

ENVIRONMENT

Appeals court blocks Oak Flat land swap, giving copper mine opponents a late reprieve

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Key Points

The 9th U.S. Circuit Court blocked a proposed land swap that would allow construction of a copper mine at Oak Flat.

Mine opponents asked the court to prevent Resolution Copper from taking control of 2,200 acres east of Phoenix until the full case could be argued in the court.

Opponents of the mine have fought the land swap for years and continued to hold out hope that an appeals court would block the exchange.

A federal appeals court temporarily halted a land exchange that would allow construction of a copper mine on a site held sacred by Arizona tribes, acting just hours before the swap could have been completed.

Ruling late Monday, Aug. 18, the 9th U.S. Circuit Court of Appeals [issued a temporary restraining order](#) blocking the land exchange at Oak Flat, where Resolution Copper wants to extract ore from beneath 2,200 acres of forest and wetlands.

The ruling came the night before the end of a 60-day review period for the land exchange, which has

survived more than two decades of delays, legal battles and an act of Congress.

A coalition of environmentalists, tribes and the San Carlos Apache Tribe asked the appeals court for the temporary injunction after a district judge declined to halt the exchange until the case had been heard.

The groups who brought the suit were jubilant that they would have their day in court.

“Tribes have been on these lands now called Arizona since time immemorial. Over the decades, we have strived to successfully provide for the health and welfare of our people while maintaining our status as sovereign nations,” said Maria Dadgar, executive director of the Inter Tribal Association of Arizona.

“We believe that the health of our people correlates with the health of the land, the water and the environment that surrounds us,” Dadgar said. “We are hopeful with the news from the 9th Circuit Court of Appeals and welcome the opportunity to make our case for the continued protection of Oak Flat.”

Roger Flynn, attorney for the groups challenging the land exchange and mine, said the court “rightly understood the important issues at stake. There is too much at stake to rush forward with this ill-advised give-away of our priceless public lands.”

A Resolution spokesperson characterized the ruling as a “temporary pause” to give the court time to consider the case. The company said it was confident the court would uphold the earlier ruling that “the congressionally directed land exchange satisfies all applicable legal requirements.”

Tuesday, Aug. 19, marked the 60th day after the U.S. Forest Service issued a new environmental impact statement for the proposed copper mine, which would be built on 2,200 acres at Oak Flat, east of Phoenix. The deadline would have cleared the way for Resolution Copper to take control of the land had the 9th

Circuit not halted it.

Resolution, which has been preparing to start work on the mine, was ready to continue its activities at the site, which include seeking the needed permits, working to restore Emory oaks and eventually beginning copper extraction.

Even as the date for the land swap neared, questions continued to arise. The State Land Department sent a [letter](#) to the Forest Service on Aug. 4 objecting to the mine based on concerns about groundwater consumption and subsidence. The agency said it was particularly worried about the proposed Superstition Vistas development in the far southeastern valley, east of Queen Creek and southwest of U.S. Highway 60.

The letter said that if a substantial portion of Superstition Vistas could not be developed or if sufficient water supplies could not be secured, the water pumped by Resolution for use in the mine "would decrease the likelihood that groundwater could be used for new development in the future," and add more stress to an already stressed groundwater sub-basin.

Water is liable to be more expensive and complicated to obtain as the groundwater declines, the letter said: "The value of the as yet undeveloped (state land) would thus suffer from the potential additional water supply obstacles to already committed uses, which could delay or eliminate demand."

Apache Stronghold was not available to comment, as its leader Wendsler Nosie was traveling and could not be reached.

Still other issues remain, including claims by some experts that the mine won't be viable, questions about where the copper will be processed and how much U.S. manufacturers will have to pay to get it back from

overseas processors.

What is at stake at the site

Oak Flat Campground, known to Apaches as Chi'chil Biłdagoteel, "the place where the Emory oak grows," has been ground zero in a battle over Native religious rights on public lands as well as preservation of one of Arizona's most scarce commodities, a wetland.

The 2,200-acre primitive campground and riparian zone, within the [Tonto National Forest](#) about 60 miles east of Phoenix, also lies over one of the nation's largest remaining bodies of copper ore.

Tribes, environmentalists and their allies have been fighting to prevent Oak Flat from being given to Resolution Copper in exchange for other environmentally sensitive lands in Arizona. The company had pursued the land exchange with the Forest Service for about 10 years before it became attached to a defense bill by lawmakers led by the late Sen. John McCain in December 2014.

