

Gaggle - Apache Stronghold

Mary Jo Pitzl [00:00:00] The battle over copper mining at Oak Flat, in an area sacred to native tribes, has waged for two decades. On March 1st, the dispute marked a significant milestone. The 9th Circuit Court of Appeals narrowly rejected the argument that the mining activity would destroy First Amendment religious rights observed by native tribes. The court voted 6 to 5 to uphold a lower court's denial of a preliminary injunction that sought to halt the transfer of federal land to Resolution Copper for the mining project.

Kaely Monahan [00:00:33] Oak flat, located just shy of 70 miles east of Phenix, is regarded as one of the most sacred sites to the Apache peoples. With this narrow ruling, a victory for Resolution Copper, the question now is what's next for the Apache tribe?

Mary Jo Pitzl [00:00:51] Welcome to The Gaggle, a politics podcast by The Arizona Republic and azcentral.com. I'm your host, Mary Jo Pitzl

Kaely Monahan [00:01:02] And I'm Kaely Monahan, sitting in for Ron Hansen. I'm a podcast producer for The Republic. Today, we're sitting down with the Republic's indigenous affairs reporter, Debra Krol, to find out what this most recent court decision means and what recourse tribes have now. Deb, welcome back to The Gaggle.

Debra Krol [00:01:21] Thanks for having me on.

Mary Jo Pitzl [00:01:23] Well, let's start with the obvious question first, Deb. Does this ruling mean Resolution Copper can start mining Oak Flat?

Debra Krol [00:01:30] Not necessarily. Under the terms of the legislation that was passed in December 2014. Resolution copper can not start actually mining in Oak Flat until it gets the keys to the campground. Currently, the land is federal land managed by the U.S. Forest Service. Under the terms of the legislation, after the final environmental impact statement has been issued. There's a 60 day window within which the title deed will pass from the federal government to Resolution Copper no later than 60 days. As we all know, the first final impact statement was released five days before the end of Donald Trump's term in office. Very shortly after that, three lawsuits were filed one by Apache Stronghold, which is the grassroots religious rights group on First Amendment religious violations. The other two were filed by the San Carlos Apache Tribe and a coalition of environmentalist and recreationalist un, more or less on environmental issues related to light water use, land use and the like. The last two lawsuits are on hold pending the rerelease of the final environmental impact statement. Which will halt the land transfer even longer. But right now, where we stand is that there will not be any copper mined. Resolution Copper can continue making its plans and doing things like buying up private land, trying to arrange for state trust land in its preferred tailings location, doing mitigation, meeting with local people to gain their support. They've been doing a lot of community outreach, but they cannot start tunneling that lateral tunnel at the bottom of the 7000 foot tunnel until they get the keys.

Mary Jo Pitzl [00:03:31] Was this ruling a surprise to any of the parties? I mean, it was really close. Was that expected?

Debra Krol [00:03:38] From my understanding, from talking with Apache Stronghold and with some of the other people who are the group's allies, it wasn't totally unexpected. And

yes, it was a pretty close decision. They have gone into this fully expecting that this is going to be appealed to the Supreme Court.

Kaely Monahan [00:03:58] Help us understand the 9th Circuit Court as far as its leanings. Is it a moderate court? Or does it lean to the right or to the left?

Debra Krol [00:04:06] The 9th Circuit used to be the most liberal minded circuit court in the U.S. in recent years, it's started to move ever so slightly to the right. I believe that was because of some of the latest appointments by Republican presidents, but it's still pretty much down the middle, as you saw from this decision.

Mary Jo Pitzl [00:04:26] As you've noted, Apache Stronghold has said they're going to take this case to the U.S. Supreme Court. Is there any reason to doubt that move?

Debra Krol [00:04:34] Oh, no. They're going. They have the backing of Becket Law, which is the nation's premier religious rights legal group. Again, from what my sources were telling me, is they expect this is going to be the native version of the Hobby Lobby case. If the Supreme Court takes it, which we all know is always a what if.

Mary Jo Pitzl [00:04:58] And if the court were to take up this case, then what would that mean for the ongoing religious practices by the Apaches and other tribes? And also for what would that mean for Resolution Copper's plans?

