense appropriations bill known as the National Defense Authorization Act during a late-night session. The rider authorized the U.S. to trade 5,376 acres of private land for 2,200 acres of forest land, including Oak Flat to Resolution Copper.

Apache Stronghold's attorneys argue in the suit that the tribes and interested Native people did not learn about the exact date for the issuance of the environmental impact report until a Reuters article broke the story on Jan. 4 that the document would be released Jan. 15. The date is important because the land swap becomes final 60 days after the report is issued.

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The suit also alleges that the Forest Service violated the tribe's right to due process, the First Amendment's guarantee of religious rights, the Religious Freedom Restoration Act and that the federal government abandoned its fiduciary responsibility to the Apache tribes.

The lawsuit also says that Oak Flat belongs to the Apache people "in accordance with the terms of the 1852 Treaty of Santa Fe," and that because the U.S. does not own that land, it lacks the authority to convey the land to anyone else.

Also, the suit says, "The 1852 Treaty was never amended, rescinded, nor terminated."

"Oak Flat is holy and sacred. Chi'chil Bildagoteel is central to our traditional religion and identity as Apache people," said Nosie, the Apache Stronghold leader. "Giving away our sacred land by the U.S. government for destruction by a foreign mining company destroys our ability to

practice our religion. It violates our First Amendment right to the free exercise of our religion protected by the Constitution.”

Mine opponents also say that Rio Tinto is repeating an act it said it would never do again, namely, destroy an Indigenous cultural site. The mining firm blew up an Australian First Nation cultural site in May 2020, causing an international furor that resulted in the dismissal of Rio Tinto’s CEO and two other top executives. The firm’s chairman [said at the time](#), “We know we cannot change the past, but we are absolutely committed to doing better in the future.”

A spokesperson for Rio Tinto emailed a statement regarding the eventual destruction of Oak Flat.

“Publication of the Final EIS and completion of the land exchange is just one step in an ongoing permitting and feasibility study process over coming years, before any decision on investment to proceed with the Resolution Copper project,” the statement said.

The spokesperson wrote that Resolution Copper is committed to engagement with tribes, the community and the Forest Service to shape the project and protect Native American cultural heritage while diversifying the local economy.

“We will ensure Oak Flat campground remains open for as long as it is safe to do so, this is expected to be for at least the next few decades,” the statement said.

Mine opponents don’t buy that statement. “Never again, taken at face value, seems simple enough to understand — but what does Rio Tinto mean by that?” a statement released by the Arizona Mining Reform Coalition said. “The parallels between what Rio Tinto recently did in the Juukan Gorge in Australia, and what they have been planning to do at Oak Flat for 15 years are remarkably similar.”

Cranston Hoffman, an Apache traditional practitioner and medicine man from the San Carlos Apache Tribe, said he grew up collecting acorns and medicinal plants in the area.

“To have a land exchange occur at Oak Flat and to have destruction of this spiritual place by mining,” Hoffman wrote in a statement supporting the lawsuit, “will have a direct, negative effect on me and members of the Holy Ground group who assist me in conducting these ceremonies.

“The prayers we have offered will be disrupted, the negative things extracted will resurface and we believe that these negative elements will come back to hurt us, our loved ones, and/or our tribal community. Our religious beliefs in the good that we do by conducting prayers at a special, holy place will be broken. We do not want this for our People, for our Future and for Ourselves.”

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