To obtain the copper ore, Resolution, which is owned by multinational companies Rio Tinto and BHP, will use a method known as [block cave mining](#) in which tunnels are drilled beneath the ore body, and then collapsed, leaving the ore to be moved to a crushing facility. Eventually, the ground will subside, leaving behind a crater about 1,000 feet deep and nearly 2 miles across, obliterating Oak Flat and its religious and environmental significance.

The company said that the mine would inject about \$1 billion annually into Arizona's economy over its lifespan and create thousands of jobs in the Copper Triangle, where mining has been a part of the economy for more than 100 years.

Can this mine be built? One former Magma Mine manager has some doubts

After a near 25-year struggle to obtain Oak Flat for its copper, Resolution may find the location unviable, says one mining manager who knows the land and what lies beneath it well.

Harry Winters led a team in 1988 to develop a plan to rehabilitate the Magma Mine, where Resolution has drilled a 7,000-foot shaft as the beginning of its mining operation. "We came up with a plan for an eight- to nine-year operation," he said.

He said he knows the geology in the areas that would circle the mine, and that Resolution's extremely deep shaft and operations may cause problems. Block cave mines have a number of issues, Winters said, including the high temperatures at the deep levels Resolution is planning to drill underneath the ore body.

"It will have to be robots to do the work," he said, "and I don't know if this tech exists."

And, he said, "What do you do if something goes wrong?" For example, Winters said, Resolution has said that Apache Leap, the mountain to the west of the Magma site that forms the eastern border of Superior, [won't be affected by the huge mine](#). "But that depends on what they find."

Winters said the rock dips toward the east, and that if the substrate cracks go that way, Apache Leap could be affected.

He also said there is a possibility that the rock won't collapse after tunneling and knocking the "blocks" out from under the ore body.

And, Winters said he could understand the Apache peoples' viewpoint on the mine.

"They have every right to be concerned," he said.

Where will the copper be sent, and will the US have to pay more to get its copper back?

Because the United States lacks smelting capacity, copper mined at Resolution would likely be refined for manufacture in Chinese facilities. Tariffs may then mean that U.S. manufacturers will have to pay more to get their refined copper products back.

On [July 30](#), the Trump administration imposed tariffs on copper imports ranging from an immediate 30% import duty on semi-finished copper products and intensive copper derivative products. Future duties will include a phased universal 15% tariff on refined copper in 2027, rising to 30% in 2028.

Interior Secretary Doug Burgum also recommended domestic sales requirements for copper and high-quality copper scrap and export controls on copper scrap.

The United States has only three copper smelters, two in Arizona and one in Utah, and Winters said the Kennecott facility in Utah is at maximum capacity.

Oak trees: [For San Carlos gatherers, acorns are like gold. Drought is making them harder to find](#)

Resolution continuing community outreach and oak restoration

Because Oak Flat and its eponymous trees will eventually be gone, Resolution has undertaken to restore other Emory oak groves. It is currently participating in partnerships such as the Emory Oak Collaborative Tribal Restoration Initiative with the U.S. Forest Service, Northern Arizona University, and some Apache

tribes. The 7-year-old project is studying priority Emory oak groves to restore and protect them.

One of these groves is located at the JI Ranch east of Oak Flat. The company said it has been actively involved in monitoring acorn production and supporting grove restoration.

"The JI Ranch site isn't the only grove we are helping to restore," a spokesperson for Resolution said. "The Emory Oak Collaborative partners and tribes are working at multiple sites across Arizona's national forests and tribal lands to improve habitat health, encourage new tree growth and ensure these culturally important trees can be sustained for generations."

The spokesperson also said the mine had undergone a rigorous review. "This review has included extensive consultation with numerous Native American tribes with ancestral ties to this land, local communities, civil society organizations, and a dozen federal, state, and county agencies," he said.

Resolution also said the talks led to major changes to the mining plan to preserve and reduce potential impacts on tribal, social, environmental and cultural interests.

Litigation results in failure to stop the exchange

The Oak Flat mine has been tied up in the courts for years. Grassroots group Apache Stronghold filed a lawsuit in January 2021 in federal court to stop the land swap, citing religious rights guarantees under the First Amendment and the [Religious Freedom Restoration Act](#). The Becket Fund for Religious Liberty, a religious freedom nonprofit law firm, accepted the case and, along with a group of private attorneys and law professors, has represented Apache Stronghold, which includes Apache and other Native peoples and their allies.