Debra Krol [00:05:10] We would still be in a holding pattern. The U.S. Forest Service has pretty much allowed the Apache Stronghold and the Apache people's full use of Oak Flat until the day that the keys are handed over to Resolution Copper, if the keys ever get handed over to Resolution Copper. They don't have to abide by the 14 day camping period. They hold ceremonies out there all the time. They're doing sweats. There's generally somebody from Apache Stronghold living out there. You know, Wendsler (Nosie) has been there. That's his primary place of residence ever since he first started this. So, the only thing that's going to change is the new environmental impact statement being released and not having another lawsuit to do an injunction to relitigate this until it's done, or if the Supreme Court takes the case and whichever decision the Supreme Court rules.

Mary Jo Pitzl [00:06:08] By the way, when is that new environmental impact statement due?

Debra Krol [00:06:11] We don't know. You know, as you remember, last year around April, there were some rumors floating around that, well, it was close. They're going to do it this summer. And those rumors were quashed by the federal government. The only thing the Forest Service would tell me last week when we did a run up to the the anticipated decision is that re consultations with tribes are ongoing. So they're keeping whatever they're going to do close to the vest.

Kaely Monahan [00:06:40] At the core of this case is an argument over religious protections. In fact, Wendsler Nosie, one of the main leaders of the Apache Stronghold who you said is living out there, he said in a statement that Oak Flat is essentially akin to Mount Sinai in religious importance. So in light of that, how do native religions work as opposed to what people might be familiar with as far as Christian religions, Judaism, Islam, all of that?

Debra Krol [00:07:10] Most of the Abrahamic religions revolve around churches or having a personal relationship, which whichever of the gods they they choose to worship, you know, Jehovah God, Allah, whatever. Churches can be brick and mortar. They can be a place like Mount Sinai. They can be like the Lourdes miracle site in France, but they don't necessarily have to be any physical place. In the various native religions there, what they call a land based religion. So there are certain sites, whether it's a grove of redwood trees, a spring, the top of a mountain or an oak flats case, a riparian zone. That's where the power is. Think about Sedona and its vortexes and the New Age people. And they say, well, there's power there. Well, in native religions, there really is power in these certain places. And so if that religious site is destroyed, the spirituality that holds the place where you go to have a connection with your god or gods, because some of the native religions have more than one deity where you go to have the experience, you can't have it anymore because the power is gone, the site is gone, the land is gone. And that's what he's trying to put forward, is that a lot of native religious sites have suffered this fate, and he doesn't want that to be one of those.

Mary Jo Pitzl [00:08:43] Then, given that Resolution Cooper has said that, you know, if it prevails and is able to proceed with the mine, that it'll still work with Apache Stronghold on ways to protect its right to exercise religion. But I mean, what would that look like? It's this is a land based religion, as you said, and this fight has been going on for two decades.

Debra Krol [00:09:05] So let's suppose that that Resolution Copper gets the keys. What they have said in both in writing and in interviews with myself and other journalists, is that Apache people will continue to be able to use the site as long as it's safe. At the end of the day, this block cave mining means that Oak Flat's going to turn into an almost thousand foot deep, two mile wide crater. So sometime in the 40 years, which is the anticipated life of the mine, Oak Flat will not be safe for any human or other creature to be on top of, because it's going to collapse upon itself. So when that day comes, the gates will be locked and nobody will be allowed on the property.

Kaely Monahan [00:09:48] Remind us how much projected copper is in Oak Flat.

Debra Krol [00:09:54] It is one of the largest remaining, if not the largest remaining, untapped source of copper in the United States. It's humongous. There's billions and billions of dollars worth of copper down there. The issue is, is how they want to get it out of the ground. What they have told me is that doing the traditional shaft mining that's been done in the copper triangle is not going to work there, because it's so deep and so hard to get to. And the ore is a lesser concentration than in other parts of the copper triangle. And so they've told me that block cave mining is the only way to practically get it out. Naturally, other mining experts have told me otherwise. But this is what resolution is said.

