



Fort McDowell Yavapai Nation

P.O. Box 17779, Fountain Hills, AZ 85269

Phone (480) 789-7000

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President Bernadine Burnette

Vice President Paul J. Russell

Treasurer Pansy P. Thomas

Council Member Gerald Doka

Council Member Ruben Balderas

Council Secretary Verlene Enos

May 13, 2021

Mr. Reid Nelson
Advisory Council on Historic Preservation
401 F Street NW
Suite 308
Washington, DC 20001-2637

RE: Support for ACHP commenting on Save Oak Flat Act 2021 H.R. 1884 and S.915

Dear Mr. Nelson:

On behalf of the Fort McDowell Yavapai Nation (“FMYN” or “Nation”), I write in support of the Advisory Council on Historic Preservation (“ACHP”) submitting testimony in support of the Save Oak Flat Act (S.915/ H.R.1883). The Nation opposes the land exchange between the U.S. Forest Service and Resolution Copper Mining, LLC because it would desecrate the highly significant cultural, historical, and spiritual site known as Gohwhy Gah Edahpbah (“Oak Flat” in English and “Chi’Chil Bilgoteel” in Apache).

The Fort McDowell Yavapai Nation has a special cultural, historical, and spiritual relationship with the aboriginal Yavapai land known as Oak Flat. As the result of the United States forcing the Yavapai people onto Fort Verde in the early 1870s, we share a common history with the San Carlos Apache Tribe. Many Yavapai lost their lives in Oak Flat, and this is one reason that the area represents a sacred memorial to our people. Another reason comes from our historical and spiritual use of the land. Since time immemorial, our people—as well as people from the Apache and San Carlos tribes, among others—have visited Oak Flat to gather acorn and lemon berries as well as traditional medicines. Elders from Fort McDowell have stories of traveling to Gohwhy Gah Edahpbah (which translates to “People Who Lives Between The Rocks”) and camping for days to gather food and medicine, and we continue to honor this tradition even today. We visit to honor our ancestors, to worship on holy ground, and to acknowledge, appreciate, and cherish not only our past, but our future as well. Oak Flat is a vital part of our traditional heritage. The proposed land exchange will destroy it.

The Fort McDowell Yavapai Nation has commented consistently during the National Environmental Policy Act (“NEPA”) and Section 106 consultation process regarding the Oak Flat land transfer, clearly stating our deep concerns about and opposition to the potential loss of Oak Flat. Destruction or loss of the ability to access Oak Flat would make it impossible for us to

visit and worship at this cultural and religious heritage site which is essential to the continued well-being of the FMYN.

Oak Flat is more than a historical landmark to the Yavapai people; it is also a cultural, spiritual, and religious area. The FMYN is fully in favor of the ACHP submitting comments to the U.S. Congress on the Save Oak Flat Act in order to protect this cherished land.

Sincerely,



Bernadine Burnette, President
Fort McDowell Yavapai Nation

- cc: Tribal Council, Fort McDowell Yavapai Nation
Phil Dorchester, General Manager, Fort McDowell Yavapai Nation
Diandra Benally, General Counsel, Fort McDowell Yavapai Nation
Albert Nelson, Culture Department, Fort McDowell Yavapai Nation
Gerry Walker, Water Resource Administrator, Fort McDowell Yavapai Nation



Inter Tribal Association of Arizona

21 TRIBAL NATIONS

May 19, 2021

Via Email: rnelson@achp.gov

Mr. Reid J. Nelson, Executive Director, Acting
Advisory Council on Historic Preservation
401 F. Street NW, Suite 308
Washington, DC 20001-2637

Ak-Chin Indian
Community

Cocopah Indian Tribe

Colorado River
Indian Tribes

Fort McDowell
Yavapai Nation

Fort Mojave
Indian Tribe

Gila River Indian
Community

Havasupai Tribe

Hopi Tribe

Hualapai Tribe

Kaibab Band of
Paiute Indians

Pascua Yaqui Tribe

Pueblo of Zuni

Quechan Tribe

Salt River Pima-
Maricopa Indian
Community

San Carlos
Apache Tribe

San Juan
Southern Paiute Tribe

Tohono O'odham
Nation

Tonto Apache Tribe

White Mountain
Apache Tribe

Yavapai-Apache
Nation

Yavapai-Prescott
Indian Tribe

RE: Request for ACHP to Support the Save Oak Flat Act (HR 1884/S.915)

Dear Acting Executive Director Nelson:

This letter is submitted to you on behalf of the 21 Member Tribes of the Inter Tribal Association of Arizona (ITAA). The ITAA Member Tribes have worked together since 1952 to provide a united voice for Tribal governments located in the State of Arizona. The representatives of ITAA are the highest elected Tribal officials from each Tribe, including chairpersons, presidents, and governors.

As you know, the Save Oak Flat Act was recently reintroduced in the House on March 12, 2021 by Representative Raúl Grijalva ([HR 1884](#)), and in the Senate on March 23, 2021 by Senator Bernard Sanders ([S. 915](#)). We respectfully and urgently request that the ACHP support the Save Oak Flat Act. Passage of the Save Oak Flat Act will repeal the land exchange provision at §3003 of P.L. 113-291 (Dec. 19, 2014) that calls for the exchange of approximately 2,400 acres of land within the Tonto National Forest to Resolution Copper Mining, LLC.

These lands proposed for exchange include the Chi'chil Bıldagoteel Historic District, also known as Oak Flat, which is a recognized Traditional Cultural Property that has been placed on the National Register of Historic Places (NRHP) for its profound religious, historical, and cultural significance to certain Western Apache, Yavapai, and other Indian Tribes.

If the Save Oak Flat Act is not passed, consummation of the land exchange will result in the wholesale destruction of Oak Flat. This entire historic, religious, and culturally significant area will crumble into a subsidence crater approximately 2 miles wide and 1,000 feet deep. In addition, this project would deplete over three-quarters of a million acre-feet of water from Arizona's already drought-stricken and dwindling reserves, and would irreparably harm the incredibly biodiverse and culturally significant environment of Oak Flat.

As you know, in addition to the destruction of Oak Flat, the mine project will harm or destroy myriad of other archaeological, religious, and culturally significant sites beyond Oak Flat due to the development of infrastructure connected to mine and land exchange, including but not limited to the construction of (1) a massive tailings site approximately 15 miles away from Oak Flat; (2) over 1,000 acres for roads, powerlines and pipeline corridors; and (3) new power substation sites. Nothing in the materials ITAA has reviewed appears to make any meaningful effort to avoid, minimize, or mitigate for the impact to these historic and culturally significant places if the land exchange and mine project is not repealed by Congress.

As the NRHP listing document states (p.4): “*Chi’chil Bildagoteel* is a culturally and geographically defined landscape within the Tonto National Forest whose physical and spiritual integrity is vital to the continuation of fully effective Western Apache cultural practices, particularly to the San Carlos Apache Tribe [...] The archaeological sites provide tangible evidence of the long standing importance of this area to the Apache and provide a continuous link from the past to present living Apache descendants.” Archaeologist and professor John Welch, PhD has [stated](#): “This is the best set of Apache archaeological sites ever documented, period, full stop.”

Since at least 2009, ITAA and many of ITAA’s individual Member Tribes have repeatedly passed formal resolutions and have written letters or provided statements in opposition to the proposed land exchange and mine project. Given its impact to Oak Flat (and the precedent of trading this site away to foreign mining interests) the exchange and mine project has been opposed by hundreds of Tribal nations, Native organizations, and others across the United States, including by the National Congress of American Indians (NCAI). Many international organizations and inter-tribal consortia across the world have also expressed their solemn opposition to this mine and land exchange and expressed support for the Save Oak Flat Act.

The precedent that would be set by the land exchange and mine project, if not repealed, is beyond unacceptable to the Member Tribes of ITAA. As such, the Member Tribes of ITAA and its parallel organization, the Inter Tribal Council of Arizona, Inc. (ITCA) have firmly stood with its Member Tribes to protect the historic properties, religious places, and sacred sites found within the Oak Flat area, including *Chi’chil Bildagoteel*, from destruction at the hands of foreign mining interests. The Tribal Leaders of ITAA will always stand shoulder-to-shoulder when it comes to protecting our ancestral lands, and the integrity of the historic properties, religious places, and sacred sites of Tribally important places like Oak Flat.

ITAA appreciates and supports the efforts and involvement of the ACHP on this serious issue, including the ACHP’s comments submitted by the ACHP to the Secretary of Agriculture on March 29, 2021, regarding the substantial impacts this mine and exchange would have on the *Chi’chil Bildagoteel* Historic District/Oak Flat, and its many historic and traditional cultural properties. We welcome any questions or discussions on these matters from the ACHP.

Sincerely,

INTER TRIBAL ASSOCIATION OF ARIZONA



Maria Dadgar, MBA, Executive Director

CC: ITAA Executive Committee
Chairman Rambler, Chairman, San Carlos Apache Tribe
Bernadine Burnette, President, Fort McDowell Yavapai Nation



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

P.O. Box 0, San Carlos, Arizona 85550
Phone (928) 475-1600 ❖ Fax (928) 475-2567

Tao Etpison
Vice-Chairman

May 19, 2021

Reid Nelson
Acting Executive Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001
via email to rnelson@achp.gov

Rick Gonzalez
Vice Chairman
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001
via email to rgonzalez@achip.gov

RE: Advisory Council's Request for Tribal View on Save Oak Flat Act

Dear Acting Executive Director Nelson and Vice-Chairman Gonzalez:

On behalf of the nearly 17,000 members of the San Carlos Apache Tribe ("Tribe"), I wish to extend our deepest gratitude for the assistance and support provided by the Advisory Council on Historic Preservation ("Council") in shining a bright light on the flawed consultation process conducted by the Tonto National Forest ("TNF") in preparing a programmatic agreement ("PA") for the proposed Resolution Copper Mine and Southeast Arizona Land Exchange (the "Undertakings"). The Council's support has been instrumental in obtaining the Department of Agriculture's directive on March 1, 2021 that TNF withdraw the Notice of Availability and rescind the Final Environmental Impact Statement (FEIS) and draft Record of Decision ("ROD"). The Tribe thanks you. However, as you are certainly aware, the fight is not over.

