

H.R. 1884, “SAVE OAK FLAT ACT”

LEGISLATIVE HEARING

BEFORE THE
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE
UNITED STATES
OF THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

Tuesday, April 13, 2021

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**LEGISLATIVE HEARING 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, “SAVE OAK FLAT ACT”**

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

The Subcommittee met, pursuant to notice, at 1:01 p.m., via Webex, Hon. Teresa Leger Fernández [Chairwoman of the Subcommittee] presiding.

Present: Representatives Leger Fernández, Gallego, Soto, McCollum, Lowenthal, García, Grijalva (ex officio); Young, Obernolte, Rosendale, Bentz, and Westerman (ex officio).

Also present: Representative Stauber.

Ms. LEGER FERNÁNDEZ. Good afternoon. The Subcommittee for Indigenous Peoples of the United States will now come to order.

Before we begin, I do want to express my profound condolences to the family and co-workers of Alexander Lofgren. I know it must be heartbreaking to have that loss, and so for the Chairman and those staff who have worked with him, my blessings go out to you.

Mr. GRIJALVA. Thank you. Thank you very much.

Ms. LEGER FERNÁNDEZ. The Subcommittee is meeting today to hear testimony on H.R. 1884, the “Save Oak Flat Act,” introduced by Representative Raúl M. Grijalva of Arizona. Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep to their schedules.

Therefore, I ask unanimous consent that all other Members’ opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today or the close of the hearing, whichever comes first.

Hearing no objection, so ordered.

Without objection, the Chair may also declare a recess subject to the call of the Chair.

Hearing no objection, so ordered.

As described in the hearing notice, statements, documents, or motions must be submitted to the electronic repository at HNRCdocs@mail.house.gov.

Additionally, please note that as with in-person meetings, Members are responsible for their own microphones. As within our

in-person meetings, Members can be muted by staff only to avoid inadvertent background noise.

Finally, Members or witnesses experiencing technical problems should inform Committee staff immediately.

I also ask unanimous consent that Representative Stauber from Minnesota be allowed to join us on the virtual dais today.

Hearing no objection, so ordered.

I will begin by recognizing myself for my opening statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. I want to welcome our witnesses to our virtual hearing today. This legislative hearing will be on H.R. 1884, the “Save Oak Flat Act,” a bill that will prohibit the Oak Flat Federal Parcel transfer to foreign mining corporations. The 2,422-acre parcel includes the Chi’Chil Bildagoteel Historic District, known as Oak Flat, located in the Tonto National Forest.

This area is considered sacred by many Tribal Nations, including the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai Apache Nation, the Yavapai-Prescott Indian Tribe, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Hopi Tribe, and the Pueblo of Zuni, many of whom continue to conduct ceremonies and gather traditional medicines and food in the area.

The National Park Service has recognized this land’s sacred status by listing Oak Flat on the National Register of Historic Places in 2016.

You might be wondering why land listed on the National Register of Historic Places is ripe for mining. In 2014, a rider on the National Defense Authorization Act authorized a land exchange giving Oak Flat to a multi-national mining conglomerate called Resolution Copper, owned by Rio Tinto and BHP.

The NDAA language required the Forest Service to produce an EIS to evaluate the mining plan’s effects before this exchange occurred. The NDAA language also stipulated the land should be removed from the Forest Service’s jurisdiction and placed into the hands of Resolution Copper within 60 days after completing the EIS, regardless of the findings.

A little over a year ago, in the 116th Congress, this Subcommittee held an oversight hearing examining the draft EIS published by the Trump administration. The draft EIS identified the tribal, soil, water, wildlife, recreation, public health, and livestock impacts mining would have on this area.

Analyses show that ancestral burial grounds for the Native communities in the region will also inevitably be disturbed and destroyed. The crater expected to be created is projected to start to appear in Year 6 of active mining and will ultimately be between 800 and 1,115 feet deep, and roughly 1.8 miles across. The Emory oak groves, which have been visited and utilized by tribal members for millennia, will be adversely affected, and one or more of those groves will likely be lost altogether. Wellfield pumping will also incrementally contribute to the lowering of groundwater levels and

cumulatively reduce overall groundwater availability in the local area.

Although the draft EIS process to the Final Environmental Impact Statement usually takes time, on January 15, the previous administration released a final FEIS, which was released without proper consultation with tribes and did not address the myriad concerns identified in the draft EIS.

In March 2021, the Biden administration withdrew the FEIS to further consult with tribes and thoroughly conduct an environmental impact statement that fully complies with the law.

Since 2015, Chair Grijalva has introduced the Save Oak Flat Act to protect the Chi'Chil Bildagoteel Historic District from detrimental mining. This bill will repeal Section 3003 of the NDAA and protect the sacred site for future generations.

[The prepared statement of Ms. Leger Fernández follows:]

PREPARED STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW MEXICO

Good afternoon. I want to welcome our witnesses to our virtual hearing today. This legislative hearing will be on H.R. 1884—the Save Oak Flat Act, a bill that will prohibit the Oak Flat Federal Parcel transfer to foreign mining corporations.

The 2,422-acre parcel includes the *Chi'chil Bildagoteel* Historic District, known as Oak Flat, located in the Tonto National Forest.

This area is considered sacred by many tribal nations, including the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Yavapai-Prescott Indian Tribe, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Hopi Tribe, and the Pueblo of Zuni. Many of whom continue to conduct ceremonies and gather traditional medicines and food.

The National Park Service has recognized this land's sacred status by listing Oak Flat on the National Register of Historic Places in 2016.

You may be wondering why land listed on the National Register of Historic places is ripe for mining. In 2014, a rider on the National Defense Authorization Act authorized a land exchange giving Oak Flat to a multinational mining conglomerate called Resolution Copper, owned by Rio Tinto and BHP.

The NDAA language required the Forest Service to produce an Environmental Impact Statement—or “EIS”—to evaluate the mining plan's effects before the exchange occurred.

The NDAA language also stipulated the land should be removed from the Forest Service's jurisdiction and placed into the hands of Resolution Copper within 60 days after completing the EIS, ***regardless of the findings***.

A little over a year ago, in the 116th Congress, this Subcommittee held an oversight hearing examining the draft EIS, published by the Trump administration. The draft EIS identified the tribal, soil, water, wildlife, recreation, public health, and livestock impacts mining would have on this area.

Ancestral burial grounds for the Native communities in the region will also inevitably be disturbed and destroyed. The crater is projected to start to appear in year 6 of active mining and will ultimately be between 800 and 1,115 feet deep and roughly 1.8 miles across. The Emory oak groves, which have been visited and utilized by tribal members for millennia, will be adversely affected and one or more of these groves will likely be lost altogether. Wellfield pumping will incrementally contribute to the lowering of groundwater levels and cumulatively reduce overall groundwater availability in the local area.

Although the draft EIS process to the final Environmental Impact Statement or “FEIS” usually takes time—on January 15, the previous administration released a final environmental impact statement (FEIS). The FEIS was released without proper consultation with tribes and did not address the myriad of concerns identified in the draft EIS.

In March 2021, the Biden administration withdrew the FEIS to further consult with tribes and thoroughly conduct an environmental impact statement that fully complies with the law.

Since 2015, Chair Grijalva has introduced the Save Oak Flat Act to protect the *Chi'chil Bildagoteel* Historic District detrimental mining. This bill will repeal section 3003 of the NDAA and protect this sacred site for future generations.

Thank you again for being here virtually. I look forward to hearing our witness testimony today.

Ms. LEGER FERNÁNDEZ. I want to thank our witnesses for being here today virtually and I look forward to hearing your testimony. I would like to now recognize the esteemed Ranking Member, Mr. Young, for any opening remarks.

Congressman Young? Is Congressman Young on?

