

APACHE STRONGHOLD

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Ninth Circuit may reconsider Oak Flat appeal

Apache Stronghold vows to pursue all avenues to protect Oak Flat, including at the Supreme Court

For Immediate Release: August 18, 2022

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San Carlos, AZ –The Ninth Circuit announced this week that it will hold a vote on whether to reconsider Apache Stronghold’s appeal to save Oak Flat, their most sacred site. This means Apache Stronghold may get a second chance to win protection for Oak Flat in the Ninth Circuit before the case goes to the Supreme Court.

Dr. Wendsler Nosie, Sr. of Apache Stronghold welcomed the news: “Oak Flat is the place we have connected with our Creator for millennia, and the generations that follow us deserve to continue this holy tradition. We are glad the Ninth Circuit is going to take a closer look at this decision, and we hope it will do the right thing and protect our most sacred site at Oak Flat.”

Western Apaches and other native tribes have worshipped on the land they call Chi’chil Bildagoteel since time immemorial. To this day, these tribes gather at Oak Flat for their most essential religious ceremonies that cannot take place anywhere else. For decades, Oak Flat has been protected by the federal government from mining and other practices that would destroy the hallowed Apache land. But in 2014, the United States government decided to give the land to Resolution Copper, a foreign-owned mining company, which plans to build a mine that will swallow the site in a nearly 2-mile wide, 1,100-foot crater, ending Apache religious practices forever.

The mine will also consume and contaminate 250 billion gallons of Arizona’s water sources, while Arizona faces drastic water use decisions due to the current continuous drought. And the copper ore itself will be shipped to China.

This past June, the Ninth Circuit in a 2-1 vote refused to protect Oak Flat and the Apache people and the state from this cultural and environmental devastation. But on Monday, the Ninth Circuit announced that it will hold a vote on whether to rehear Apache Stronghold’s case *en banc*, meaning it could hear the case in front of a full 11-judge court instead of the original three-judge panel.

“The panel’s opinion is, as Judge Berzon said, ‘illogical,’ ‘incoherent,’ ‘flawed,’ and ‘absurd,’” **said Luke Goodrich, vice president and senior counsel at Becket**, which represents Apache Stronghold. “The ruling conflicts with the decisions of other

circuits and the Supreme Court, and it gets the law badly wrong. So we expect it to be corrected—if not by the full Ninth Circuit then by the U.S. Supreme Court.”

The Ninth Circuit is expected to hold its vote on rehearing in early October. If it agrees to rehear the case, it will schedule another hearing in San Francisco. If it declines to rehear the case—meaning the panel’s original ruling stands—Apache Stronghold will appeal to the U.S. Supreme Court.

In addition to Becket, Apache Stronghold is represented by attorneys Michael Nixon and Bill Carpenter.

For more information or to arrange an interview with a Becket attorney, contact Ryan Colby at media@becketlaw.org or 202-349-7219. Interviews can be arranged in English, Chinese, French, German, Portuguese, Russian, and Spanish.

Additional Information:

- [Ninth Circuit decision in Apache Stronghold v. United States](#) (June 24, 2022)
- [Media Kit for Apache Stronghold v. United States](#) (Images, video and B-roll. Courtesy of Apache Stronghold members and their families, Becket, Robin Silver Photography, and Russ McSpadden)
- [Becket’s Opening Brief at the Ninth Circuit Court of Appeals](#) (March 18, 2021)
- [Case page for Apache Stronghold v. United States](#) (Press releases and legal documents)