R. Nelson & R. Gonzalez

Re: Save Oak Flat Act

May 19, 2021

Page 2 of 3

The Council's May 5, 2021 correspondence directed to tribal leaders seeks comment upon the Save Oak Flat Act ("SOFA"). I do not believe it is necessary for me to elucidate why the Tribe supports the SOFA. The Council is well aware of the facts and circumstances surrounding the Tribe's opposition to Section 3003 of the Fiscal Year 2015 National Defense Authorization Act ("Section 3003"). The reasons the Tribe opposed Section 3003 are precisely the reasons the Tribe supports SOFA. Whereas Section 3003 would have destroyed ancestral homelands, devastated sacred sites, disrespected our ancestors and destroyed the source of all life, water, SOFA does precisely the opposite by protecting our homelands, preserving our sacred sites, respecting our ancestors and protecting life-giving water resources.

The Council is also aware of the number of Tribes and tribal organizations such as the National Congress of American Indians ("NCAI") which opposed Section 3003. I daresay that most, if not all, the tribes and organizations which opposed Section 3003 would support SOFA. I am appending to this correspondence examples of the support for SOFA. This is just a small sample of the support for SOFA. Please find appended to my letter:

1. Correspondence dated April 27, 2021 from twelve tribal organizations to select U.S. Senators and members of the House of Representatives expressing support for SOFA;
2. April 30, 2021 Resolution of the Zuni Tribe;
3. Written testimony of Vice-Chairman Shan Lewis, Fort Mojave Indian Tribe and President of Inter Tribal Association of Arizona;
4. Written testimony of T. J. Ferguson, Maren P. Hopkins, and Chip Colwell of Anthropological Research, LLC, authors of *Ethnographic and Ethnohistoric Study of the Superior Area, Arizona*.
5. April 7, 2021 Resolution of the White Mountain Apache Tribe; and
6. Written testimony of Kristen A. Carpenter, Professor of Law and Director of the American Indian Law Program, University of Colorado Law School.

The list above is just a small sample of the widespread support which exists among tribes, tribal organizations, academicians, and other interested parties.

I encourage and respectfully request that ACHP give its full support for Save Oak Flat Act. I also respectfully request and encourage the ACHP give its consideration to extending the time in which interested parties may submit their views on SOFA. Interested parties include

R. Nelson & R. Gonzalez

Re: Save Oak Flat Act

May 19, 2021

Page 3 of 3

much more than just tribal leaders who may have received your May 5, 2021 correspondence. I submit there are additional voices to be heard in support of SOFA.

Also, COVID-19 has unduly impacted tribes. Recent developments and announcements by the Center for Disease Control have required the full attention of tribes with their limited staffs. I would encourage the ACHP to continue accepting comments and views on SOFA for an additional two weeks beyond May 19, 2021.

The Tribe and I thank you for your support and continued dedication. Your commitment is greatly appreciated.

As we say in our Apache language, *ahiyeh*, thank you for considering this correspondence. If you have any questions, please contact me.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Enclosures

Cc: Fawn Sharp, President, NCAI, fsharp@ncai.org
Jamie Gomez, Chief of Staff, jgomez@ncai.org
Fatima Abbas, V.P. Gov't Rel., fabbas@ncai.org
Maria Dadgar, Exec. Dir., Inter Tribal Council of Arizona
Maria.dadgar@itcaonline.org

San Carlos Apache Tribe
Tao Etpison, Vice Chairman
San Carlos Council Members
Vernelda Grant, THPO
Seth Pilsk, Ethnobotanist,
A.B. Ritchie, AG, DOJ

Correspondence dated April 27, 2021

April 27, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate

The Honorable Joe Manchin
Chairman
Senate Energy and Natural Resources Cmte

The Honorable Pelosi
Speaker of the House
House of Representatives

The Honorable Raul Grijalva
Chairman
House Natural Resources Cmte

Re: Support for H.R. 1884/S.915, the Save Oak Flat Act

Dear Members:

On behalf of the undersigned tribal organizations, we write to show our support for the enactment of H.R. 1885/S.915, the Save Oak Flat Act. Collectively, we advocate on behalf of Tribal Nations from across the country. We stand in solidarity with the Native American tribes, religious freedom groups, conservationists, and average Americans who wish to protect Oak Flat and stop a massive give-away to foreign mining corporations.

Chi'chil Bildagoteel, known as Oak Flat, is a Traditional Cultural Property listed on the National Register of Historic Places located in the Tonto National Forest (TNF) in southeastern Arizona. The Oak Flat area plays a vital role in tribal religion, tradition, and culture. Since time immemorial, native people have come to Oak Flat to participate in ceremonies, to pray, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. It is part of the U.S.'s sad history in its mistreatment of tribes that the lands administered by federal land management agencies are lands taken away from tribes by the United States. These lands are ancestral homelands of tribes, and we still retain their connections to these lands.

Tribal leaders and allies have been working for almost two decades to protect the Oak Flat area. Resolution Copper, a subsidiary of foreign mining conglomerates Rio Tinto and BHP Billiton, hope to build the largest copper mine in North America at the Oak Flat area. To build the mine, the companies worked behind closed doors to ensure the Southeast Arizona Land Exchange (land exchange) was included as Section 3003 of the FY15 NDAA, P.L. 113-291. The land exchange transfers 2,422 acres of TNF land, including sacred Oak Flat, to Resolution Copper in exchange for Resolution Copper-owned parcels that will go to the Department of the Interior and the U.S. Forest Service.

The mine, associated infrastructure, and toxic waste material will not only permanently destroy Oak Flat but will directly, adversely, and permanently affect numerous sacred springs, traditional areas, burial locations, and other cultural places and experiences of high spiritual and cultural value. The massive mine will cause irreversible destruction to thousands of acres of public lands and contaminate already scarce water sources. Resolution Copper plans to use a block-cave mining technique, which will result in a 1.8-mile-wide crater (the distance from the Capitol to the Lincoln Memorial) over a thousand feet deep. The mine will consume more than

637,000 acre-feet of water and require over 40 miles of pipeline through large parts of the TNF to slurry out toxic waste and ore concentrate. It will also require the construction of massive utility and road corridors that could span 500 feet in width. This mine will deplete and contaminate precious water resources in the region and result in a toxic waste dump that could cover 15,000 acres and be taller than the Washington Monument.

As part of the legislation, the land exchange is subject to NEPA (Sec. 3003 (c)(9)) as well as appraisals of the lands to be exchanged and public review of the appraisals (Sec. 3003(c)(4)). However, TNF failed to comply with NEPA and other applicable federal laws and they failed to complete the required appraisals of the lands to be exchanged. Instead, TNF rushed to publish the Final EIS on January 15, 2021, to artificially start a 60-day clock under Section 3003(c)(10) to give away sacred Oak Flat to Resolution Copper to pave the way for its mine that will destroy Oak Flat, large swaths of TNF, and other surrounding areas with no simultaneous commensurate conveyances of Resolution Copper-owned land to the federal government.

On March 1, 2021, USDA directed the Forest Service to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision. USDA noted that rescinding the FEIS will ensure the Forest Service complies with “the environmental, cultural, and archaeological analyses required” and concluded that “additional time is necessary to fully understand concerns raised by Tribes and the public and the project’s impacts on these important resources and ensures the agency’s compliance with federal law.” Importantly, USDA noted that because the exchange was directed under the FY15 NDAA that “long-term protection of the site will likely require an act of Congress.”

We condemn the destruction of a tribal sacred site, the flagrant disregard for the importance of life-giving water, and the disregard for significant tribal concerns during the NEPA process.

For these reasons, we respectfully request that you enact the Save Oak Flat Act. On behalf of Native Americans nationwide, thank you for considering this important request.

Sincerely,



Fawn Sharp, President
National Congress of American Indians



A. Gay Kingman, Executive Director
Great Plains Tribal Chairman’s Association



Willfred Herrera, Jr., Chairman
All Pueblo Council of Governors



Mark N. Fox, Chairman
Coalition of Large Tribes



Kirk Francis, President
United South and Eastern Tribes Sovereignty
Protection Fund



Aaron Payment, Vice President
Midwest Alliance of Sovereign Tribes



Chris James, President & CEO
National Center for American Indian Enterprise
Development



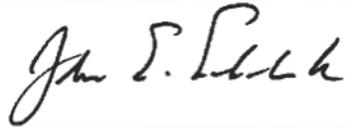
LaDonna Harris, President
Americans for Indian Opportunity



W. Ron Allen, Chairman
Self-Governance Communication & Education Tribal
Consortium



Cris Stainbrook, President
Indian Land Tenure Foundation



John E. Echohawk, Executive Director
Native American Rights Fund



Leonard Forsman, President
Affiliated Tribes of Northwest Indians



Inter Tribal Association of Arizona

21 TRIBAL NATIONS

April 16, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate

The Honorable Joe Manchin
Chairman
Senate Energy and Natural Resources Cmte

The Honorable Pelosi
Speaker of the House
House of Representatives

The Honorable Raul Grijalva
Chairman
House Natural Resources Cmte

Re: Support for H.R. 1884/S.915, the Save Oak Flat Act

Dear Members:

This letter is being submitted on behalf of the Inter Tribal Association of Arizona (ITAA) to show our support for the enactment of H.R.1885/S.915, the Save Oak Flat Act. ITAA is an inter-tribal consortium of 21 federally recognized Indian Tribes with lands in Arizona, California, New Mexico, and Nevada. The Member Tribes of ITAA have advocated together since 1952 on issues of common interest and concern across Indian Country. ITAA is governed by the highest elected Tribal officials from each Tribe, including Tribal chairpersons, presidents and governors.

ITAA stands in solidarity with the Native American tribes, religious freedom groups, conservationists, and average Americans who wish to protect Oak Flat and stop the transfer of over 2,400 acres of public lands to foreign mining corporations for destructive mining purposes.

