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## Apache make emotional appeal to court to halt proposed copper mine



Activists from the Apache Stronghold grassroots organization regroup at a downtown Phoenix intersection Tuesday on their way to a vigil at the federal courthouse. The group is protesting the government's OK of an environmental review that clears the way for a proposed copper mine in Oak Flat.

Alberto Mariani/Cronkite News

By Sarah Oven – Cronkite News

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WASHINGTON – Members of the group Apache Stronghold told a federal district judge, in sometimes tearful testimony on Feb. 3, that a proposed copper mine at Oak Flat would destroy a “holy place” for Native Americans and needs to be stopped.

“This is what this fight for Oak Flat is revealing,” said Wendsler Nosie Sr., a leader of Apache Stronghold and one of the witnesses that day. “Why can’t all Americans know they’ve met an angel at a holy place?”

The hearing before U.S. District Judge Steven Logan was the latest in a years-long fight to block the Resolution Copper Mine, a massive project that is the result of a land swap in southeastern Arizona between the mining company and the federal government.

The U.S. Forest Service cleared the way for that transfer on Jan. 15, when it released a final environmental impact statement on the mine.

Opponents argued Feb. 3 that the federal government violated their due process rights by rushing through the final approval last month, just days before President Donald Trump left office. They also claim the mine would violate their constitutional right to worship, and are asking Logan for a preliminary injunction to halt progress on the project while they pursue their suit.

The mine's supporters say it could eventually bring thousands of jobs and billions in economic activity to the region over its lifetime. But doing so would destroy Oak Flat, which Nosie and his granddaughter, Naelyn Pike, called sacred land.

Pike said that would sever her people's connection to the land and "everything the creator has given to us would be taken away." She and Nosie described coming-of-age ceremonies, family gatherings and other ceremonies at Oak Flat.

"The area of Oak Flat is Apache territory, and we need to protect it, we need to fight for it, because that is the spirit of who we are in our Apache religion," Pike said in a news conference after the hearing.

## **Government arguments**

But government lawyers urged Logan to reject the motion for an injunction, saying in court filings that the suit "has no likelihood of success on the merits, and because the public interest favors allowing the land transfer to go forward."



Ed Mendoza, an Apache Stronghold leader, speaks to supporters in Phoenix Tuesday. The group is protesting the planned Resolution Copper mine on lands they consider to be Native American, arguing the project would cause dramatic environmental damage and step on their religious rights.

Alberto Mariani/Cronkite News

The government said the lawsuit's claims are based on the Apache tribe's control of the land, but that Apache Stronghold members are representing themselves, not the tribe, so they cannot press the claim. Government lawyers also challenged that an 1852 treaty required the government to manage Oak Flat for the tribe – but that treaty never put Oak Flat into trust status, the government said.

As for the argument that the mine would infringe on their religious rights, the government's filing said the changes to Oak Flat would not create the "substantial burden" the law requires. It is not enough to claim "an alleged effect on an individual's subjective, emotional experience, or claimed 'diminishment of spiritual fulfillment – serious though it may be.'"

But John Welch, an archaeologist who testified for Apache Stronghold, said the tribe's "religious practices have already been disturbed" just by the preparation work for the mine. If the mine actually enters production, the operation would place an "incalculable burden" on religious observations, he said.

The government said the due process claims are also dubious, noting that opponents have had six years since the land transfer was first approved by Congress to have input while studies and hearings were held.

## Trying to be heard

Pike said after the hearing that opponents have been trying to make their voices heard all those years, but the government did not listen.

“When they talk about us not following the process, we did,” she said. “We did that by putting in our comments, by going to public comments and saying our voice.

“We partake in the process that’s supposed to protect us, and what did the United States do?” Pike asked. “They didn’t even use their own process. They disregarded that. And that is why they’re being sued.”

Arizona lawmakers had tried for years to win approval of the land transfer before then-Sen. John McCain inserted language approving the deal as an amendment to the must-pass Defense Department budget in December 2014.

According to the company’s site, the mine would bring in up to \$61 billion for Arizona in 60 years, increasing state and local tax revenue by \$88 million to \$116 million a year. At full capacity, the mine would employ about 1,500 people and support another 2,200 jobs in the state indirectly, the mining company said.



Chris Luna, a member of the Apache Stronghold grassroots organization, chants traditional hymns Tuesday during a protest by the group Apache Stronghold over a proposed copper mine that the group said would destroy a sacred site in southeastern Arizona.

Alberto Mariani/Cronkite News

The bill said the transfer – 2,422 acres of federal land in the Tonto National Forest in exchange for 5,459 acres from the mining company – would take place within 60 days of the approval of the final environmental impact statement. That is why Apache Stronghold is urging Logan to put the brakes on the project for now.

But government lawyers noted that mining will not start for years after the transfer, and it could be years after that before there is noticeable damage to Oak Flat.

Logan gave both sides until Feb. 5 to file final written arguments in the injunction and said he would have a ruling by Feb. 12.

Nosie said after the hearing that he is committed to continue fighting.

“To see all the people praying, to see all the people come out there, and the participation, and doing it in a religious and respectful way, because the voice of that really needs to be heard,” he said. “The voice of the people need to be heard and, in this case, all of us will be affected.”