Congressman Young is having technical issues.

Is Mr. Westerman with us today?

When Congressman Young is able to participate, I will make sure I go back to him. In the meantime, I would like to give any sponsoring Members of Congress the opportunity to speak on behalf of the legislation.

The Chair now recognizes the Chair of the Full Committee, Chair Grijalva, for a statement on his legislation.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Madam Chair, and I appreciate you having this hearing on the legislation, H.R. 1884. I think your summation in your opening statement basically deals with the issue, and rather than being repetitive, let me point out a couple other issues.

I think it is important to note that, yes, it passed on a must-pass piece of legislation, the Section 3003 of the National Defense Authorization Act of 2015. It was a must-pass piece of legislation, and as such, passed the House, passed the Senate, and was signed into law.

It should be noted that since 2005, this particular Section 3003 and other iterations as stand-alone legislation repeatedly failed to receive support in the House of Representatives and in the U.S. Senate as a stand-alone piece of legislation. And since 2015, I have been introducing the Save Oak Flat Act to uphold what I believe is essential, the Indigenous peoples' rights to protect the lands and these lands that many tribes in Arizona and outside of Arizona consider sacred.

As the Chair indicated, the historic site, known as Oak Flat, has deep significance. It was placed in the National Register in 2016 with extensive consultation with the San Carlos Apache Tribe. This area has been utilized and occupied for the past 1,500 years from the Pre-Classic Hohokam to the present.

Resolution Copper is owned by a multi-national corporation, Rio Tinto and BHP, and plans on developing and extracting this sacred ecosystem for profits that will only last a lifetime, destroying what we already know is a profoundly religious and sacred site for generations and generations.

Unfortunately, the track record of Rio Tinto—and some of the witnesses will deal with that—in unearthing sacred sites is not new. Just last year, the foreign mining giant blew up a 46,000-year-old Aboriginal cave in Australia, and the difference between

the two is that members of this Subcommittee have the opportunity to right that wrong and not allow that to happen.

We have a chance to protect the site that many tribes use for spiritual and traditional purposes. The environmental damage Resolution Copper can have on the area impacts tribes in Arizona and the water resources of local communities.

Let me just say, there are two issues also as well, the issue of water. The drought in Arizona and in other parts of the Southwest is ongoing and is not abating. The depletion of the Colorado River, the 40 percent reduction in Lake Mead and Lake Powell in terms of the reservoirs that the Grand Canyon provides for Arizona and other states and over 40 million Americans in those areas is an emergency setting, and emergency water reduction in allocations are imminent if we don't take better care, usage, and protection of that water resource.

The other issue is the royalty issue. Mining extraction provides no royalties for the extraction of private land. And this trade, this land exchange, under normal circumstances would have required a process, not only NEPA, but full environmental impact consultation, as required by law, government-to-government consultations with affected tribes, and none of that has occurred to the degree where the tribes and others who want this area protected feel that this process has been fair, upfront, transparent, and accountable.

This is a sweetheart deal, and it has been a sweetheart deal since it was first introduced as legislation in 2005, and it continues to be a sweetheart deal for the company as of 2015 when it passed as part of the National Defense Authorization Act.

I look forward to the witnesses, Madam Chair. Thank you very much for holding the hearing. And as this legislation moves along, I want to invite you and other Members to have input into the legislation as to both content and any recommendations that you might have.

With that, let me yield back and thank you once again, Madam Chair, for your courtesy. And let me say, the loss of our esteemed colleague here, Alex Lofgren, thank you for mentioning that. It is a tragedy and a very sad experience for all of us that knew the young man, and those people that did not know him, a loss for them as well. So, thank you for mentioning that. That was very kind of you, and I appreciate the courtesy.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, CHAIR, COMMITTEE ON
NATURAL RESOURCES

Good afternoon. I want to thank the Subcommittee Chair for having this important hearing on my bill—H.R. 1884—the Save Oak Flat Act.

This bill was created in response to Section 3003 of the NDAA that passed for FY 2015. It is important to know that since 2005 section 3003 was a bill that repeatedly failed to receive support from both chambers.

Since this occurred, I have introduced the Save Oak Flat Act in the following Congress to uphold Indigenous peoples' rights and protect the lands many tribes in Arizona consider sacred.

The *Chi'chil Bildagoteel* Historic District has a rich cultural significance and placed on the National Register of Historic Places in 2016 with extensive consultations with the San Carlos Apache Tribe. This area was utilized and occupied for the past 1,500 years from the pre-Classic Hohokam to the present.

Resolution Copper, a company owned by Rio Tinto and BHP, plans on developing and extracting this sacred ecosystem for profits that will only last a lifetime—destroying a profoundly religious and sacred site for generations and generations.

I only wish that these companies would have considered the detrimental impacts of their actions before sponsoring a provision that was clearly an industry favor.

Unfortunately, the track record for Rio Tinto and unearthing sacred sites is not new. Just last year, the foreign mining giant blew up a 46,000-year-old Aboriginal cave in Australia. Similar to what we are witnessing today with Oak Flat.

The difference between the two is that—members of this Subcommittee have the opportunity to right a wrong.

We have the chance to protect this sacred land that many tribes use for spiritual and traditional purposes. The environmental damage Resolution Cooper can have on this area impacts tribes in Arizona and the water sources of the local community.

Lastly, one should not underestimate the precedent this type of land exchange will have on Indigenous sacred sites' protections in the future. We have witnessed this foreign mining company destroy an Indigenous sacred site in Australia.

H.R. 1884—Save Oak Flat Act is proof that the destruction of foreign mining companies on religious and sacred sites does not stop at our country's borders.

Ms. LEGER FERNÁNDEZ. Thank you. And, once again, our condolences, blessings, and prayers for Mr. Lofgren and his family.

Now, I would like to recognize our Ranking Member, Congressman Young. I understand he is available. Congressman Young.

**STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ALASKA**

Mr. YOUNG. Thank you, Madam Chair.

And thank you to the Chairman of the Full Committee for the comments, and I agree with what he said about his staffer. It is unfortunate. When you adventure, sometimes accidents happen, and it is sad when it does occur.

I have been involved in this legislation for a long time. I know there has been some progress made. I will not repeat everything that you have said, or the Chairman have said. I would suggest that we listen to the witnesses and we look and see, is there a way to make this possible, as it should be done, as the, I call, the rules.

I am anxious to listen to the witnesses, find out what they have to say. And I will say that I am a little frustrated when everybody says no to everything, but there is some legitimacy in the complaints, as the Chairman said, about this being a sacred area. So, let's listen to the witnesses. Let's go through, as the legislation goes by, let's see if there isn't a way we can arrive at a solution to a very serious problem, because there is a law in place.

We did pass that law. It wasn't done by due order, but it was also done, and when you repeal a law, we have to look at the process in which we do it. And I know there will be some legal cases if we don't, so let's do the job right, Madam Chair. I am sure we will.

And when you get time, I need to talk to you personally on another bill, which I hope I have your support of introducing. With that, I yield back.

Ms. LEGER FERNÁNDEZ. Thank you, Congressman Young, and I always look forward to speaking with you.

Congressman Westerman, would you like to speak to the Committee today?

I am not hearing from Congressman Westerman. I understood he was on, but we will now move to the witnesses.

Under our Committee Rules, oral statements are limited to 5 minutes, but you may submit a longer statement for the record if you choose. When you begin, the on-screen timer will begin counting down and will turn orange when you have 1 minute remaining.

I recommend that Members and witnesses joining remotely lock the timer on their screen. When you go over the allotted time, I will ask you to please wrap up your statement. After your testimony is complete, please remember to mute yourself to avoid any inadvertent background noise. I will allow the entire panel to testify before we question the witnesses.