Chi'chil Bıldagoteel, known as Oak Flat, is a Traditional Cultural Property listed on the National Register of Historic Places located in the Tonto National Forest (TNF) in southeastern Arizona. The Oak Flat area plays a vital role in tribal religion, tradition, and culture. Since time immemorial, native people have come to Oak Flat to participate in ceremonies, to pray, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. It is part of the U.S.'s sad history in its mistreatment of tribes that the lands administered by federal land management agencies are lands taken away from tribes by the United States. These lands are ancestral homelands of tribes, and we still retain their connections to these lands.

Tribal leaders and our allies have been working for almost two decades to protect the Oak Flat area. Resolution Copper, a subsidiary of foreign mining conglomerates Rio Tinto and BHP Billiton, hope to build the largest copper mine in North America at the Oak Flat area. To build the mine, the companies worked behind closed doors to ensure the Southeast Arizona Land Exchange (land exchange) was included as Section 3003 of the FY15 NDAA, P.L. 113-291. The land exchange transfers 2,422 acres of TNF land, including sacred Oak Flat, to Resolution Copper in exchange for Resolution Copper-owned parcels that will go to the Department of the Interior and the U.S. Forest Service.

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Indians
Pascua Yaqui Tribe
Pueblo of Zuni
Quechan Tribe
Salt River Pima-
Maricopa Indian
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Apache Tribe
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Nation
Tonto Apache Tribe
White Mountain
Apache Tribe
Yavapai-Apache
Nation
Yavapai-Prescott
Indian Tribe

The mine, associated infrastructure, and toxic waste material will not only permanently destroy Oak Flat, it will also deplete, and in some cases, permanently destroy numerous sacred springs, traditional areas, burial locations, and other cultural places and experiences of high spiritual and cultural value. The massive mine will cause irreversible destruction to thousands of acres of public lands and contaminate already scarce water sources. Moreover, over the life of the mine, the Forest Service estimates that the mine will pump billions of gallons of water from the East Salt River Valley, just outside of Phoenix – water that is critically needed to support municipal needs and future growth in this region.

Resolution Copper plans to use a block-cave mining technique, which will result in a 1.8-mile-wide crater (the distance from the Capitol to the Lincoln Memorial) over a thousand feet deep. The mine will consume more than 637,000 acre-feet of water and require over 40 miles of pipeline through large parts of the TNF to slurry out toxic waste and ore concentrate. It will also require the construction of massive utility and road corridors that could span 500 feet in width. This mine will deplete and contaminate precious water resources in the region and result in a toxic waste dump that could cover 15,000 acres and be taller than the Washington Monument.

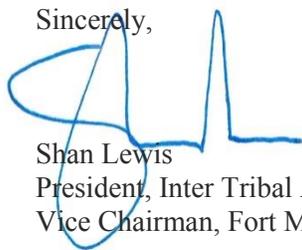
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On March 1, 2021, USDA directed the Forest Service to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision. USDA noted that rescinding the FEIS will ensure the Forest Service complies with “the environmental, cultural, and archaeological analyses required” and concluded that “additional time is necessary to fully understand concerns raised by Tribes and the public and the project’s impacts on these important resources and ensures the agency’s compliance with federal law.” Importantly, USDA noted that because the exchange was directed under the FY15 NDAA that “long-term protection of the site will likely require an act of Congress.”

The Inter Tribal Association of Arizona condemns the destruction of a tribal sacred site, the flagrant disregard for the importance of life-giving water, and the disregard for significant tribal concerns during the NEPA process.

For these reasons, we respectfully request that you enact the Save Oak Flat Act. On behalf of Native Americans nationwide, thank you for considering this important request.

Sincerely,



Shan Lewis
President, Inter Tribal Association of Arizona
Vice Chairman, Fort Mojave Indian Tribe

MIDWEST ALLIANCE OF SOVEREIGN TRIBES

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Gresham, WI 54128-0265
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April 16, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate

The Honorable Joe Manchin
Chairman
Senate Energy and Natural Resources Cmte

The Honorable Pelosi
of the House
House of Representatives

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Re: Support for H.R. 1884/S.915, the Save Oak Flat Act

Dear Members:

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Sincerely,

President Aaron Payment – MAST 04/16/2021



Rocky Mountain Tribal Leaders Council

2929 3rd Ave N, Ste 300, Billings, Montana 59101
Ph: (406) 252-2550 Fax: (406) 254-6355 Web: www.rmtlc.org

April 16, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate

The Honorable Joe Manchin
Chairman
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Speaker of the House
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Dear Members:

On behalf of the undersigned tribal organizations, we write to show our support for the enactment of H.R. 1885/S.915, the Save Oak Flat Act. Collectively, we represent thousands of Native Americans from across the country. We stand in solidarity with the Native American tribes, religious freedom groups, conservationists, and average Americans who wish to protect Oak Flat and stop a massive give-away to foreign mining corporations.

Chi'chil Bildagoteel, known as Oak Flat, is a Traditional Cultural Property listed on the National Register of Historic Places located in the Tonto National Forest (TNF) in southeastern Arizona. The Oak Flat area plays a vital role in tribal religion, tradition, and culture. Since time immemorial, native people have come to Oak Flat to participate in ceremonies, to pray, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. It is part of the U.S.'s sad history in its mistreatment of tribes that the lands administered by federal land management agencies are lands taken away from tribes by the United States. These lands are ancestral homelands of tribes, and we still retain their connections to these lands.

Tribal leaders and allies have been working for almost two decades to protect the Oak Flat area. Resolution Copper, a subsidiary of foreign mining conglomerates Rio Tinto and BHP Billiton, hope to build the largest copper mine in North America at the Oak Flat area. To build the mine, the companies worked behind closed doors to ensure the Southeast Arizona Land Exchange (land exchange) was included as Section 3003 of the FY15 NDAA, P.L. 113-291. The land exchange transfers 2,422 acres of TNF land, including sacred Oak Flat, to Resolution Copper in exchange for Resolution Copper-owned parcels that will go to the Department of the Interior and the U.S. Forest Service.

The mine, associated infrastructure, and toxic waste material will not only permanently destroy Oak Flat but will directly, adversely, and permanently affect numerous sacred springs, traditional areas, burial locations, and other cultural places and experiences of high spiritual and cultural value. The massive mine will cause irreversible destruction to thousands of acres of public lands and contaminate already scarce water sources. Resolution Copper

plans to use a block-cave mining technique, which will result in a 1.8-mile-wide crater (the distance from the Capitol to the Lincoln Memorial) over a thousand feet deep. The mine will consume more than 637,000 acre-feet of water and require over 40 miles of pipeline through large parts of the TNF to slurry out toxic waste and ore concentrate. It will also require the construction of massive utility and road corridors that could span 500 feet in width. This mine will deplete and contaminate precious water resources in the region and result in a toxic waste dump that could cover 15,000 acres and be taller than the Washington Monument.

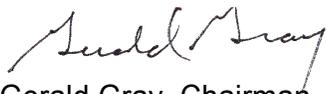
As part of the legislation, the land exchange is subject to NEPA (Sec. 3003(c)(9)) as well as appraisals of the lands to be exchanged and public review of the appraisals (Sec. 3003(c)(4)). However, TNF failed to comply with NEPA and other applicable federal laws and they failed to complete the required appraisals of the lands to be exchanged. Instead, TNF rushed to publish the Final EIS on January 15, 2021, to artificially start a 60-day clock under Section 3003(c)(10) to give away sacred Oak Flat to Resolution Copper to pave the way for its mine that will destroy Oak Flat, large swaths of TNF and other surrounding areas with no simultaneous commensurate conveyances of Resolution Copper- owned land to the federal government.

On March 1, 2021, USDA directed the Forest Service to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision. USDA noted that rescinding the FEIS will ensure the Forest Service complies with “the environmental, cultural, and archaeological analyses required” and concluded that “additional time is necessary to fully understand concerns raised by Tribes and the public and the project’s impacts on these important resources and ensures the agency’s compliance with federal law.” Importantly, USDA noted that because the exchange was directed under the FY15 NDAA that “long-term protection of the site will likely require an act of Congress.”

We condemn the destruction of a tribal sacred site, the flagrant disregard for the importance of life-giving water, and the disregard for significant tribal concerns during the NEPA process.

For these reasons, we respectfully request that you enact the Save Oak Flat Act. On behalf of Native Americans nationwide, thank you for considering this important request.

Sincerely,



Gerald Gray, Chairman
Rocky Mountain Tribal Leaders Executive Board

April 30, 2021 Resolution of the Zuni Tribe



**ZUNI TRIBAL COUNCIL
ZUNI TRIBE
ZUNI, NEW MEXICO**

April 30, 2021

Resolution No. M70-2021-P055

Re-Affirming Opposition to Section 3003 of the National Defense Authorization Act for Fiscal Year 2014; Supporting Oak Flat Act

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor and the six elected Tenientes, is declared to be the legislative authority of the Zuni Tribe by Article V, Sections 1 and 2 of the Constitution of the Zuni Tribe; and,

WHEREAS, the Zuni Tribal Council, pursuant to Article VI, Section 1(d) of the Constitution of the Zuni Tribe, holds the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and,

WHEREAS, the Pueblo of Zuni is a federally-recognized Indian tribe possessing all the inherent sovereign powers of self-government; and,

WHEREAS, through treaties with the United States, federal laws mandating the allotment of Indian lands, and other U.S. takings, tribal nations lost hundreds of millions of acres of tribal homelands to help build this Nation; and,

WHEREAS, federal lands are carved out of the ancestral lands of tribal nations and the historical and spiritual connections of Native Americans to these lands have not been extinguished; and,

WHEREAS, some of these lands contain the remains of our ancestors and Native Americans continue to pray, hold ceremonies, and gather traditional and medicinal plants on these lands; and,

WHEREAS, the United States government has legal and moral obligations to provide access to these ancestral lands to Native Americans and to protect these traditional cultural territories in a manner that respects the cultural, historical, spiritual and religious importance of these lands to tribal nations; and,

