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Judge denies Apache bid to block Ariz. copper land swap

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A federal judge Friday denied an Apache group's request to block the transfer of sacred land in an Arizona national forest to a pair of multinational mining firms.

The decision is a setback for Native Americans aiming to prevent Rio Tinto PLC and BHP Group Ltd. from mining copper at Oak Flat, a site in the Tonto National Forest where Apaches have gone to pray and hold ceremonies for centuries.

The **order** by Judge Steven Logan of the U.S. District Court for the District of Arizona allows the Forest Service to complete the land swap with Rio Tinto and BHP's joint venture, Resolution Copper, by the middle of next month.

In a January lawsuit, nonprofit group Apache Stronghold argued that terms in the 1852 Treaty of Santa Fe mean the federal government is not the owner of Oak Flat, the 2,422-acre parcel with an estimated 40 billion pounds of copper beneath it (***E&E News PM***, Feb. 3).

Logan disagreed. He found that Mexico ceded the land to the United States in the 1848 Treaty of Guadalupe Hidalgo.

Congress approved the land swap as a rider in a defense spending bill in 2014, which President Obama signed into law (***Greenwire***, Dec. 9, 2020).

Apache Stronghold also argued that conveying the land to Resolution Copper would violate the Religious Freedom Restoration Act (RFRA).

The mine is still years away from an investment decision, but the plan is to extract copper about a mile underground. The surface would cave into a crater nearly 2 miles wide.

In his order, the judge noted the impact of the project.

"Quite literally, in the eyes of many Western Apache people, Resolution Copper's planned mining activity on the land will close off a portal to the Creator forever and will completely devastate the Western Apaches' spiritual lifeblood," wrote Logan, who was appointed by Obama.

However, the land swap does not constitute a substantial burden under RFRA because it doesn't compel people to act contrary to their religious beliefs under threat of punishment, Logan wrote.

Michael Nixon, an attorney for Apache Stronghold, said the group will appeal.

"This is quite obviously a substantial burden on the Apaches' ability to freely exercise their religion. Even what they believe in is going to be totally annihilated," Nixon said. "It's absurd. We'll get that clarified. We believe that the 9th Circuit will clarify this."

The Forest Service declined to comment. Rio Tinto, which is not a party to the case, also declined to comment.