The Chair now recognizes the Honorable Shan Lewis, President of the Inter Tribal Association of Arizona.

**STATEMENT OF THE HONORABLE SHAN LEWIS, PRESIDENT,
INTER TRIBAL COUNCIL OF ARIZONA, PHOENIX, ARIZONA**

Mr. LEWIS. Good afternoon, Chairman Grijalva, Chairperson Fernandez, Ranking Member Young, Vice Ranking Member Obernolte, Representative Gallego, and members of the Subcommittee.

My name is Shan Lewis. I am the Vice Chairman of the Fort Mojave Indian Tribe and President of the Inter Tribal Association of Arizona. On behalf of our 21 Member Tribes, we appreciate this opportunity to speak today in support of the Save Oak Flat Act.

The survival of Oak Flat is at a critical moment. Passage of the Save Oak Flat bill would respect the religious and cultural practices and values of our Member Tribes and protect the water resources of Arizona. We urge that you act now and Save Oak Flat for all of us and for future generations.

Oak Flat is located in the Tonto National Forest. It is a place of profound religious, cultural, and historic significance to Western Apache and Yavapai people, as well as many other tribes in the region. It is a place for prayer and for ceremonies, like the Sunrise Ceremony, a coming-of-age ceremony for young women, and for gathering water, medicinal plants, and important foods like acorns that are abundant in this area due to the ancient oak trees that shelter Oak Flat.

Oak Flat has been a sacred place since time immemorial. It is culturally significant to many tribes. The recent work of anthropologist T.J. Ferguson, done in cooperation with the Forest Service, also confirms Oak Flat's importance to at least nine Arizona tribes. It is our understanding that Dr. Ferguson has submitted testimony for today's hearing, and we urge you to review it.

In recognition of Oak Flat's importance, Oak Flat is listed on the National Register of Historic Places. Yet, if Congress doesn't act, over 2,400 acres of tribal ancestral lands at Oak Flat will be traded away for one of the most destructive mines we have ever seen, destroying in turn the religious freedoms and cultural practices of many of our Member Tribes. It is for this reason, the Inter Tribal Association of Arizona has opposed this land exchange and mine from the beginning.

If developed, the Forest Service's own documents say the mine will cause a massive crater at the heart of Oak Flat, which will be

almost 2 miles wide and at least 1,000 feet deep, as deep as the Empire State Building is tall. The ancient oak trees that have provided subsistence to tribal people for generations will be destroyed by this mine, along with the surrounding medicinal plants that have provided the health of Indigenous people for centuries. These oak trees and these plants cannot be replaced, and there is no mitigation that will reduce the harm caused by the destruction of Oak Flat.

Arizona tribes remain in control of approximately 28 percent of the state, and while we have endured many challenges in maintaining control over our land, our sacred sites, and our status as sovereign nations, we know water is the most important life-giving resource of all.

Forest Service documents say the mine will use billions of gallons of water, both from the mine site at Oak Flat and from Wellfield just outside of Phoenix. If allowed to move forward, the mine at Oak Flat will destroy countless springs and water resources. Once gone, there will be no mitigation for this loss.

Almost every part of Arizona is under extreme or extraordinary drought, and we are hearing news of impending shortages on the Colorado River. At the same time, people are moving here in record numbers. Yet, this single-mine project would deplete massive amounts of water for Arizona's water supply. How can all of this fit in Arizona's long-term water future? The answer is, it can't.

Perhaps the mine could bring a handful of short-term jobs to the area, but at what cost? As tribal leaders, we must think about future generations and the negative impact the mine would have over the long term. The United States also should not violate its trust responsibility and constitutional obligations by trading away Oak Flat and the religious freedoms of Indigenous people.

Without action, Oak Flat will be traded away and destroyed after the Forest Service re-issues the final EIS, which we expect sometime this year. As elected leaders of our Tribal Nations, it is our responsibility to protect sacred sites, and so, respectfully, we urge Congress to pass the Save Oak Flat Act.

Thank you again for this opportunity to provide testimony. I would be glad to answer any questions you might have. Thank you.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF MR. SHAN LEWIS, PRESIDENT, INTER TRIBAL ASSOCIATION
OF ARIZONA AND VICE-CHAIRMAN, FORT MOJAVE INDIAN TRIBE

Chairman Grijalva, Chairperson Fernandez, 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,

¹The 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.

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 Cooeyate 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.

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 5 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.

Ms. LEGER FERNÁNDEZ. Thank you so very much, President Lewis.

The Chair now recognizes the Honorable Fawn Sharp, President of the National Congress of American Indians.

STATEMENT OF THE HONORABLE FAWN SHARP, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Ms. SHARP. [Speaking native language.] Good afternoon. My name is Fawn Sharp. I serve as President of the National Congress of American Indians. Founded in 1944, NCAI is the oldest, largest, and most representative organization comprised of Tribal Nations and their citizens.

Chair Leger Fernández, Ranking Member Young, and members of the Subcommittee, on behalf of the National Congress for American Indians, we thank you for this opportunity to provide testimony on a critically important issue—

Ms. LEGER FERNÁNDEZ. Excuse me, if we could hold the timer just a bit. You are not coming through very clear on my computer, so maybe getting it a little closer so we can all hear you well.

Ms. SHARP. Can you hear me OK now?

Ms. LEGER FERNÁNDEZ. That is better. Thank you. Go on.

Ms. SHARP. I am a case-in-point for the need of broadband in Indian Country.

Today, my testimony addresses Congress' fiduciary obligations to protect tribal resources, the documented historical and cultural resources within the Oak Flat area, and highlights the long-standing national opposition to this land transfer.

Tribal Nations have a unique legal and political relationship with the United States that is defined in the United States Constitution, treaty, statutes, court decisions, and executive orders. Through its acquisition of tribal lands, the United States has formed a trust relationship with Tribal Nations. Part of this trust obligation is to safeguard tribal rights, lands, resources, cultural practices, and sacred sites.

For example, the American Indian Religious Freedom Act states, "It shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, exercise traditional religions, including but not limited to access to sacred sites."

Similarly, the National Historic Preservation Act states that it is the policy of the Federal Government in cooperation with other nations and in partnership with Indian tribes to provide leadership in the preservation of the prehistoric and historic resources of the United States.

As part of its trust responsibility and trust relationship, the Federal Government has recognized the historic and cultural uniqueness of Oak Flat. Beginning with President Eisenhower, in 1955, the Federal Government has recognized the importance of Oak Flat and protected it from mining activities. More recently, in 2016, Oak Flat was placed on the National Register of Historic Places as a traditional cultural property.

Article 8 of the U.N. Declaration on the Rights of Indigenous Peoples, which was endorsed by the United States in 2010, protects the right of Tribal Nations. Among other enumerated rights protecting Indigenous cultural expressions, Article 8 protects the right of Tribal Nations not to be subject to forced destruction of their culture and specifically requires state parties to provide mechanisms for the prevention and redress.

Here Tribal Nations have been provided no avenues to prevent the destruction of an irreplaceable sacred site. The proposed transfer of Oak Flat would set a dangerous precedent and violate international law and the Federal trust responsibility to which the United States has charged itself with moral obligations of the highest responsibility.

Lastly, there is a long-standing opposition to the destruction of Oak Flat from Indian Country and Congress. Since 2009, NCAI has passed seven resolutions, specifically opposing legislation that would transfer the Oak Flat area to Resolution Copper. More recently, Resolution No. ABQ-19-062 expresses support for repeal of Section 3003 of the 2015 NDAA due to its circumvention of Federal laws that protect tribal sacred places from destruction and harm.

Both the House and the Senate have previously rejected the destruction of the sacred site. Since 2005, there have been 13 failed attempts to pass legislation that would transfer the Oak Flat area to Resolution Copper. Only the late rider to a must-pass piece of legislation succeeded.