WHEREAS, for more than ten years, tribes throughout Indian country have considered and rejected legislation titled the “Southeast Arizona Land Exchange and Conservation Act” (“the Land Exchange”) that proposed a mandatory conveyance of National Forest Service lands to Resolution Copper, a private mining company owned by the foreign mining giants Rio Tinto PLC (United Kingdom) and BHP Billiton Ltd (Australia), in order to facilitate the development of a massive and unprecedented block cave copper mining project; and,

WHEREAS, pursuant to §3003 of the National Defense Authorization Act of 2015 (NDAA), Congress authorized the transfer of all right, title, and interest of the United States in approximately 2,242 acres of federal lands in the Tonto National Forest, commonly known as Oak Flat but known to Apaches as Ch’chil Bitdagoteel, in exchange for all right, title, and interest in specifically identified non-federal lands held by Resolution Copper; and,

WHEREAS, Oak Flat is part of the ancestral homelands of the Western Apache, Yavapai, Hopi, Zuni, and O’odham people; and,

WHEREAS, Oak Flat is a place filled with power – a place where Native people have, since time immemorial, and continue to go to for prayer, to conduct ceremonies such as Holy Ground and the Apache Puberty Rite Ceremony that some refer to as the Sunrise Dance, which celebrates a young woman’s coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing; and,

WHEREAS, Oak Flat has and continues to play an essential role in Apache, Yavapai, Hopi, Zuni, and O’odham religion, traditions, and culture for centuries and is a holy site and traditional cultural property with deep tribal religious, cultural, archaeological, historical and environmental significance; and,

WHEREAS, on March 4, 2016, Oak Flat was listed on the National Park Service’s National Register of Historic Places as a Traditional Cultural Property; and,

WHEREAS, the Land Exchange circumvents federal laws that mandate protection of Native American religion and culture and circumvents federal laws that mandate protection of the environment; and,

WHEREAS, the Inter Tribal Association of Arizona (“ITAA”), an association of 21 tribal governments in Arizona, provides a forum for tribal governments to advocate for national, regional and specific tribal concerns and to join in united action to address these issues; and,

WHEREAS, the ITAA has passed resolutions opposing the Land Exchange and has joined hundreds of tribal nations, Native organizations and others in opposition to the Land Exchange, because the proposal

will destroy the religious and cultural integrity of Oak Flat, and set dangerous precedent for all of Indian Country by conveying federal lands that encompass a known Native sacred area to a private company for mining activities; and,

WHEREAS, by standing resolution #REN-13-019, NCAI has opposed the Land Exchange (H.R. 1904 and H.R. 687, and S. 339), the Southeast Land Exchange, and has joined hundreds of tribal nations, tribal organizations and others in opposition to the Land Exchange; and,

WHEREAS, over united opposition by NCAI, ITAA member tribes, and other tribal nations, and organizations across the country, the Southeast Arizona Land Exchange legislation was attached to the FY 2015 National Defense Authorization Act and enacted in December 2014; and,

WHEREAS, under Section 3003, the United States Department of Agriculture (USDA) must begin implementation of the Land Exchange, which includes conducting an Environmental Impact Statement of the Land Exchange and conducting government-to-government consultation with impacted Indian tribes – but which also includes a mandatory transfer of Oak Flat to the foreign-owned mining corporation regardless of the findings of the Environmental Impact Statement and tribal government consultation; and,

WHEREAS, the U.S. Forest Service, in carrying out the directives of Section 3003 published the Draft Environmental Impact Statement of the Land Exchange and mine project; and,

WHEREAS, the National Congress of American Indians (“NCAI”) recently reaffirmed its commitment to strongly advocate for the protection of Native American sacred places in accordance with its 2002 Policy Statement, NCAI standing resolution #PHX-08-069c, “NCAI Policy Statement on Sacred Places,” NCAI standing resolution #SD-02-002, “Essential Elements of Public Policy to Protect Native Sacred Spaces,” and other resolutions that oppose mining that harms sacred places; and,

WHEREAS, by standing Resolution No. MSP-15-001, the NCAI expressed its support for the Repeal of Section 3003 of the FY 2015 National Defense Authorization Act, the Southeast Arizona Land Exchange; and,

WHEREAS, on January 15, just five days before President Biden was sworn in, the Forest Service published the Final EIS (“FEIS”) for the Resolution Copper Mine starting a 60-day clock that will transfer sacred Chi’chil Bildagoteel, but the FEIS is inadequate; and,

WHEREAS, three separate government agencies have each objected to the FEIS – the Arizona State Land Department, the federal Environmental Protection Agency and the Advisory Council on Historic Preservation; and,

WHEREAS, the San Carlos Apache Tribe and others repeatedly filed comments with the Forest Service on water and cultural impacts, but these were largely ignored by the Forest Service; and,

WHEREAS, the NDAA also requires appraisals of the land to be exchanged, but these have also not been made available to the public and Resolution has refused to provide information as to the copper content of the ore body, which is essential to both the appraisal and the value of royalties; and,

WHEREAS, RCM admits that it will pump nearly 600,000 acre-feet of water, enough water for 168,000 homes over 40 years, which will result in the absence of drinking water for both Superior and Queen Creek; and,

WHEREAS, the Forest Service did not provide the EPA report or nine other reports on water, mine tailings and environmental impacts to the public for comment or review, which left the public inadequately informed of the potential impacts of the mine or its tailings facility, or the impacts to underlying groundwater or the impacts of pumping; and,

WHEREAS, the San Carlos Apache Tribe has filed suit against the Forest Service for its failed preparation, issuance and reliance upon an inadequate FEIS as part of its review of the mining project, and its failure to comply with the public and agency review requirements under NEPA and the NHPA, contravene the NDAA and stand in excess of the Forest Service's statutory jurisdiction, authority or limitations, and that the Land Exchange will violate the fundamental, constitutional right of Apaches to practice their traditional religion at Oak Flat; and,

WHEREAS, legislation calling for the Repeal of Section 3003 of the FY 2015 National Defense Authorization Act has now been re-introduced in the current 117th Congressional session, sponsored by Representative Grijalva and Senator Sanders; and,

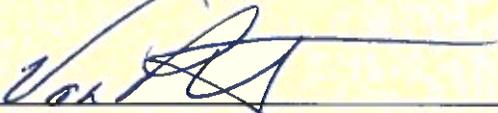
WHEREAS, the Zuni Tribe finds that the Land Exchange will result in Apaches, Yavapais, Hopis, Zunis, and O'odhams suffering irreparable harm and that the FEIS was flawed and should be reconsidered, and for such reasons, the Save the Oak Flat Act is in the best interests of the Tribe and its members.

NOW THEREFORE, BE IT RESOLVED, by the Zuni Tribal Council that the Zuni Tribe hereby:

1. supports the Save the Oak Flat Act and the repeal of Section 3003 of the NDAA; and,
2. requests the Secretary of Agriculture to withdraw the FEIS from publication and to undertake a process to issue a supplemental draft environmental impact statement; and,
3. requests the U.S. Senators and Representatives for Arizona support the Save the Oak Flat Act and the withdrawal of the FEIS from publication.

BE IT FURTHER RESOLVED, that the Zuni Tribal Council hereby authorizes the Governor, or his designee, to execute any and all documents necessary to effectuate the intent of this Resolution.

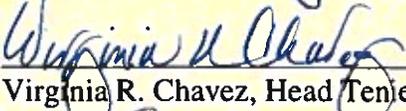
ZUNI TRIBAL COUNCIL:



Val R. Panteah, Sr., Governor



Carleton R. Bowekaty, Lt. Governor



Virginia R. Chavez, Head Teniente

VACANT
Teniente



Arlen P. Quetawki, Sr., Teniente



Eric Bobelu, Teniente



Ricky R. Penketewa, Sr., Teniente



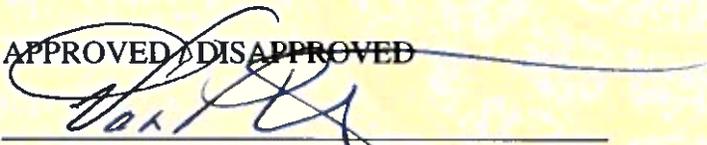
Arden Kucate, Teniente

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni, New Mexico, at which a quorum was present and the same was approved by a vote of 7 in favor, 0 opposed, 0 abstaining, 0 absent on April 30, 2021.



Tribal Council Secretary

APPROVED / DISAPPROVED


Val R. Panteah, Sr., Governor
Pueblo of Zuni

Written Testimony

**Vice-Chairman Shan Lewis
Fort Mohave Indian Tribe and President of Inter Tribal
Association**

**TESTIMONY FOR THE RECORD
BY THE
INTER TRIBAL ASSOCIATION OF ARIZONA**

**Mr. Shan Lewis, President
Vice-Chairman, Fort Mojave Indian Tribe**

**Provided to the
Subcommittee on Indigenous Peoples of the United States
1324 Longworth House Office Building
Washington, D.C., 20515**

**Legislative Hearing on H.R. 1884 (Rep. Raúl Grijalva) (To repeal section 3003 of the
Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for
Fiscal Year 2015, and for other purposes).**

April 13, 2021

Chairman Grijalva, Chairperson Fernández, Representative Gallego, and members of the Subcommittee, thank you for the opportunity to testify today. My name is Shan Lewis, Vice Chairman of the Fort Mojave Indian Tribe, and President of the Inter Tribal Association of Arizona (“Inter Tribal Association” or “ITAA”). My Tribe is a member of the Inter Tribal Association of Arizona.

On behalf of our 21 Member Tribes, we appreciate the opportunity to speak today in support of the Save Oak Flat Act (H.R. 1884). The future existence of Oak Flat is at a critical moment. This important bill would repeal the land exchange legislation and save Oak Flat from being lost forever. This bill would permanently protect Oak Flat, located in the Tonto National Forest in eastern Arizona, from destruction by mining. Oak Flat, also known traditionally as *Chi’chil Bildagoteel*, is a place of profound religious, cultural, and historic significance to certain Western Apache and Yavapai people, as well as other Tribal cultures across the region. Given its profound importance to Tribal people, Oak Flat is listed as a Traditional Cultural Property (TCP) on the National Register of Historic Places.