Two other suits filed in January 2021 by the San Carlos Apache Tribe and a coalition of environmentalists and tribes were held pending the filing of a new EIS after the Biden administration [rescinded the environmental impact statement](#) in March 2021 for further consultation with tribes. The Forest Service announced [consultation was concluded](#) in 2023. Resolution was granted permission to [join the lawsuit](#) in 2023.

In 2024, the 9th U.S. Circuit Court of Appeals [ruled against Apache Stronghold](#) in a narrow 6-5 decision. That fall, the group appealed to the U.S. Supreme Court.

The [Forest Service's announcement in April](#) that the process would move forward again set off a flurry of court filings to stop or at least put on hold the move, which would open up a 60-day period when the land exchange could take place. Apache Stronghold won a temporary halt to the proceedings until the high court either decided not to take the case or issued a decision.

The Supreme Court turned [Apache Stronghold down in May](#).

On June 9, U.S. District Court Judge Dominic W. Lanza [barred the Forest Service from completing the land exchange](#) until a full 60 days after the new document is issued to give parties from the other two lawsuits sufficient time to review the environmental impact statement and revive their litigation.

In July, Apache Stronghold asked the high court to reconsider its decision and agree to hear the case.

Also in July, a group of Apache women filed their own lawsuit to halt the land exchange at Oak Flat. The four women, who have spiritual and cultural connections to the site, filed their suit in the [U.S. District Court for the District of Columbia](#) July 24. Their litigation said that the exchange violated the Religious Freedom

Restoration Act, the First Amendment's religious rights protections and two environmental laws.

The lawsuit also brought two new factors into play: a recent high court decision that [affirms parental rights to direct their children's religious education](#) and references to Justice Neil Gorsuch's [blistering dissent to the Supreme Court's refusal to hear Apache Stronghold's case](#).

In August, Lanza heard the San Carlos and environmentalists' lawsuits Aug. 6. He turned down their requests to halt the land exchange [Aug. 15](#).

Lanza turned down a request from the Apache women for an emergency injunction [Aug. 17](#).

The environmentalists and the Apache women immediately appealed Lanza's decision to the 9th Circuit Court.

Guarding land: [Indigenous people find legal, cultural barriers to protect sacred spaces off tribal lands](#)

Environmentalists vow to fight on even if final appeals go against them

Although they were happy that the appeals court had temporarily halted the exchange, environmentalists vowed to fight on even if they lose their appeals and Oak Flat becomes private land, not subject to many land use laws.

“We’re gratified that the transfer of federal land at Oak Flat has been delayed,” said Curt Shannon, interim director of the Arizona Mining Reform Coalition. “There are many issues involving this land exchange that have not yet been adequately resolved.”

Recreational enthusiasts were also thankful at the temporary halt. “The climbing community stands with the San Carlos Apache Tribe and our partners in the conservation community to protect Oak Flat, a sacred land that boasts invaluable natural, cultural and recreational resources,” said Erik Murdock, deputy director of Access Fund. “We appreciate the 9th Circuit’s decision to temporarily halt the ill-conceived land exchange and will continue to oppose handing over public lands to a foreign mining company at the expense of the environment and the overwhelming interests of all Americans. We cannot let the Oak Flat land exchange set a precedent for our public lands.”

"This is not simply a land swap; it is a direct transfer of one of America’s richest copper deposits worth billions of dollars to a foreign-owned mining company with a robust financial relationship and strategic partnership with China, putting U.S. control of critical land, water, and copper resources in jeopardy,” said Camilla Simon, executive director of Hispanics Enjoying Camping, Hunting, and the Outdoors, also known as HECHO.

"Before it is too late, we need to take a hard look at what we are ‘swapping’ — and to whom — because from what we have seen, the American people are not getting a fair exchange for handing over our public lands and resources to foreign-controlled entities.”

“Everyone who loves Oak Flat and who’s been fighting for years to save it can exhale for now,” said Russ McSpadden, Southwest conservation advocate at the Center for Biological Diversity. “The battle over this extraordinary place is far from over. I’m hopeful the courts will protect Oak Flat for future generations.

"We’re committed to doing everything in our power to protect this remarkable and sacred place. We will fight to the bitter end."

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