I also want to draw your attention to the fact that while Tribal Nations all across this country have relinquished millions of acres of vast and pristine lands across this country, we have never relinquished our spiritual connection to these very sacred places. And the younger generations that are coming up, who would go to Oak Flat for coming-of-age ceremonies, for songs, for dance, for prayer, they too are exercising a right that Tribal Nations have exercised for millennia.

We urge support, and we thank you for holding this hearing on H.R. 1884, a bill that would address an extraordinary threat to the religious practices of American Indians and tribal environmental, historic, and cultural resources. With that, NCAI urges passage of H.R. 1884, because the land transfer of Oak Flat violates the Federal trust responsibility.

[Speaking native language.]

[The prepared statement of Ms. Sharp follows:]

PREPARED STATEMENT OF FAWN SHARP, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing. My name is Fawn Sharp, and I serve as President of the National Congress of American Indians (NCAI). I look forward to working with members of this Subcommittee and other Members of Congress to protect tribal sacred sites, which includes Oak Flat.

Founded in 1944, NCAI is the oldest, largest, and most representative national organization comprised of Tribal Nations and their citizens. Tribal leaders created NCAI in response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native Tribal Nations. Since then, NCAI has fought tirelessly to preserve the trust, treaty, and sovereign rights of Tribal Nations, advance the government-to-government relationship, and remove historic structural impediments to tribal self-determination. Core to NCAI's mission is a tireless commitment to securing tribal traditional cultures and ways of life for present and future generations.

Federal, state, and private lands are carved from the ancestral territories of Tribal Nations. In spite of this significant land loss, Tribal Nations and their citizens are place-based peoples that maintain deep and ongoing religious, social, and cultural connections to their sacred places within their ancestral territories. Sacred and cultural landscapes are places for Tribal Nations and their citizens to pray, hold ceremonies, and gather traditional and medicinal plants. They also are places where tribal cultures, religions, and ways of life are preserved, protected, and passed on to the next generation through oral tradition and traditional acts of cultural and religious observance.

The United States government has a legal and moral obligation to ensure tribal peoples have access to their ancestral lands and to protect their traditional cultural territories in a manner that respects and preserves their tribal cultural, historical, spiritual and religious importance. Despite this established obligation, in a late rider to the National Defense Authorization Act of 2015 (2015 NDAA), Congress authorized a land exchange that transferred all right, title, and interest of the United States in approximately 2,242 acres of public lands in the Tonto National Forest, commonly known as Oak Flat, to Resolution Copper, a subsidiary of private, foreign-owned mining corporations. The purpose of the land transfer is to provide Resolution Copper with the ability to construct and operate a block-cave copper mine.

If the transfer were to take place, it would result in an unparalleled destruction and degradation of tribal cultural places within the Oak Flat Area. The project proposes to remove copper ore through a technique called block-cave mining. This is a type of mining that digs deep below the earth's surface to extract ore as the earth above collapses from the void created. If permitted, Resolution Copper would create one of the largest and deepest copper mines in the United States.¹ Resolution Copper proposes to extend mine workings approximately 7,000 feet below the

¹ See, Draft Environmental Impact Statement: Resolution Copper Project and Land Exchange, at p. 3.

surface of the earth² and remove approximately 1.4 billion *tons* of ore to produce 40 billion *pounds* of copper.³ The result of removing ore from below ground would cause a subsidence of roughly 6,951 acres, or 11 square miles, approximately 1.8 miles wide and 800 to 1,115 feet deep.⁴

This testimony addresses Congress's fiduciary obligation to protect tribal resources; details the documented historical and cultural resources within the Oak Flat Area; and highlights Indian Country's united opposition to this land transfer, which will irrevocably destroy the resources within this sacred area.

CONGRESS HAS A TRUST RESPONSIBILITY TO PROTECT TRIBAL HISTORICAL AND CULTURAL RESOURCES

Tribal Nations are members of the original family of American governments and have a unique legal and political relationship with the United States as defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. The Supreme Court has long recognized that Tribal Nations are distinct political entities that pre-date the existence of the United States and that have retained inherent sovereign authority over their lands and people. Through its acquisition of tribal lands and resources, the United States formed a fiduciary relationship with Tribal Nations whereby it recognized a trust obligation to safeguard tribal rights, lands, and resources.⁵ In fulfillment of this trust relationship, the United States "charged itself with moral obligations of the highest responsibility and trust" toward Tribal Nations.⁶

Congress expressly and continuously recognizes its fiduciary responsibilities as reflected in the fact that "[n]early every piece of modern legislation dealing with Indian tribes contains a statement reaffirming the trust relationship between tribes and the federal government."⁷ An essential component of this fiduciary responsibility is the preservation of sacred places, objects, and cultural landscapes, as provided for in numerous statutes, executive orders, departmental policies, and inter-departmental memoranda.⁸

Since at least the early 20th Century, Congress has codified its policy to protect tribal cultural sites⁹ and religious practices as part of its trust responsibility to Tribal Nations.¹⁰ For example, the American Indian Religious Freedom Act states, "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise . . . traditional religions . . . including, but not limited to access to sites . . . and the freedom to worship through ceremonials and traditional rites."¹¹ Congress further recognized the federal responsibility to protect historic and cultural sites as well as engage in a process of formal consultation with Tribal Nations in the National Historic Preservation Act (NHPA).

The NHPA established formal procedures for identifying and protecting tribal cultural sites and landscapes and engaging in government-to-government consultation.¹² Specifically, the NHPA states that it is the policy of the federal government, "in cooperation with other nations and in partnership with . . . Indian tribes . . . [to] provide leadership in the preservation of the prehistoric and historic resources of the United States."¹³ Lastly, Executive Order 13007 directs that "in managing

²Id.

³Id. Executive Summary, at ES-3; *see also* Draft Environmental Impact Statement: Resolution Copper Project and Land Exchange, at p. 6.

⁴Final Environmental Impact Statement: Resolution Copper Project and Land Exchange, Volume 2, January 2021, at ES-3; *supra* note, 33, at p. 26.

⁵*See e.g., Johnson v. McIntosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832) (collectively called the "Marshall Trilogy").

⁶*Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

⁷Cohen's Handbook of Federal Indian Law §5.04[3][a] (Nell Jessup Newton ed., 2012).

⁸*See e.g.,* The Native American Religious Freedom Act of 1978, 42 U.S.C. § 1996; "Special Message on Indian Affairs, July 8, 1970," Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 564-567, 576; National Historic Preservation Act, 16 U.S.C. 470 et seq.; Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq.; Executive Order No. 13,007, "Indian Sacred Sites," (1996); Memorandum of Understanding Among: U.S. Department of Defense, U.S. Department of the Interior, U.S. Department of Agriculture, Department of Energy, Advisory Council on Historic Preservation on Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites.

⁹Antiquities Act of 1906, 16 U.S.C. §§ 431-433; *see also*, Ronald F. Lee, The Antiquities Act of 1906 (1970).

¹⁰The Native American Religious Freedom Act of 1978, 42 U.S.C. § 1996.

¹¹Id.

¹²16 U.S.C. § 470f; 36 C.F.R. § 800.

¹³16 U.S.C. § 470-1(2).

federal lands, each executive branch agency with statutory or administrative responsibility . . . shall, [to] the extent practicable . . . avoid adversely affecting the physical integrity of such sacred sites.”¹⁴

The right of Tribal Nations to their culture practices and sacred places is also recognized in the United Nations Declaration on the Rights of Indigenous Peoples, which was endorsed by the United States in 2010. Among other enumerated rights, Article 8 of the UN Declaration protects the right of Tribal Nations not to be subject forced destruction of their culture and specifically requires state parties to provide mechanisms for prevention and redress for “any action which have the aim or effect of dispossessing them of their lands, territories, or resources.”¹⁵

The proposed land transfer of the Oak Flat Area to Resolution Copper, contravenes the UN Declaration on the Rights of Indigenous Peoples, the federal trust responsibility, and Congress’ longstanding intent to protect and preserve tribal historical and cultural places and items by placing them in imminent threat of destruction.