For the Western Apache including the San Carlos Apache Tribe, Oak Flat is a place for prayer, for coming-of-age (Sunrise) and other ceremonies, for collecting water and gathering medicinal plants for ceremonies, for gathering acorns and other foods, and honoring the departed who are buried there. The Yavapai also have a long history and traditional historical relationship with Oak Flat, and have used its free-flowing waters, plants and materials grown there for food as well as for ceremonial and cultural purposes. Indeed, in work supervised by the Tonto National Forest, anthropologists Maren P. Hopkins and T.J. Ferguson conducted extensive fieldwork and ethnographic interviews

with elders from multiple tribes regarding their relationship with Oak Flat to develop a report in 2015 entitled “Ethnographic and Ethnohistoric Study of the Superior Area, Arizona”. This exhaustive report noted that Oak Flat is an important cultural site for nine tribes in Arizona. It is our understanding that Dr. Ferguson has submitted prepared testimony for today’s subcommittee hearing. While different Tribal peoples may regard and use Oak Flat in different ways, the underlying traditional and historical relationships of the many various Tribal cultures to the ancestral lands here has existed since time immemorial. **This absolutely must be respected.**

If the land exchange legislation is not repealed, approximately 2,400 acres of public land, including the Oak Flat, will be transferred into private ownership and control of two foreign mining companies, Rio Tinto and BHP Billiton, that operate in Arizona under the name Resolution Copper. Once transferred, Resolution Copper will have the authority to forever prevent current and future generations of Tribal people and other users from entering Oak Flat to perform prayers, engage in ceremony, and to gather acorns and other important plants that have sustained Tribal people for countless generations. And, of course, the goal of the transfer is to facilitate the development of a massive copper mine that will destroy Oak Flat, leaving a crater almost 2 miles wide, and a thousand feet deep at its heart. The mine will also deplete billions of gallons of water, destroy sacred springs, and leave the natural world irreparably harmed, along with the religious freedoms and practices of those Tribal people who have relied upon the existence and health of Oak Flat for generations upon generations.

These actions would violate the religious freedoms of current and future generations of Tribal people and directly contradict the protections provided by the First Amendment to the United States Constitution, the American Indian Religious Freedom Act (42 U.S.C. § 1996), and the Religious Freedom Restoration Act (42 U.S.C. § 2000bb-2000bb-4), among other laws.

Tribal religious and cultural practices must be respected and treated by the United States government on par with the religious freedoms of other citizens of this country. Doing anything less undermines the very foundation of who we **all** are as Americans.

For these reasons, ITAA strongly supports the Save Oak Flat Act (H.R. 1884). This is the only way to achieve the long-term, permanent protection of Oak Flat. ITAA does not oppose all mines, however, some places just should not be mined. Oak Flat is one of these areas.

Background on the Inter Tribal Association of Arizona

The Inter Tribal Association of Arizona, Inc. is a non-profit, inter tribal consortium of 21 federally recognized Indian Tribes, nations, and communities with lands located

across the State of Arizona, as well as in New Mexico, California, and Nevada.¹ ITAA's Member Tribes have worked together since 1952 to provide a united voice for Tribal governments located in the State of Arizona on matters of common interest and concern. The representatives of ITAA are the highest elected Tribal officials from each Tribe, including chairpersons, presidents, and governors.

ITAA's 21 Member Tribes are Unified in Opposition to the Transfer of Oak Flat to Foreign Mining Interests

Since the current mining proposals at Oak Flat arose nearly two decades ago, ITAA and our sister organization, the Inter Tribal Council of Arizona, Inc. (ITCA), as well as numerous individual Member Tribes have passed multiple resolutions, written countless letters, submitted statements, and testified before Congress (including before this subcommittee) on multiple occasions, adamantly opposing the transfer of their ancestral lands at Oak Flat to foreign mining interests and raising specific, detailed concerns about the many likely and inevitable impacts of this mine.

The 21 Member Tribes of ITAA/ITCA, as well as many of our individual Member Tribes, have passed resolutions opposing the destruction of Oak Flat and/or supporting the legislation to repeal the exchange legislation. The Navajo Nation, Arizona's 22nd federally recognized tribe, has also passed a resolution in opposition to the Resolution Copper Mine and Land Exchange.

In 2008, I traveled to Washington to testify on behalf of our 21 Member Tribes before Congress on this issue. Again in 2009, President Norman Coeoyate of the Zuni Tribe traveled to Washington to testify for us. Throughout subsequent sessions of Congress, we have consistently and adamantly expressed **unified** Tribal opposition to the Resolution Copper Mine and Land Exchange on behalf of our 21 Member Tribes. Over the years, our tribal leaders including former San Carlos Apache Tribal Chairman Wendsler Nosie Sr. and current Chairman Terry Rambler, and leaders from the Fort McDowell Yavapai Nation, the Zuni Tribe, and the Hualapai Tribe, have testified before Congress or submitted testimony for the record in firm opposition to the Resolution Copper Mine and Land Exchange. In addition, countless letters have been sent to Congress opposing this mine and land exchange from ITAA, and from our individual Member Tribes.

¹ The ITAA's Member Tribes are the Ak-Chin Indian Community, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Quechan Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and the Yavapai Prescott Indian Tribe.

ITAA and its Member Tribes have been joined in this opposition by many other tribes and inter tribal organizations across the United States including by the National Congress of American Indians (NCAI), who is testifying here today. NCAI has also voted on and passed resolutions opposing this mine and land exchange. Even indigenous organizations from as far away as Australia have expressed their concerns with the Rio Tinto's plans to develop a mine at Oak Flat following Rio Tinto's tragic destruction of the culturally and historically significant Juukan Gorge cave rockshelters in the Pilbara Region of Australia as part of a mining project in May 2020. Indigenous people warned of Rio Tinto's destructive plans and urged Rio Tinto not to destroy the rockshelters, but Rio Tinto blasted these structures anyway, destroying them forever. Despite Rio Tinto's promises made in the aftermath of this blatant destruction to never let this happen again, in fact, Rio Tinto plans to do the very same thing at Oak Flat. **But, in this case, Congress can take action and pass the Save Oak Flat Act and protect this sacred place and well-documented religious and culturally important landscape before it can be demolished to benefit the commercial interests of Rio Tinto.**

The ITAA stands **firmly** with all of our Member Tribes who have fought for many years to protect the historic properties, religious places, and sacred sites found within the Oak Flat area including *Chi'chil Bildagoteel* from being exchanged to and ultimately destroyed by foreign mining interests. The Tribal Leaders of ITAA will **always** stand shoulder-to-shoulder when it comes to protecting our ancestral lands, and the integrity of historic properties, religious places, and sacred sites located within those lands.

Irreparable Impacts of the Proposed Resolution Copper Mine

Last year on March 12, 2020, this subcommittee held a hearing to discuss the numerous impacts of the proposed Resolution Copper mine (titled *The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation*). Our prior prepared statement submitted for that hearing record detailing these numerous harms is incorporated here by reference.

If the Save Oak Flat Act is not passed, upon the completion of a legally-compliant and final environmental impact analysis, approximately 2,400 acres of Tribal ancestral land will be exchanged, so that Resolution Copper can construct and operate a block-cave mining operation to blast and remove 1.4 billion tons of rock from beneath Oak Flat. This would leave a subsidence crater at almost 2 miles wide and over 1,000 feet deep, collapsing the Oak Flat area including the NRHP-listed *Chi'chil Bildagoteel* (Oak Flat) Historic District and the archaeological, cultural, historic, and sacred sites within the area including burial sites and petroglyphs. Among the impacts are:

- The Forest Service estimates that over the life of the mine, this mine will deplete at least 87,000 acre-feet of water from the Oak Flat area (1 acre-foot is 325,851 gallons of water). Dewatering and destroying riparian seeps,

springs, and streams in and around Oak Flat that support ecosystems and habitats for a wide variety of species including the endangered Sonoran ocelot, black bear, mountain lion, bobcat, coatimundi, javelina, ring-tailed cat, all four native Arizona species of skunk. Oak Flat is also a critical area for resident and migrating bird species including Bald and Golden Eagles (which have religious and cultural significance to ITAA Member Tribes).

- The Forest Service also estimates that over the life of the mine, this mine will deplete at least 550,000 acre-feet of water from the east Salt River Valley just outside of Phoenix. Extensive dewatering of ground and surface water supplies would also add more strain on the desperately-needed and already thin water supplies of Arizona residents.
- More than **half a million** acre-feet of groundwater would be pumped for this mine from central Arizona, an area which has already seen subsidence and fissures in the earth from over-pumping. The Pinal AMA in this region alone already faces an 8.1 million acre-foot shortfall between available supplies and demand over the next century. Moreover, it is anticipated that the agricultural users in this same region will be hit hardest by additional predicted substantial cuts in Colorado River water supplies, forcing them to deepen their wells and compete with the mine for scarce water resources.
- The Forest Service also estimates that approximately 1.37 billion tons of toxic mine waste (tailings) would be deposited from this mine. This would be left forever only a few short miles from the Gila River. This presents threats of water and environmental contamination, spillage, and human health concerns that have not been adequately addressed by the Forest Service or the mine. In fact, none of the short-term **or** long-term environmental threats posed by this sprawling mine, including from its tailings slurry, concentrate slurry, toxic pit lake in the subsidence crater, and other facets of the mine have ever been fully addressed.
- The construction of many additional miles of infrastructure, pipelines, power lines, roads, wells, railways will also have innumerable and widespread environmental impacts. For example, pipelines transporting slurried toxic mine waste to the tailings site would be placed underneath Mineral Creek (critical habitat to the endangered Gila Chub, and proposed critical habitat for the Yellow-Billed Cuckoo). Transmission lines and pipeline corridors will be bladed or blasted through miles and miles of Forest lands, including through the nearby King's Crown Peak mountain.

