

Apache Stronghold v. United States

A HOLY LAND WORTH FIGHTING FOR



The Clients: Oak Flat (known in Apache as Chi'chil Bildagoteel) has been a sacred site for Native Americans since before recorded history. Located in Arizona's vibrant Tonto National Forest, Western Apache religious and cultural identity is inextricably tied to Oak Flat. It is the sole place where they may perform key sacred ceremonies that have been critical to their people for centuries. It is recognized in the National Register of Historic Places, and its religious significance has been compared to that of Mount Sinai for Jews or St. Peter's Basilica for Catholics.

The Case: The federal government had promised to protect this place of worship. However, in 2014 it caved to pressure from special interest lobbyists and initiated a land transfer to a foreign-owned mining company with plans to construct a mine that will obliterate this sacred site, swallowing it in a crater nearly two miles wide and over 1,100 feet deep, and erasing core Apache religious ceremonies forever. Apache Stronghold filed a lawsuit arguing that the destruction of their sacred site violates the Religious Freedom Restoration Act (RFRA), the U.S. Constitution, and an 1852 treaty promising that the United States would protect their land and "secure the permanent prosperity and happiness" of the Apache.

The Timeline: The Final Environmental Impact Statement (FEIS)¹—the final preparatory step necessary for the federal government to officially transfer the land—was published on January 15, 2021. It was withdrawn on March 5, 2021, mere hours before the government's response was due in the litigation, temporarily delaying the transfer. However, the FEIS could be reissued at any time and would trigger a 60-day window within which the land must be transferred. Once the transfer takes place, the federal government can do nothing to help protect it. Oral argument before a three-judge panel of the Ninth Circuit is scheduled for October 22.

What's at Stake? If the transfer is allowed to happen, the underground mining plans for the site will swallow Oak Flat in a nearly two-mile-wide, 1,100-foot-deep crater—the depth of two Washington Monuments stacked on top of each other and the length of the National Mall. Ancient Apache religious practices would be destroyed forever.

Case Page: <https://www.becketlaw.org/case/apache-stronghold-v-united-states/>

Projected Mining Crater



¹ *Final Environmental Impact Statement: Resolution Copper Project and Land Exchange*, USDA (Jan. 2021), <https://perma.cc/29CW-AW5F>.

BREAKING IT DOWN:

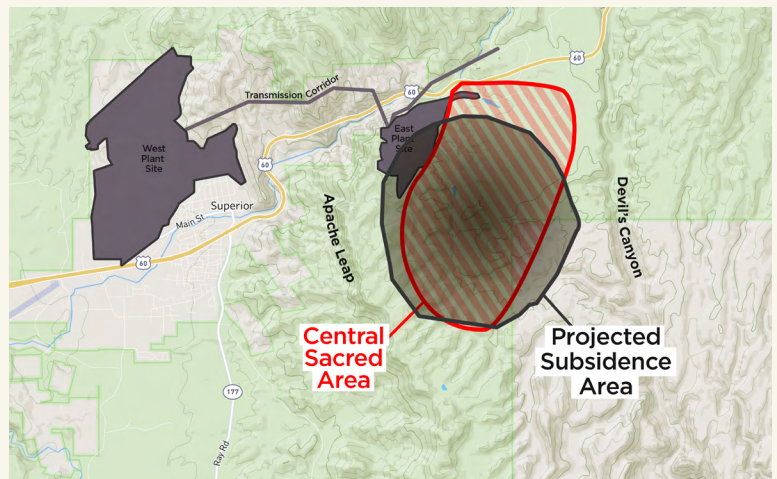
- Recognizing its responsibility to Native peoples, the federal government has protected the sacred site of Oak Flat for more than six decades.
- Mining companies have long lobbied Congress to give them control of the land. One sponsor of a land-transfer bill was even convicted of soliciting a bribe from a mining company in exchange for his support. For many years, Congress refused these lobbying efforts, protecting the site from exploitation the same way it would preserve a historic, centuries-old church, mosque, or synagogue.
- But in 2014, a rider was attached during late-night negotiations of the National Defense Authorization Act (NDAA) directing the government to transfer the land to Resolution Copper.
- Resolution Copper is a foreign-owned mining company which plans to construct a mine that will obliterate the sacred site in a nearly 2-mile-wide, 1,100-foot-deep crater.
- Apache Stronghold—a coalition of Apache, other Native peoples, and non-Native allies dedicated to preserving Oak Flat—sued the government in federal court. After the trial court declined to halt the land transfer, Becket filed an emergency appeal to the Ninth Circuit Court of Appeals.
- Just six hours before the government’s response was due, the government announced that it would withdraw the environmental impact statement that triggered the land transfer, delaying the transfer for several months. The Ninth Circuit Court of Appeals then denied emergency relief to Apache Stronghold, but with Oak Flat still at risk, the Court scheduled the appeal for an expedited hearing—with Judge Bumatay stating that the destruction of Oak Flat is “an obvious substantial burden” on Apache Stronghold and that “this is not a difficult case.”

“My people are pleading with the court to stop this unconstitutional destruction of native land and preserve Oak Flat so that we can continue taking our children and our grandchildren there to worship and pray.”

- Dr. Wendsler Nosie, Sr. of Apache Stronghold

*“The Apaches see Oak Flat differently—it is a church, a place for worship and the practice of our traditional religion. It is the center of our most sincerely held, religious beliefs, where *diyf* (sacred power) can be called upon via prayers.”*

- Terry Rambler



Myth: The mine will be underground and will not harm the surface of the land.

Reality: Though the mine will be underground, it is undisputed that it will soon result in the total destruction of the surface above the mine. The federal government admits in the FEIS that, although the mine itself will be several thousand feet underground, the ground above the mine will eventually collapse. The result will be a crater nearly two miles wide and 1,100 feet deep—the length of the National Mall and twice the height of the Washington Monument. The crater will obliterate the Apache’s sacred space.

Myth: If Oak Flat is destroyed, the Apache can simply worship elsewhere.

Reality: Native Americans have been worshipping at Oak Flat since time immemorial. It is not sacred simply because it is preserved land. It is the only place where certain traditional sacred ceremonies may be performed and has unique significance for Apache religious practices. For the Apache religion, the place itself is sacred, like Mount Sinai for Abrahamic faiths. It cannot be moved or replicated.