THE FEDERAL GOVERNMENT RECOGNIZES THE HISTORICAL AND CULTURAL IMPORTANCE OF OAK FLAT

In 1955, President Dwight D. Eisenhower recognized the importance of the Oak Flat Area when he signed Public Land Order 1229. This order withdrew the Oak Flat Picnic and Camp Ground from future mining activities. Later, in 1971, the Nixon Administration’s Department of the Interior again acknowledged the importance of this area when it retained the mining ban.¹⁶ In March 2016, the Oak Flat area was placed on the National Register of Historic Places (National Register) as a Traditional Cultural Property (TCP).¹⁷

A TCP is a type of property that is eligible for inclusion on the National Register based on its associations with cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions.¹⁸ Properties may be nominated to the National Register by a State Historic Preservation Officer,¹⁹ Tribal Historic Preservation Officer,²⁰ or federal agencies.²¹ Importantly, TCPs may also be identified as part of an agency’s responsibilities to prepare a draft environmental impact statement,²² determine categorical exclusions,²³ or prepare an environmental assessment under the National Environmental Policy Act.²⁴

Once determined to be eligible for listing on the National Register, a TCP is considered a “historic property” within the meaning of the NHPA.²⁵ As such, any agency undertakings that may affect that property is required to engage in what is commonly known as a Section 106 review.²⁶ Section 106 of the NHPA directs federal agencies to take into account the effect of their actions on properties included in or eligible for inclusion in the National Register.²⁷ The regulations for section 106 clarify how agencies are to meet their statutory responsibilities—from initiating the Section 106 process and identifying historic properties to resolving adverse effects. Central to the entire process is consultation with affected Tribal Nations or their representatives, including Tribal Historic Preservation Officers.²⁸

¹⁴ Executive Order No. 13,007, “Indian Sacred Sites,” (1996).

¹⁵ United Nations Declaration on the Rights of Indigenous Peoples, Article 8 (adopted 2007).

¹⁶ Lydia Millet, “Selling off Apache Holy Land,” <https://www.nytimes.com/2015/05/29/opinion/selling-off-apache-holy-land.html>.

¹⁷ On January 15, 2021, the U.S. Forest Service (USFS) released its six volume Final Environmental Impact Statement. *See*, “Final Environmental Impact Statement: Resolution Copper Project and Land Exchange” (<https://www.resolutionmineeis.us/documents/final-eis>). On March 1, 2021, the USDA directed the USFS Service to withdraw the Final Environmental Impact Statement. *See*, “United States Department of Agriculture, Tonto National Forest, Project Update: March 1, 2021.” (<https://www.resolutionmineeis.us/>).

¹⁸ “National Register of Historic Places—Traditional Cultural Properties (TCPs): A Quick Guide for Preserving Native American Cultural Resources,” U.S. Department of the Interior, National Park Service, American Indian Liaison Office.” <https://www.nps.gov/history/TRIBES/Documents/TCP.pdf> (last visited, Mar. 10, 2020).

¹⁹ 36 C.F.R. § 60.6.

²⁰ *Id.*

²¹ 36 C.F.R. § 60.9.

²² 40 C.F.R. § 1502.25.

²³ 36 C.F.R. § 800(b).

²⁴ 36 C.F.R. § 800.8(c).

²⁵ 36 C.F.R. § 800.16(l)(1) (Historic Properties are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places).

²⁶ 36 C.F.R. § 800.1(a).

²⁷ 54 U.S.C. 306108.

²⁸ 36 C.F.R. § 800.2(a)(4).

Specifically, the NHPA requires the agency to consult with Tribal Nations that attach religious and cultural significance to historic properties that may be affected by an undertaking,²⁹ assess adverse effects,³⁰ and continue tribal consultation to resolve any adverse effects.³¹ If no resolution is reached, the Advisory Council on Historic Preservation (ACHP) provides comments to the head of the agency that must be taken into account as part of the final agency decision.³²

The placement of the Oak Flat Area on the National Register is the product of lengthy historical and archaeological analysis. It demonstrates the federal government's explicit recognition of this landscape's national historical and cultural significance and trust and statutory obligations to preserve it. The proposed transfer of the Oak Flat area, to Resolution Copper violates the original purpose of the NHPA; that certain historic properties are so significant to our national heritage that "the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans."³³

THERE IS LONG-STANDING OPPOSITION TO THE DESTRUCTION OF OAK FLAT

In addition to being listed on the National Register as a TCP, this area is home to hundreds of additional sites eligible for inclusion in the National Register that are culturally important to Tribal Nations in the area.³⁴ Degradation and destruction of these places and the larger landscape is unacceptable. Since 2001, NCAI has passed over 60 resolutions that speak to the broad concerns of Tribal Nations and their citizens regarding the need to protect cultural and historic resources. Since 2009, NCAI membership, which is comprised of Tribal Nations from across the country, has passed seven resolutions directly opposing legislation that would transfer the Oak Flat area to Resolution Copper.³⁵ Most recently, NCAI passed Resolution #ABQ-19-062, titled "Support for the Protection of Oak Flat and Other Native American Sacred Spaces from Harm." This resolution expresses NCAI's support for repeal of Section 3003 of the 2015 NDAA due to its circumvention of federal laws that protect tribal sacred places from destruction and harm.

Section 3003 of the 2015 NDAA is an affront to the 65-year history of federal administrative actions that acknowledge and actively protect the deep historical and cultural significance of the Oak Flat Area. It is also an abrogation of the federal trust responsibility and a violation of the United States' obligations under the UN Declaration on the Rights of Indigenous Peoples. Due to the problematic nature of how the land transfer occurred, tribal opposition, and broad Congressional opposition since 2005, there have been 13 failed attempts to pass legislation that would

²⁹ 36 C.F.R. § 800.2(c)(2)(ii).

³⁰ 36 C.F.R. § 800.5.

³¹ 36 C.F.R. § 800.6.

³² 36 C.F.R. § 800.7. On February 11, 2021, ACHP terminated Section 106 consultation. On March 29, 2021, pursuant to 36 C.F.R. § 800.7(c), the ACHP sent Secretary of Agriculture Vilsack its final comments regarding the proposed land exchange Advisory Council on Historic Preservation. In that letter, the ACHP stated, "the historic significance of Oak Flat cannot be overstated and neither can the enormity of the adverse effects that would result to this property for the undertaking." ACHP letter to Secretary Vilsack, *Resolution Copper Mining Project and Land Exchange Tonto National Forest, Pinal County, Arizona* (March 29, 2021).

³³ 16 U.S.C. § 470.

³⁴ Final Environmental Impact Statement: Resolution Copper Project and Land Exchange, Volume 2, January 2021, at p. 778 (noting a total of 644 archaeological sites in the area, of which 506 are National Register eligible). *See also*, Draft Environmental Impact Statement: Resolution Copper Project and Land Exchange, at p. 628, ("Within the direct impacts analysis area, 721 archaeological sites have been recorded . . . Of the 721 sites, 523 are recommended or determined eligible for the NRHP [National Register of Historic Places]. . .").