Kaely Monahan [00:10:42] And circling back to the religious significance, a lot of different religious groups have had their eyes on this case, and assuming for a moment that the case ends here, say they don't go to the Supreme Court. What would this decision mean for religious protections?

Debra Krol [00:11:00] You're absolutely right. There's a lot of religious leaders out there who are seeing this as a bellwether for what direction the United States is going to take. Is it really going to honor the First Amendment's religious protections? Or as some of the religious leaders have told me, that native religions are the low hanging fruit, and if Oak Flat goes, is my religion going to be next, you know? Are the evangelicals going to be

outlawed, or are the Muslims going to be persecuted? You know, there's so much, so much angst amongst religious leaders as to what could happen next.

Mary Jo Pitzl [00:11:43] How has this decision been received by Arizona's congressional leaders? And also, I'm curious, does the Biden administration have a dog in this fight?

Debra Krol [00:11:53] The only congressperson I've heard from so far is Congressman (Raúl) Grijalva, who did say that he thought it was wrong. You know, he's floated several pieces of legislation to reverse the writer to the must pass defense Act that caused all this to happen in the first place, none of which have gotten to the full House and the Biden administration. It's hard to parse, but based on their statements about their commitment to clean energy, their commitment to divesting the nation of fossil fuels by their chosen method, which is, you know, electric vehicles and more more electric generation by renewable means. Copper is needed for that. So read into it what you will.

Mary Jo Pitzl [00:12:40] But obviously they have no formal role in the litigation?

Debra Krol [00:12:45] Well, the United States government is being sued the U.S. Forest Service. So naturally, the Biden administration is involved through the Department of Justice and the Department of Justice is has been fighting this all along.

Kaely Monahan [00:12:58] Well, you kind of touched on this a little bit earlier in our conversation, but I wanted to just dig in a little bit more about the other lawsuits percolating around Oak Flat. What other lawsuits are in the wings that might reactivate?

Debra Krol [00:13:13] There are two other lawsuits in the wings. One is filed by the San Carlos Apache Tribe. The other is filed by a coalition of environmentalists and recreational enthusiasts and the Arizona Mining Reform Association, which is an association that's not totally against mining. It's just totally against mining the way it's been done in Arizona over the last hundred years. They are awaiting the re issuance of the final environmental impact statement, upon which I have been told definitively over the weekend that if Apache Stronghold's suit falls by the wayside almost immediately after the new EIS is issued, they're going to reactivate their lawsuits. They are bound, determined that this isn't going to happen.

Mary Jo Pitzl [00:14:07] Wow, this is a story that's a long way from ending. Deb, thanks so much for coming on and sharing all this update with us. If people want to follow your work on social media, where can they find you?

Debra Krol [00:14:18] Met Deb Krol on. Twitter. I met Deb Krol on Facebook. I met Deb Krol on Instagram.

Mary Jo Pitzl [00:14:25] And that is K-R-O-L?

Debra Krol [00:14:29] Yes, think of it as an old fashioned radio station. Radio Station KROL.

Kaely Monahan [00:14:33] I love that. Thank you. Deb.

Mary Jo Pitzl [00:14:37] Well, that's it for this week, listeners. Do you have questions about today's episode or topics you'd like us to cover? Well, let us know. Send us a

message at (602) 444-0804. Or a voice memo to thegaggle@arizonarepublic.com. That's all one word, all spelled out.

Kaely Monahan [00:14:58] This episode was edited and produced by me, Kaely Monahan, with additional support from Amanda Luberto. Our news direction is by Kathy Tulumello and episode oversight is by Kara Edgerson. Our show music comes from Universal Production Music.

Mary Jo Pitzl [00:15:16] Never miss an episode of The Gaggle by subscribing to us wherever you listen. And if you learned something new today, be sure to share this episode with a friend. You can also leave us a review and rate us five stars. You can follow The Gaggle on social media @azcpodcasts. And I'm @MaryJPitzl. That's P-I-T-Z-L, no radio call signal there.

Kaely Monahan [00:15:43] And I'm @kaelymonahan. That's K-A-E-L-Y-M-O-N-A-H-A-N. The Gaggle is an Arizona Republic and azcentral.com production. Thanks for listening. And we'll see you next Wednesday.