The COVID-19 pandemic has placed a magnifying glass on the fundamental need to protect and preserve healthy water supplies. Yet, the egregious amount of water required by the mine and its threat to water quality and the environment is a matter of serious concern to ITAA's Member Tribes. Dr. James Wells, Ph.D. of L. Everett & Associates is also here presenting testimony today to this Subcommittee in greater detail on the specific and profound water impacts of this project. The severe and ongoing drought which has stricken the southwestern United States and the State of Arizona for many decades would be made much worse by the staggering amounts of water this mine would consume. Water is necessary to sustain life. It is therefore important for our survival to understand and think about what the long-term impacts on water this project will have 10, 20, and even 100 years from now.

In sum, the destructive legacy of this project would be staggering and forever leave a stain on eastern Arizona. **It would also leave a stain on who we are as Americans, since we would be exchanging the religious freedoms of Tribal people for a promise of jobs and profit offered by foreign mining interests.** The exchange would also create an unacceptable precedent – that is, the exchange of a well-documented Traditional Cultural Property recognized under the National Historic Preservation Act to two foreign mining interests to facilitate its destruction. And, all of Arizona's residents including tribal members of ITAA's Member Tribes would suffer the cultural, social, environmental and other consequences for years to come.

Permanent Protection of Oak Flat (“Save Oak Flat Act”) Is Still Needed

In December 2014, despite our strong protests, and despite failing for many years to pass as a standalone bill on its own merits, the highly controversial Resolution Copper Mine and Land Exchange was included in the 2015 National Defense Authorization Act and enacted into law. Among other things, this provision required a full and legally compliant Final Environmental Impact Statement (FEIS) on the project. Publication of an FEIS triggers a 60-day clock, by the end of which Oak Flat lands would be exchanged to Resolution Copper for eventual destruction.

The Forest Service had originally anticipated publishing the FEIS in December 2021. But in the waning days of the prior administration, the Forest Service hurriedly published an incomplete, fatally flawed FEIS for the Resolution Copper Mine Project and Land Exchange on January 15, 2021, just five days before the presidential inauguration. The document was glaringly incomplete and fell far short of a full NEPA analysis, failing in countless instances to consider direct, indirect and cumulative project impacts and mitigation measures.

On March 1, 2021, USDA directed the Forest Service to rescind the FEIS and Draft Record of Decision, citing the need for more time to more fully understand Tribal and public concerns in accordance with the recent Presidential Memorandum on Tribal

Consultation (dated January 26, 2021), as well as project impacts and to “ensure the agency’s compliance with federal law.”

Rescission of the FEIS and Draft Record of Decision was welcome news as it halted the 60-day clock, temporarily saving Oak Flat. Nevertheless, the USDA and Forest Service are still estimating that another final EIS will be published at some point in the future, perhaps even later this year. If the land exchange legislation is not repealed, then upon publication of another FEIS, the 60-day clock would restart, and Oak Flat will be transferred from the Tonto National Forest into the private hands of Resolution Copper no later than 60 days after that FEIS is published. This outcome is not acceptable to ITAA. And should not be acceptable to Congress.

Long-term and permanent protections for Oak Flat are critically needed. Passage of H.R. 1884, the Save Oak Flat Act, would undo the original land exchange legislation and provide this protection.

Conclusion

We welcome the recently-signed Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships signed by President Biden on January 26, 2021, making regular, meaningful and robust consultation with Tribal Nations one of the priorities of his administration. ITAA urges Congress to live up to these values as well, and consider the united Tribal concerns opposing this land exchange and mine which have been consistent, united, and unwavering since the beginning. To do this, we urge you to pass the Save Oak Flat Act to provide long-term, permanent protection to Oak Flat.

Thank you for providing an opportunity on the part of the Inter Tribal Association of Arizona and our 21 Member Tribes to submit this testimony.

Written Testimony

**T.J. Ferguson, Maren P. Hopkins, and Chip Colwell
of Anthropological Research**



Oak Flat is an Important Cultural Site for Nine Tribes

The Resolution Copper Mine will Impact Hundreds of Tribal Traditional Cultural Properties

Testimony of T. J. Ferguson, Maren P. Hopkins, and Chip Colwell
Anthropological Research, LLC¹

On H.R. 1884, To repeal Section 3003 of the Carl Levin and Howard P. “Buck” McKeon
National Defense Authorization Act for Fiscal Year 2015, and for other purposes

U.S. House of Representatives Natural Resources Committee
Subcommittee on Indigenous Peoples of the United States
Tuesday, April 13, 2021

We support H.R. 1884 that would provide needed long-term protection for Oak Flat and encourage the enactment of this legislation as soon as possible for the reasons below. Our testimony is based on the results on an ethnographic overview we conducted in 2014 and 2015, which produced a report entitled *Ethnographic and Ethnohistoric Study of the Superior Area, Arizona*. This study was done under contract to Resolution Copper, and supervised by the USDA Forest Service to provide information needed for compliance with the National Historic Preservation Act. The tribal liaison and forest archaeologist for the Tonto National Forest participated in much of the fieldwork of the study, and reviewed a draft of our report. The study included a thorough review of published and archival literature, and extensive fieldwork and ethnographic interviews with elders of multiple tribes to identify and assess tribal traditional cultural properties.

We worked with nine Indian tribes in Arizona to identify cultural sites potentially impacted by the development of the Resolution Copper Mine, and assess the eligibility of those sites for inclusion in the National Register of Historic Places. We found that Oak Flat is a sacred place for many Western Apache people, and that it is also an important traditional cultural property for the

¹ Anthropological Research, LLC, is owned by Maren P. Hopkins and T. J. Ferguson. The company specializes in providing professional services needed for compliance with the National Historic Preservation Act, National Environmental Policy Act, and the Native American Graves Protection and Repatriation Act. The company is based in Tucson, Arizona, and works throughout the Southwest. T. J. Ferguson, the principal investigator for the ethnographic overview, is a professor emeritus at the University of Arizona, with more than forty years of professional experience and many published books and journal articles about historic preservation. Maren P. Hopkins, a registered professional archaeologist, has fifteen years of experience in conducting historic preservation research in the Southwest, and is the author of numerous technical reports, book chapters, and journal articles about archaeology, ethnography, and the relevance of collaboration in historic preservation research. Chip Cowell received his Ph.D. in anthropology from Indiana University in 2004, and has published 12 books and many journal articles on Native American history and culture.

the other tribes that participated in the study. Oak Flat lies at the center of a regional cultural landscape, and the fact that this sacred site will be physically destroyed by the development of the Resolution Copper Mine is of great concern to all of the tribes we worked with. In addition to Oak Flat, our study identified 403 traditional cultural properties eligible for inclusion in the National Register of Historic Places in the project area that are important tribal cultural resources. While some of these traditional cultural properties are unique to certain tribes, most of the sites are historically and culturally significant to multiple tribes.

The nine tribes that we worked with include:

- | | |
|-------------------------------|---|
| San Carlos Apache Tribe | Gila River Indian Community |
| Tonto Apache Tribe | Salt River Pima-Maricopa Indian Community |
| White Mountain Apache Tribe | Hopi Tribe |
| Yavapai-Apache Nation | Pueblo of Zuni |
| Yavapai-Prescott Indian Tribe | |

Sixty-five members of the San Carlos Apache Tribe, White Mountain Apache Tribe, and Tonto Apache Tribe participated in our research, and many interviews of tribal elders were conducted with the help of the San Carlos Apache people we worked with. We found that Oak Flat, known as Chich'il Biłdagoteel in the Apache language, is the home to specific Diyin (Apache Holy beings), including the Gáán Lichíí (Red Mountain Spirits). Vincent Randall of the Yavapai-Apache Nation told us that “Chich'il Biłdagoteel is a Diyin gózáa,” meaning that it is a Holy Place. He explained that “the items you remove from a holy place are more special, they have more power. They carry the power of the place. Anything you take out of here has already been blessed a long, long time ago.” Linda Evans said that “everything from here is blessed.” This makes the plants collected by Apache people at Chich'il Biłdagoteel to be particularly efficacious in traditional religious practices (Figure 1).

Apache sacred places are closely connected to the clans who migrated through different areas. Thus, Chich'il Biłdagoteel (Oak Flat) is considered sacred as a clan origin place and past residence for many but not all tribal members. Chich'il Biłdagoteel is associated with traditions rooted in the history of the T'iis Tsebán (Pinal People) and the Tsé Binesti'é (Aravaipa People). Eighty years ago, the area around Chich'il Biłdagoteel



Figure 1. An Apache research participant discusses cultural traditions related to a plant at Chich'il Biłdagoteel. Photograph by Maren P. Hopkins, April 30, 2014.

was documented by anthropologist Grenville Goodwin as a place where Western Apache people settled during the period of clan migration. Sunrise Dances and sweat baths still take place at Chich'il Bıldagoteel on a seasonal basis. These ceremonies are carried out at Chich'il Bıldagoteel because it is a place of power, and it connects individuals and communities to diyih (supernatural or spiritual power). The significance of Chich'il Bıldagoteel was recognized by the Department of the Interior when it listed this traditional cultural property on the National Register of Historic Places.

The Apache clan members who value Chich'il Bıldagoteel (Oak Flat) as a sacred site are greatly concerned about the destruction of this place if the Resolution Copper Mine is developed. The subsidence from the removal of copper ore from beneath Oak Flat would result in a crater almost 1,000 feet deep and 1.8 miles in diameter. This would physically destroy Chich'il Bıldagoteel, and prevent the Apache people from continuing their traditional cultural practices at this sacred site (Figure 2). It would also prevent the Apache people from being able to use Oak flat as a physical monument that commemorates numerous layers of their history and culture.

