

OAK FLAT LITIGATION – SUMMARY & STATUS OF THE THREE ACTIVE CASES

July, 2022

1. *Apache Stronghold v. United States of America, et al.*, No. 21-CV-00050-PHX-SPL (Judge Steven P. Logan of the U.S. District for the District of Arizona)

Apache Stronghold asks the court to declare that Oak Flat is Western Apache land with treaty and property rights reserved by and to the Apaches in accordance with 1852 Treaty of Santa Fe.

Claims: (1) Fifth Amendment to the U.S. Constitution, Due Process; (2) First Amendment, Petition Clause and Right to Remedy; (3) Breaches of Trust and Fiduciary Duties (Reserved Treaty Rights and Constructive Trust); (4) First Amendment, Free Exercise Clause – Substantial Burden; (5) Religious Freedom Restoration Act (“RFRA”); and (6) First Amendment, Free Exercise Clause.

Status: On February 12, 2021, the district court denied Apache Stronghold’s motion for a preliminary injunction, which was appealed on emergency to the U.S. Court of Appeals for the Ninth Circuit. **No. 21-15295.** On March 1, 2021, the U.S. Forest Service announced its decision to “rescind” the Final Environmental Impact Statement & Draft Record of Decision (“FEIS/DROD”) for the Resolution Copper Mine and related Land Exchange. On March 5, 2021, the Ninth Circuit’s Emergency Motions Panel, in a 2-1 decision, declined to grant the emergency injunction because of the USDA’s rescinding of the FEIS/DROD. On June 24, 2022, the Ninth Circuit affirmed the denial of the preliminary injunction motion, with one of the three judges dissenting. *Apache Stronghold v. United States*, 2022 U.S. App. LEXIS 17423 (June 24, 2022). Apache Stronghold has vowed to petition the U.S. Supreme Court for a writ of certiorari and those preparations are underway.

The merits of Apache Stronghold’s case in the district court has been stayed pending the final outcome of the preliminary injunction appeal.

2. *San Carlos Apache Tribe v. U.S. Forest Service, et al.*, No. 21-CV-0068-PHX-DWL (Judge Dominic W. Lanza of the U.S. District Court for the District of Arizona).

The Tribe requests that the FEIS for the Resolution Copper mine project and land exchange be vacated, and the Forest Service enjoined from allowing the project or land exchange to proceed until full compliance with Section 3003 of 2015 National Defense Authorization Act (“NDAA”), the National Historic Preservation Act (“NHPA”), the RFRA, the National Environmental Policy Act (“NEPA”), and other applicable laws and implementing regulations.

Claims: (1) Violation of Section 3003 of the 2015 NDAA; (2) Failure to Consult under Section 106 of the NHPA; (3) Section 3003 violates the RFRA; (4) Section 3003 as applied violates the Free Exercise Clause of the First Amendment to the U.S. Constitution; and (5) Section 3003 violates Tribe’s members to free exercise of religion guaranteed by Treaty Rights pursuant to the Apache Treaty of 1852.

Status: The case is stayed pending the Forest Service’s publication of a future FEIS.

3. *Arizona Mining Reform Coalition, et. al. v. U.S. Forest Service., et al.*, No. 21-CV-00122-PHX-DLR (Judge Douglas L. Rayes of the U.S. District Court for the District of Arizona).

The coalition requests that the FEIS and the land exchange be vacated, and that the Forest Service be enjoined from allowing the land exchange or the Resolution Copper mining project to proceed.

Claims: (1) the National Environmental Policy Act; (2) Section 3003 of the National Defense Authorization Act; (3) the Forest Service Organic Act; and (4) the Federal Land Policy and Management Act, the Organic Act, and Public Lands Laws.

Status: The case is stayed pending the Forest Service’s publication of a future FEIS.