³⁵ *See, e.g.*, NCAI Resolutions #NGF-09-001, "To Protect Oak Flat and Apache Leap in Arizona from Mining"; #MKE-11-002, "Opposition to Legislation Proposing a Land Exchange in Southeastern Arizona for the Purpose of Mining Operations"; #PDX-11-001, "Opposition to H.R. 1904, Southeast Arizona Land Exchange and Conservation Act of 2011, Which Would Transfer Federal Land for a Massive Block Cave Mine that Would Destroy Native American Sacred and Cultural Sites"; #SAC-12-006, "Opposition to H.R. 1904, Southeast Arizona Land Exchange and Conservation Act of 2011, Which Would Transfer Federal Land for a Massive Block Cave Mine that Would Destroy Native American Sacred and Cultural Sites"; #REN-13-019, "In opposition to the Conveyance of Federal Lands to Foreign Mining Interests with Sacred and Cultural Significance to Tribes, Including H.R. 687 and S. 339"; and #MSP-15-001, "Support for Repeal of Section 3003 of the FY 15 National Defense Authorization Act, the Southeast Arizona Land Exchange."

transfer the Oak Flat area to Resolution Copper.³⁶ The late rider to the 2015 NDAA circumvented what had been long-standing Congressional acknowledgement of its trust obligation to Tribal Nations.

If finalized, the Southeast Land Exchange would be unprecedented not only in its destruction of tribal religious, cultural, archeological, historical, and natural resources. It would be the first time the United States actively sought to relinquish control of federal property to a foreign entity that would knowingly destroy the sacred places of peoples to whom it has a trust responsibility.

CONCLUSION

On behalf of NCAI, I again thank you for the opportunity to submit testimony and holding this legislative hearing on H.R. 1884. Prior to the late addition of Section 3003 to the 2015 NDAA, Congress consistently rejected legislation transferring the Oak Flat Area to Resolution Copper. Given the clear cultural and environmental destruction that this land transfer will cause, and given the untenable impact this land transfer would have on Indian religious practices, NCAI calls on Congress to affirm its trust obligation, pass H.R. 1884, and permanently protect Oak Flat.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. FAWN SHARP, PRESIDENT,
NATIONAL CONGRESS OF AMERICAN INDIANS

Questions Submitted by Representative Grijalva

Question 1. You note in your testimony the long-standing opposition to the Southeastern Arizona Land Exchange (by both NCAI and tribal governments across the country) prior to its inclusion in the FY15 NDAA as a last-minute rider, without having passed the House or Senate that Congress. Can you talk about Congress' responsibility to tribes, as well as Indian Country's response to the inclusion of Sec. 3003 in a "must-pass" bill with no opportunity to remove the provision by amendment?

Answer. Federally recognized Tribal Nations have a unique legal and political relationship with the United States. This relationship is defined by the U.S. Constitution, executive orders, treaties, statutes, court decisions, and Departmental policy. For example, the Supreme Court determined that the United States assumed a fiduciary obligation to Tribal Nations in exchange for the historic taking of the immense lands that are home to tribal cultural places, and natural resources necessary to establish the United States.¹

Consequently, the United States acts as trustee for tribal rights and interests. These responsibilities include protecting tribal cultural heritage when developing and implementing federal policies or actions. The National Historic Preservation Act, Executive Order 13175, and the American Indian Religious Freedom Act, for example, reaffirm the trust responsibility and require full and meaningful consultation as a method for meeting this obligation. When Tribal Nations are not given the opportunity to contribute to the development and implementation of policies, including proposed federal legislation, that have substantial and direct effects on their interests, the Federal Government has not met its fiduciary obligation; an obligation of the highest moral responsibility.²

Since 2009, NCAI membership, which is a strong representation of the many Nations, villages, communities, and individuals that constitute the whole of Indian Country, has passed seven resolutions directly opposing legislation that would transfer the Oak Flat area to Resolution Copper.³ Most recently, NCAI passed

³⁶ Only H.R. 1904 passed the House during the 112th Congress. (<https://www.congress.gov/bills/112th-congress/house-bill/1904?q=%7B%22search%22%3A%5B%22%5C%22oak+flat%5C%22%22%5D%7D&s=3&r=17>).

¹ *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831). See also, Indian Tribal Justice Support Act of 1993, 25 U.S.C. §§3601-31 (stating, "The United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); *United States v. Mitchell*, 463 U.S. 206, 225 (1983), (reiterating "the undisputed existence of a general trust relationship between the United States and the Indian People"); *United States v. Navajo Nation*, 537 U.S. 488 (2003).

² *Seminole Nation v. U.S.*, 316 U.S. 286 (1942).

³ See, NCAI Resolutions #NGF-09-001, "To Protect Oak Flat and Apache Leap in Arizona from Mining"; #MKE-11-002, "Opposition to Legislation Proposing a Land Exchange in Southeastern Arizona for the Purpose of Mining Operations"; #PDX-11-001, "Opposition to H.R. 1904, Southeast Arizona Land Exchange and Conservation Act of 2011, Which Would Transfer Federal Land for a Massive Block Cave Mine that Would Destroy Native American Sacred and Cultural

Resolution #ABQ-19-062, titled “Support for the Protection of Oak Flat and Other Native American Sacred Spaces from Harm.”⁴ This resolution expresses NCAI’s support for the repeal of Section 3003 of the 2015 NDAA due to its circumvention of federal laws that protect tribal sacred places from destruction and harm.

Questions Submitted by Representative Gosar

Question 1. NCAI long supported the Sealaska land exchange bill (Southeast Alaska Native Land Entitlement Finalization & Jobs Protection Act), which was also part of the 2015 NDAA. It transferred 70,000 acres from the Tongass National Forest for timber harvesting that would result in economic development from Timber harvesting. As you know, the lands package in the 2015 NDAA is considered a major public lands compromise after 5 years of complete inaction. It included new parks, wilderness area and river protections, such as the Blackstone River Valley National Historical Park in Rhode Island, expanding the Alpine Lakes Wilderness in Washington state, turning the Valles Caldera National Preserve in New Mexico into a national park. All of these were considered “late riders” into the defense authorization bill, all had been proposed for multiple congresses and all had opposition. The Southeast Arizona Land Exchange was the only one that required a NEPA analysis and additional consultation before the land exchange could take place. Since this bill was included in the NDAA, key aspects of which NCAI supported, with additional requirements that were the result of compromise, why do you single out this bill as having been added to the NDAA as a “late night rider” when in reality, the entire lands package that was added into the NDAA was a broad bipartisan late-night compromise agreement?

Answer. Federally recognized Tribal Nations have a unique legal and political relationship with the United States. This relationship is defined by the U.S. Constitution, executive orders, treaties, statutes, court decisions, and Departmental policy. For example, Supreme Court case law has long recognized that Tribal Nations are distinct political entities that pre-date the existence of the United States and have retained inherent sovereignty over their lands and people since time immemorial.⁵ Furthermore, the Supreme Court determined that the United States assumed a fiduciary obligation to Tribal Nations in exchange for the historic taking of the immense lands that are home to tribal cultural places, and natural resources necessary to establish the United States.⁶

Consequently, the United States acts as a trustee for tribal rights and interests. These responsibilities include protecting tribal cultural heritage when developing and implementing federal policies or actions. The National Historic Preservation Act, Executive Order 13175, and the American Indian Religious Freedom Act, for example, reaffirm the trust responsibility and require full and meaningful consultation as a method for meeting this obligation.

Here, Tribal Nations were not provided the opportunity to contribute to the development and implementation of policies, including proposed federal legislation that will have substantial and direct effects on their interests, as directed by Executive Order 13175. Nor was Section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 supported by a majority of members from either the House of Representatives or the Senate.⁷ With respect to tribal participation, the Federal Government has not met its fiduciary obligation; an obligation of the highest moral responsibility.⁸

Question 2. Were you aware that the following studies were conducted for the Resolution Land Exchange: an ethnographic/ethnohistoric study, 100% class III

Sites”; #SAC-12-006, “Opposition to H.R. 1904, Southeast Arizona Land Exchange and Conservation Act of 2011, Which Would Transfer Federal Land for a Massive Block Cave Mine that Would Destroy Native American Sacred and Cultural Sites”; #REN-13-019, “In opposition to the Conveyance of Federal Lands to Foreign Mining Interests with Sacred and Cultural Significance to Tribes, Including H.R. 687 and S. 339”; and #MSP-15-001, “Support for Repeal of Section 3003 of the FY 15 National Defense Authorization Act, the Southeast Arizona Land Exchange.”