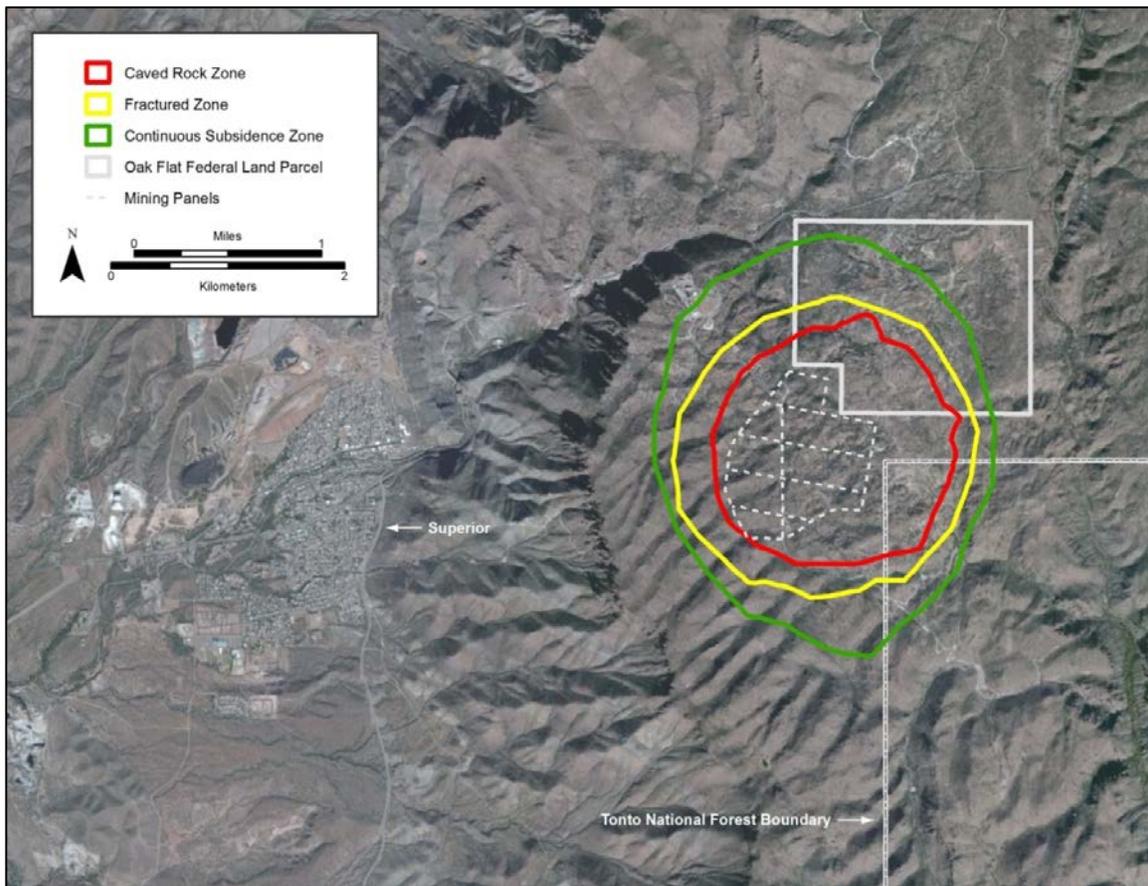


Figure 2. The red line on this aerial photograph indicates the area that would be totally destroyed by subsidence at Oak Flat.

The proposed Resolution Copper Mine would impact many areas beyond Chich'il Bıldagoteel. Pipelines, tailing dumps, road construction, and other mine infrastructure would impact a large area surrounding Oak Flat. Our reconnaissance of this area documented 377

additional Western Apache traditional cultural properties eligible for inclusion in the National Register of Historic Places. Of these, there are 24 traditional cultural properties with specifically documented significance and 354 traditional cultural properties that are categorically significant, including landforms and resource collection areas with Apache place names, Apache camps, ancestral archaeological sites, petroglyph sites, and trails. In addition to these historic properties, there are 46 known springs in the study area that are important to the Apache, and tribal elders and project participants also identified dozens of plants, minerals, and animals in the study area that possess traditional cultural significance. Part of the mine footprint is within the judicially determined aboriginal lands of the Western Apache people.

Named Apache places in the project area include Bìih Bitu'é, Chich'il Bìłch'igoteel, Chich'il Níntíí, Di'iyú Biyi, Diba'eh Des'áá, Dibé Daszi, Dził Deniné, Dził Nteel, Dziłgizh Ha'itin, Gáán Bidził, Gáán Bik'oh, Gáán Daszií, Ha kíí, Hashbidi Bitu'é, Łbaiyé Sítiné, Nidìłchí Dihilí, Nolghínìłgaiyé, T'iis Tséba, Tégotsugé, Tsé Disj'ág, Tsé Yahijjii, Tséghá Tsik'ed, Tséyaa Godotl'izh, Tséyaa Gogeschin, Tú Łitsogí, and Tú Nahikaadi. Place names are an integral part of Apache culture that mark special places on the land to commemorate historical events, perpetuate collective memories, and provide moral instruction through storytelling.

While Oak Flat has special significance to the Apache people, it is also an important cultural site for seven other tribes in Arizona. The three Yavapai tribes in Arizona—the Yavapai-Apache Nation, Fort McDowell Yavapai Nation, and Yavapai-Prescott Indian Tribe—know Oak Flat by the name of Gohwhy Gah Edahpbah. Gohwhy Gah Edahpbah is a historic district that is significant as a Yavapai traditional band area, a site associated with Yavapai raiding, a food gathering area, and a habitation area. The proposed mine is within and surrounded by Yavapai traditional lands, sacred sites, resource collection areas. Part of the mine footprint is within the judicially determined aboriginal lands of the Yavapai people.

Oak Flat and the surrounding area are also important to the O'odham people who today are members of the Gila River Indian Community and Salt River Pima-Maricopa Indian Community. The southwestern portion of the study area for our ethnographic overview is within the judicially determined aboriginal lands of the O'odham (Pima). Our research with six O'odham tribal members documented that O'odham traditional cultural properties in the mine area include campsites, gathering sites, artistic locales, ceremonial grounds, and other places that figure into the traditions associated with O'odham beliefs about tribal origin, cultural history, and worldview. O'odham songs and place names are one way that the O'odham people retain their connection with traditional places, and how they transmit knowledge about places between generations. O'odham place names are descriptive and embedded with cultural meaning. For example, Mo'o 'lalik (Picketpost Mountain) is visible from the ridge known as Apache Leap at the western edge of Oak Flat and thus is part of this cultural landscape. Mo'o 'lalik translates into English as 'Place where the Head Rolled Down,' and it has this name because of a large rock outcrop located low on the north side that resembles the head of a person lying on his back and gazing toward the sky. It looks like the head rolled off the top of the mountain. Mo'o 'lalik is near an old O'odham trail that runs up Queen Creek Canyon and past Oak Flat. This mountain has been well known to the O'odham since ancient times, and the name was remembered by O'odham living in Florence, Arizona, in the 1990s.

The O’odham people have a number of cultural sites that are categorically important because of the values and traditions associated with them, including ancestral habitation sites, human burials, traditional trails, and petroglyphs. During our study, we identified 364 O’odham traditional cultural properties in the study area that are eligible for inclusion in the National Register of Historic Places. These include ancestral sites, petroglyphs, landforms, and water sources with historical and traditional cultural significance.

The Hopi Tribe values Oak Flat as a traditional cultural property and historic district associated with Hopi ancestral settlements, resource collection, and the migration histories of the Hopi clans, all of which constitute significant events in Hopi history and in their ongoing cultural beliefs and practices. During our study, we identified 363 Hopi traditional cultural properties in our study area that are eligible for inclusion in the National Register of Historic Places. These include ancestral habitation sites, petroglyphs, collection areas, and water sources with historical and traditional cultural significance. The Hopi people consider all ancestral sites to be “footprints” that provide physical evidence of the migrations of their ancestors. The Hopi people consider numerous plants, animals, minerals, stones, and water sources within the study area to have cultural significance, and they believe that the earth should be treated with reverence and respect. The 15 Hopi people we worked with identified 46 springs in the study area that have cultural, emotional, and spiritual values for the Hopi.

We worked with four research participants from the Pueblo of Zuni of New Mexico. In addition to Oak Flat, they identified 360 Zuni traditional cultural properties in the study area that are eligible for inclusion in the National Register of Historic Places. These include ancestral habitation sites, petroglyphs, landforms, and water sources with historical and traditional cultural significance. The Zuni people also value the springs in the study area that have cultural, emotional, and spiritual values. The Zuni consider these water sources to be sacred places.

In conclusion, all nine tribes we worked with consider Oak Flat to be a significant traditional cultural property—a historic site complemented by an additional 403 traditional cultural properties in the surrounding area. These cultural properties are important in the retention and transmission of traditional tribal culture and values. The proposed destruction of Oak Flat is akin to tearing out pages from a history book in the library. Once gone, Oak Flat cannot be replaced, and the ten tribes that value this historic site will find it harder to maintain their traditional land-based religious and cultural practices. The development of the Resolution Copper Mine, and the destruction of Oak Flat, will cause tremendous emotional trauma and cultural harm for all of the tribes that revere and use Oak Flat as a sacred site.

