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## **Judge to decide whether native mound group can be disturbed**

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The last of a once-larger group of Native American burial mounds, protected by state law since 1990, could be destroyed for the valuable rock beneath them, if a court allows a local stone manufacturer to have them removed from state protection.

The issue, according to Wingra Redi-Mix, is whether the effigy mounds that are part of the Ward Mound Group, located within its quarry in the town of Blooming Grove, actually contain any human remains, making them eligible for protection under state law.

But the court case is not the only legal avenue Wingra is taking to try to mine the site. It is also pursuing a state permit to excavate the site, which is being heard by a state administrative law judge, said Chip Brown of the Wisconsin Historical Society.

“The permit is the more salient issue,” Brown said. “My feeling is that really is the case.”

At a hearing in the court case on Wednesday before Dane County Circuit Judge Ellen Berz, Wingra, the state and the Ho-Chunk Nation, which has intervened in the case, differed on whether the mounds are burial sites and whether it matters if human remains currently can't be detected beneath them.

“Once it's a burial site, it always is,” said Assistant Attorney General Bruce Olsen, representing the state Burial Sites Preservation Board. “Human remains are likely to decompose and I think the Legislature recognized that. Once remains are buried, they continue to be buried.”

A ruling on the case is not imminent. Berz said she doesn't expect to review the case until sometime in May. Brown said he did not know when Administrative Law Judge Mark Kaiser would decide the excavation permit case, in which the sides are still submitting legal briefs.

In both cases, Brown said, the losing party is likely to appeal, so it could be years before a final resolution is reached.

The mound group, located on an elevated, tree-covered piece of land owned by Wingra, once consisted of at least seven mounds. Since it was first investigated in 1914, the number of mounds has dwindled to a bird effigy and a remnant of one that was perhaps a fox.

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The site is not accessible to the public and is in the midst of a quarry. Wingra said that it's missing out on \$10 million worth of minerals beneath the mounds that it would like to extract.

Wingra bought the site in 1962. The mounds remained unprotected until a state law in 1986 that gave the director of the Historical Society of Wisconsin the authority to preserve burial sites, not only of Native American origin but "any place where human remains are present."

The Ward mounds were officially cataloged as a burial site in 1990.

But Wingra said that because there's no evidence that there are human remains beneath the mounds, they don't warrant protection as burial sites. In 2010, the company asked that the site be removed from state burial site protection.

Wingra said it has new evidence that the mounds are not burial sites, as previously determined. Instead, Wingra said, ground-penetrating radar and magnetometry examinations performed in 2011 by UW-Madison civil engineering professor Dante Fratta show that human remains are not likely present in the Ward group.

“There is no evidence in the record of anything about the site other than it’s an effigy,” Wingra lawyer Raymond Roder said in court Wednesday. “If the Legislature intended to preserve sites where human remains might have been at one time, it would have said (in the law) where burial ‘is or was.’”

Wingra took the decision to court last April, after the Burial Sites Preservation Board declined to remove state protection for the Ward group.

In the Ho-Chunk’s court filing, tribal attorney Rebecca Maki-Wallander called the Fratta report “clearly flawed.” She said in court that the mounds that remain are in an area that the Ho-Chunk has long called home and that the tribe “will continue to fight for them.”



Ward Mound Group map  
Mar 27, 2014



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