⁴NCAI Resolution, #ABQ-19-062, “Support for the Protection of Oak Flat and Other Native American Sacred Spaces from Harm.”

⁵*Worcester v. Georgia*, 31 U.S. 515 (1832).

⁶*Cherokee Nation v. Georgia*, 20 U.S. 1 (1831). See also, Indian Tribal Justice Support Act of 1993, 25 U.S.C. §§3601-31 (stating, “The United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government”); *United States v. Mitchell*, 463 U.S. 206, 225 (1983), (reiterating “the undisputed existence of a general trust relationship between the United States and the Indian People”); *United States v. Navajo Nation*, 537 U.S. 488 (2003).

⁷The Save Oak Flat Act, H.R. 1884 §2, para. 5, as introduced.

⁸*Seminole Nation v. U.S.*, 316 U.S. 286, 296–97 (1942).

cultural resources survey, Native Pant survey and tribal perspectives surveys—tribal members worked on the ground alongside experts for job training and employment to cover over 60,000 acres with millions in employment benefits spanning 3 years? Yes or no? Why does NCAI not support these requirements as part of the land exchanges you have pushed Congress to approve?

Answer. Since 2001, NCAI has passed over 60 resolutions that speak to the broad concerns of Tribal Nations and their citizens regarding the need to protect cultural and holy places, ancestral remains, and historic resources. For example, in 2008, NCAI passed Resolution #PHX-08-069c, entitled, “NCAI Policy Statement on Sacred Places.” This Resolution calls for, among other things, the Federal Government to establish a policy requiring cultural surveys prior to any transfer or issuance of a federal land-use permit; that the cultural survey be undertaken in consultation with Tribal Nations as part of the initial stages of any federally mandated identification process; and that the policy affirm the inherent rights of Tribal Nations and their citizens to access to and protect their historic, cultural, holy and sacred places; cultural patrimony; and ancestors.⁹ More recently, in 2017, NCAI passed Resolution #MKE-17-008, “To Support Moratorium on Leasing and Permitting In Greater Chaco Region.” Among other things, this Resolution calls for an ethnographic study of cultural landscapes within the Greater Chaco Region prior to the issuance of additional oil and gas leases.¹⁰

NCAI has long supported the completion of comprehensive cultural surveys of U.S. lands prior to any federal action that may affect their cultural and historic places and that these surveys be done in close and meaningful consultation with Tribal Nations.

Question 3. Chairwoman Sharp, you mention in your testimony that the Oak Flat Area was placed on the National Register of Historic Places in 2016, but this nomination and process seems to have been in direct response of the passage of the Southeast Arizona Land Exchange bill. The nomination as TCP has a very odd shape as it follows sharp angular boundaries that directly align to the land exchange boundary and unpatented mining claims held by Resolution Copper, yet specifically excludes and carves out private land holdings of Resolution Copper in the middle and State Land within and surrounding the nomination. Why is the nomination area such a strange shape—historically did Native American Tribes follow sharp, odd, shaped boundaries to define sacred areas within a common landscape?

Answer. A “Historic Property,” as defined in the National Historic Protection Act,¹¹ may be nominated to the National Register of Historic Places by a Tribal Historic Preservation Officer,¹² State Historic Preservation Officer,¹³ or a Federal Preservation Officer.¹⁴ The National Congress of American Indians does not have the statutory authority to function as a Tribal Historic Preservation Office, State Historic Preservation Office, or a Federal Preservation Office. NCAI supports the inherent right of Tribal Nations to define what is sacred to them, protect the confidentiality of information and traditional knowledge used to make that decision, and manage their traditional territories.¹⁵

Question 4. Chairwoman Sharp, you mentioned that the U.S. Government has “a legal and moral obligation to ensure tribal peoples have access to their ancestral lands to practice traditional religious freedoms, you even site religious freedom. In a February 2021 press release, Resolution Copper asserted once again that they “will maintain public access to areas within Oak Flat including the campground and recreational trails and climbing, after completion of the land exchange.” This was also mandated in the land exchange bill. The land exchange bill also mandated a number changes per testimony by Wendsler Nosie and Chairman Rambler including the permanent protection of Apache Leap through the creation of a special management area, the completion of a final EIS prior to the exchange of title and enhanced consultation provisions. The USFS has over 550 documented consultations over the last decade (FEIS Appendix S). Based on this, how is the government not meeting its legal and moral obligations?

⁹ NCAI Resolution #PHX-08-069c: “NCAI Policy Statement on Sacred Places.”

¹⁰ NCAI Resolution #MKE-17-008: “To Support Moratorium on Leading and Permitting in Greater Chaco Region.”

¹¹ 36 C.F.R. § 800.16(1)(1).

¹² 54 U.S.C. § 302702; 36 C.F.R. § 60.6.

¹³ 36 C.F.R. § 60.6.

¹⁴ 36 C.F.R. § 60.9.

¹⁵ See e.g., NCAI Resolution #SD-02-027, “Essential Elements of Public Policy to Protect Native Sacred Places,” NCAI Resolution #PDX-20-070, “NCAI Initiative on Sacred Places and Cultural Rights Laws and Developing Legislation.”

Answer. Tribal Nations have a unique legal and political relationship with the United States as defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. In fulfillment of this trust relationship, the United States “charged itself with moral obligations of the highest responsibility and trust” toward Tribal Nations.¹⁶ Congress expressly and continuously recognizes its fiduciary responsibilities as reflected in the fact that “[n]early every piece of modern legislation dealing with Indian tribes contains a statement reaffirming the trust relationship between tribes and the federal government.”¹⁷ Additionally, the American Indian Religious Freedom Act states, “it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise . . . traditional religions . . . including, but not limited to access to sites . . . and the freedom to worship through ceremonials and traditional rites.”¹⁸ Similarly, right of Tribal Nations to their culture practices and sacred places is also recognized in the United Nations Declaration on the Rights of Indigenous Peoples. Specifically, Article 19 requires that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”¹⁹ The voices of Tribal Nations must not only be heard, they must be heeded.

Question 5. Chairwoman Sharp, you also refer to obligations under Section 106, specifically that consultation with affected Tribal Nations or their representatives is essential. Most of the other tribes meaningfully participated in good faith, in hundreds of consultations and have considerably influenced activities resulting in the complete relocation of facilities off National Forest System Lands, and the protection of specific TCPs, avoidance of medicinal plants, seeps, springs and ancestral sites, the implementation of a tribal monitoring program that has resulted in the employment of over 30 tribal members, and the creation of a program to protect and restore Emory oak groves. Additionally, compensatory funds for Native American tribes were developed in response to tribal consultation efforts between the affected tribes and the Tonto National Forest. The purpose of the funds is to support the exiting tribal monitoring program, the emory oak collaborative restoration initiative, tribal youth programs, tribal higher education programs, and a tribal cultural preservation program. The San Carlos Apache Tribe did not participate in this dialogue, but other Tribes did. Was their time wasted? Does their input and voice not matter?

Answer. In light of Appendix S of the FEIS, which charts the tribal consultation events for this project, and the extensive documentation of the San Carlos Apache Tribe’s participation in consultation, it is unclear as to what is being asked.