April 7, 2021 Resolution of the White Mountain Apache Tribe



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Re-Affirming Opposition to Section 3003 of the National Defense Authorization Act for Fiscal Year 2014 and Supporting Save the Oak Flat Act)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power, “To represent the tribe and act in all matters that concern the welfare of the Tribe...”; and
- WHEREAS,** Through treaties with the United States, federal laws mandating the allotment of Indian lands, and other U.S. takings, tribal nations lost hundreds of millions of acres of tribal homelands to help build this Nation; and
- WHEREAS,** Federal lands are carved out of the ancestral lands of tribal nations and the historical and spiritual connections of Native Americans to these lands have not been extinguished; and
- WHEREAS,** Some of these lands contain the remains of our ancestors, and Native Americans continue to pray, hold ceremonies, and gather traditional and medicinal plants on these lands; and
- WHEREAS,** The United States government has legal and moral obligations to provide access to these ancestral lands to Native Americans and to protect these traditional cultural territories in a manner that respects the cultural, historical, spiritual and religious importance of these lands to tribal nations; and
- WHEREAS,** For more than ten years, tribes throughout Indian country considered and rejected legislation titled the “Southeast Arizona Land Exchange and Conservation Act” (“the Land Exchange”) that proposed a mandatory conveyance of National Forest Service lands to Resolution Copper, a private mining company owned by the foreign mining giants Rio Tinto PLC (United Kingdom) and BHP Billiton Ltd (Australia), in order to facilitate the development of a massive and unprecedented block cave copper mining project; and
- WHEREAS,** Pursuant to §3003 of the National Defense Authorization Act of 2015 (“NDAA”), Congress authorized the transfer of all right, title, and interest held by the United States in approximately 2,242 acres federal lands in the Tonto National Forest, commonly known as Oak Flat, but known to Apaches as Chi’chil Bidagoteel, in exchange for all right, title, and interest in specifically identified non-federal lands held by Resolution Copper; and
- WHEREAS,** Oak Flat is part of the ancestral homelands of the Western Apache, Yavapai, Hopi, Zuni, and O’odham people; and

Resolution No. 04-2021-68

- WHEREAS,** NCAI recently reaffirmed its commitment to strongly advocate for the protection of Native American sacred places in accordance with its 2002 Policy Statement, NCAI Standing Resolution #PHX-08-069c, “NCAI Policy Statement on Sacred Places,” NCAI Standing Resolution #SD-02-002, “Essential Elements of Public Policy to Protect Native Sacred Spaces,” and other resolutions that oppose mining that harms sacred places; and
- WHEREAS,** By standing Resolution No. MSP-15-001, the NCAI expressed its support for the repeal of Section 3003 of the FY 2015 National Defense Authorization Act, the Southeast Arizona Land Exchange; and
- WHEREAS,** On January 15, just five days before President Biden was sworn in, the Forest Service published the Final EIS (“FEIS”) for the Resolution Copper Mine, starting a 60-day clock that will transfer sacred Chí’chil Bįłdagoteel, but the FEIS is inadequate; and
- WHEREAS,** Three separate government agencies have each objected to the FEIS – the Arizona State Land Department, the federal Environmental Protection Agency and the Advisory Council on Historic Preservation; and
- WHEREAS,** The San Carlos Apache Tribe and others repeatedly filed comments with the Forest Service on water and cultural impacts, but these were largely ignored by the Forest Service; and
- WHEREAS,** The NDAA also requires appraisals of the land to be exchanged, but these have not been made available to the public, and Resolution has refused to provide information as to the copper content of the ore body, which is essential to both the appraisal and the value of royalties; and
- WHEREAS,** RCM admits that it will pump nearly 600,000 acre-feet of water, enough water for 168,000 homes over 40 years, which will result in the absence of drinking water for both Superior and Queen Creek; and
- WHEREAS,** The Forest Service did not provide the EPA report or nine other reports on water, mine tailings and environmental impacts to the public for comment or review, which left the public inadequately informed of the potential impacts of the mine or its tailings facility, or the impacts to underlying groundwater or the impacts of pumping; and
- WHEREAS,** The Council understands that the San Carlos Apache Tribe has filed suit against the Forest Service for its failed preparation, issuance and reliance upon an inadequate FEIS as part of its review of the mining project, and its failure to comply with the public and agency review requirements under NEPA and the NHPA, which contravene the NDAA and stand in excess of the Forest Service’s statutory jurisdiction, authority or limitations, and that the Land Exchange will violate the fundamental, constitutional right of Apaches to practice their traditional religion at Oak Flat; and
- WHEREAS,** Legislation calling for the Repeal of Section 3003 of the FY 2015 National Defense Authorization Act has now been re-introduced in the current 117th Congressional session, sponsored by Representative Grijalva and Senator Sanders; and

Resolution No. 04-2021-68

WHEREAS, The Council finds that the Land Exchange will result in Apaches suffering irreparable harm and that the FEIS was flawed and should be reconsidered, and for such reasons, the Save the Oak Flat Act is in the best interests of the Tribe and its members.

BE IT RESOLVED by the Council of the White Mountain Apache Tribe that:

1. The Tribe hereby supports the Save the Oak Flat Act and the repeal of Section 3003 of the NDAA.
2. The Secretary of Agriculture is hereby requested to withdraw the FEIS from publication and to undertake a process to issue a supplemental draft environmental impact statement.
3. The Tribe hereby requests the U.S. Senators and Representatives for Arizona support the Save the Oak Flat Act and the withdrawal of the FEIS from publication.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on APRIL 7, 2021 duly adopted by a vote of **SIX** for, **ONE** against, and **FOUR** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).


Gwendena Lee-Gatewood, Chairwoman Date 4/8/21


Doreen T. Numkena, Tribal Secretary Date 4-8-2021

Written Testimony

**Kristen A. Carpenter, Professor of Law and Director of the
American Indian Law Program, University of Colorado
Law School**

Kristen A. Carpenter

United Nations
Expert Mechanism on the Rights of Indigenous Peoples
Member from North America
Geneva, Switzerland

University of Colorado Law School
Council Tree Professor of Law
Director of the American Indian Law Program
Boulder, Colorado

28 April 2021

The Honorable Raúl M. Grijalva
Chairman, House Committee on Natural Resources
Washington, DC 20515
Via email to: Naomi.Miguel@mail.house.gov

Dear Chairman Grijalva:

I am pleased to write in support of H.R. 1884/S. 915, the Save Oak Flat Act, a bill which is in my view critical to ensuring the religious freedom and self-determination of the San Carlos Apache Tribe, consistent with both federal Indian law and human rights law. As a member of the United Nations Expert Mechanism on the Rights of Indigenous Peoples and a professor at the University of Colorado Law School, I write in my individual capacity to express my own personal views only.

By way of background, I serve on the United Nations Expert Mechanism on the Rights of Indigenous Peoples as its member from North America, one of seven worldwide experts appointed by the UN Human Rights Council to provide advice on the rights of Indigenous Peoples generally and to assist States and Indigenous Peoples in realizing the aims of the UN Declaration on the Rights of Indigenous Peoples. In this capacity, I work around the world to advance understanding of, and practical solutions to, the challenges of Indigenous Peoples' rights in contemporary societies.

Additionally, I am a law professor at the University of Colorado Law School, where I direct the American Indian Law Program, while teaching courses in human rights, property law, cultural property, federal Indian law, and Indigenous Peoples in international law. I am a co-author of Getches et al., *Cases and Materials on Federal Indian Law* (7th ed. 2017) and other books, articles, and publications. My specialty is American Indian religious freedoms and sacred sites. I have written several articles on this topic, of which the most recent is, [Kristen A. Carpenter, *Living the Sacred: Indigenous Peoples and Religious Freedom*, *Harvard Law Review* \(2021\)](#).

As you know, Oak Flat (*Chi'chil Bildagoteel*) is a place of religious and cultural significance to the San Carlos Apache Tribe and other Indigenous Peoples in the United States. A unique place where ceremonies take place and spirits live, Oak Flat is irreplaceable to the religious and cultural life of the Apache people. As such, Oak Flat should already be protected by treaty and constitutional law. Unfortunately, for the last several decades, the federal courts have taken a very restrictive approach to American Indian religious freedoms.

Unfortunately, in cases such as *Lyng v. Northwest Cemetery Assn* (U.S. S.Ct. 1988) and *Navajo Nation v. Forest Service* (9th Cir. 2008), the courts have held that American Indian sacred sites located on the public lands are not substantively protected by the First Amendment, Religious Freedom Restoration Act, National Historic Preservation Act, or other laws. The cases are particularly

egregious given that, in most instances, the courts are denying tribes the freedom to practice religion on sacred lands that were taken forcibly or illegally from the tribes years ago. These cases have, moreover, left American Indians as virtually the only citizens in the United States who lack religious freedom under the First Amendment and other laws.

Beyond federal Indian law, the question of religious freedom implicates fundamental, universal human rights. Indeed, it was following the horrors of World War II that world leaders joined to form the United Nations and its charter instruments, realizing that international peace and human freedom could only be achieved with baseline protections for the religious freedom of all, including minorities.

Accordingly, the Universal Declaration of Human Rights (1948) recognizes that “Everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” The International Covenant on Civil and Political Rights (1966), to which the United States is a party, provides: “Everyone shall have the right to freedom of ... religion. This right shall include freedom ... either individually or in community with others and in public.” This Covenant protects against: “against discrimination on any ground [including] ... religion.” It also provides: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion....”

Unfortunately, universal human rights have often been disregarded in the case of Indigenous Peoples. To address this problem, the United Nations adopted the [Declaration on the Rights of Indigenous Peoples](#), which elaborates the human rights of Indigenous Peoples. Among other things, the Declaration recognizes the individual and collective rights of Indigenous Peoples, including their rights to self-determination, land, culture, and religion. The United States expressed its support for the Declaration in 2010. In 2014, all 193 member states of the UN expressed support for achieving the ends of the Declaration by endorsing the Outcome Document of the World Conference on Indigenous Peoples. The Declaration is now widely accepted as a standard-setting document for the minimum treatment of Indigenous Peoples worldwide.

Of relevance to the Save Oak Flat Act and the situation of American Indian religious freedoms, the Declaration provides:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 11 1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. 12 2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12 1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. 2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in

their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. (italics added)

Consistent with Articles 3, 11, 12, and 25, among others,¹ the Save Oak Flat Act would help the United States ensure that the San Carlos Apache and other tribes are able to practice their ceremonies, protect and access their sacred site, and maintain their distinct spiritual relationship with traditional lands. The Declaration helps to contextualize what the courts have struggled to understand, namely that for Indigenous Peoples religious freedoms requires protection of, and access to, sacred sites and the right to practice ceremonies in community with others.

By recognizing Indigenous Peoples' rights to self-determination and freedom of religion, the Act would help the United States set an important example for justice and freedom everywhere.

Thank you for considering my views. I wish you and the Committee all the best in your work, and would be pleased to answer any questions.

With my very best regards,



Kristen A. Carpenter
Council Tree Professor of Law and Director, American Indian Law Program
Member, United Nations Expert Mechanism on the Rights of Indigenous Peoples

Cc: Terry Rambler, Chairman, San Carlos Apache Tribe
Chase A. Velazquez, Assistant Attorney General, San Carlos Apache Tribe
Andrea Carmen, Executive Director, International Indian Treaty Council

¹ Other articles of the Declaration are also relevant to this case, as explained in the Harvard publication referenced above.