Question 6. A number of San Carlos Apache members also depend on Resolution Copper for employment, directly or through local contractors—don’t they matter?

Answer. Through treaties, statutes, executive orders, and legal decisions, the United States has undertaken a trust obligation in exchange for hundreds of millions of acres of homelands. Yet the Federal Government has not sufficiently met these obligations to provide essential services, programs and benefits to Native people. Tribal Nations invest in and develop economies within their local and regional communities in order to create infrastructure and opportunities that self-sustain the general welfare of their citizens and fill gaps left by the Federal Government. Tribal Nations face unique challenges in attracting and leveraging private sector investment, creating jobs, and increasing economic activity due to unique jurisdictional and property law complexities of tribal lands. At the same time, Native small business owners and entrepreneurs lack support and incentives to invest in businesses on tribal lands, and struggle to find opportunities to gain expertise, business acumen, and advantageous partnerships to help develop economies within their communities. NCAI is committed to supporting the efforts of Tribal Nations to develop their economies and support their citizens.²⁰

Question 7. After a decade of opposition from the Carlos Apache Tribe to a new open pit mine and land exchange a few miles from the eastern border of the San

¹⁶*Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942).

¹⁷Cohen’s Handbook of Federal Indian Law § 5.04[3][a] (Nell Jessup Newton ed., 2012).

¹⁸*Id.*

¹⁹United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/259 art. XIX (Oct. 2, 2007).

²⁰See e.g., NCAI Resolution #MSP-15-045, “Calling on Congress to Create Tribal Empowerment Zones.”; NCAI Resolution #MSP-15-005, “Calling on the President to Issue a New Executive Order on Native Nations.”

Carlos Apache Reservation (Dos Pobres/San Juan), the San Carlos Apache Tribe and Freeport McMoran found a path forward through sales of San Carlos Apache water from the Black River and job/skills training. A recent expansion of that mine (Lone Star EIS) with a new open pit mine, waste rock dumps and a new leach facility was completed in less than 3 years with no opposition from the San Carlos Apache Tribe (or ITAA or other mine opposition groups). We see this as a positive example where mines and Tribes can work together for mutual benefit—Chairwoman Sharpe would you be willing to help bring the two sides together to initiate a mutually beneficial dialogue on how to shape this mine?

Answer. The duty to consult and resolve disputes is a federal responsibility. For example, the NHPA states that federal agencies “shall consult with any Indian tribe and Native Hawaiian organization that attaches religious or cultural significance” to properties that might be affected by a federal undertaking.²¹ The NHPA also contemplates the challenges of consultation and provides a process for assessing, resolving, and failing to resolve adverse effects on “historic properties.”²² As part of this process, in a letter dated February 11, 2021, and pursuant to its authority under 36 C.F.R. § 800.7(a)(4), the Advisory Council on Historic Preservation terminated the consultation process because it determined additional consultation would not be productive. In a letter dated March 29, 2021, the Advisory Council on Historic Preservation communicated its final comments regarding the Resolution Copper mine to the Secretary of Agriculture. Pursuant to 36 C.F.R. 800.7(c)(4), the Secretary of Agriculture has a non-delegable responsibility to respond.

NCAI supports the inherent right of Tribal Nations to define what is sacred to them, protect the confidentiality of information and traditional knowledge used to make that decision, and manage their traditional territories.²³ Here, a number of Tribal Nations oppose the citing of the Resolution Copper mine in the Oak Flat area and have made it clear that they did not consent to Section 3003 of the 2015 NDAA.²⁴ NCAI recognizes and supports the sovereign decisions and position of these Tribal Nations.

Question 8. In 2017, NCAI Resolution MOH-17-053 ‘Continued Support for the Paris Climate Agreement and Action to Address Climate Change’ was passed resolving that NCAI will continue to support and advocate for initiatives intended to reduce greenhouse gas emissions and promote climate resiliency including increased investment and use of renewable energy resources. In 2021, NCAI passed Resolution #PDX-20-30 ‘Development of a 2021 Tribal Climate Crisis Action Plan’ finding that “federal action must be taken to support the efforts of [American Indians and Alaska Natives] to adapt to climate change impacts and to reduce their carbon footprints through a range of mitigation approaches, including renewable energy development and energy efficiency.” Given that Resolution Copper will produce copper and tellurium for renewable energy production here in the United States, how does NCAI reconcile the resolutions supporting clean energy and the resolutions opposing the development of the Resolution Copper Project?

Answer. NCAI supports the sovereign right of tribal governments to determine how they manage their own resources. For some Tribal Nations, there is a complicated history that makes traditional energy resources the best—and in some cases only—way to generate the funds to provide governmental services to their citizens. In other cases, Tribal Nations have made a conscious, and sometimes economically disadvantageous choice to forego extracting valuable mineral resources on their lands. NCAI recognizes that governance is difficult; that ultimately, Tribal Nations have the sovereign right to manage their own resources. As tribal leaders often and poignantly state, we have lived here forever, we know how to manage our lands.

²¹ 54 U.S.C. § 307706(b) (emphasis added).

²² 36 C.F.R. § 800.5; 36 C.F.R. § 800.6; 36 C.F.R. § 800.7.

²³ See e.g., NCAI Resolution #SD-02-027, “Essential Elements of Public Policy to Protect Native Sacred Places,” NCAI Resolution #PDX-20-070, “NCAI Initiative on Sacred Places and Cultural Rights Laws and Developing Legislation.”

²⁴ NCAI Resolution #MOH-17-001, “A Call on Congress to Enact Legislation that Will Ensure Uniform, Effective and Meaningful Consultation with Indian Nations and Tribes whenever Federal Activities have Tribal Impacts.”

Ms. LEGER FERNÁNDEZ. Thank you, President Sharp.
The Chair now recognizes Dr. James Wells, the Chief Operating Officer at L. Everett & Associates.

STATEMENT OF DR. JAMES WELLS, PHD, CHIEF OPERATING OFFICER, L. EVERETT & ASSOCIATES, SANTA BARBARA, CALIFORNIA

Dr. WELLS. Thank you for inviting me to testify today on H.R. 1884, the Save Oak Flat Act. My name is Jim Wells. I have been a practicing environmental geologist for more than 30 years. For the last 7 years, I have advised the San Carlos Apache Tribe on environmental and water resource matters. And at the invitation of the Forest Service, I served on the groundwater working groups advising Tonto National Forest on the draft and final EIS for the Resolution Copper Mine, which is a joint venture of foreign mining giants, Rio Tinto and BHP.

I urge Congress to pass this bill because of the devastating and irreparable cultural and environmental impacts that would ensue if this mine were developed. I am not anti-mining. I have worked as a mineral exploration geologist. We need copper and other metals. However, we do not need to green light every mining project if the cultural and environmental costs are too high, as they are for this project.

This mine will consume enough water to supply a city of 140,000 people every year for 50 years. This represents a massive new water demand in a region already experiencing water shortage. The final EIS says this mine will use at least 250 billion gallons of water. That is a lot of water. To provide a visual, this mine would need a tank the size of a football field 147 miles high to hold all that water.

Most of this water will be pumped from the East Salt River Valley. The proposed wellfield is in the Phoenix Active Management Area, or AMA, and is just north of the Pinal AMA, where there is already an 8.1 million acre-foot groundwater shortfall. Tens of thousands of people in Pinal County rely on groundwater for their water supplies, and already wells are drying up. There is really just not enough groundwater to go around in this part of Arizona.

EIS computer modeling acknowledged that cumulative effects of Resolution's pumping along with other known demands will drop groundwater levels about 450 feet. This outcome is contrary to Arizona's long-stated goal to achieve safe yield in this groundwater basin and avoid depleting the aquifer.

There is no serious analysis in the EIS of mitigation measures for the impact on the state's water resources. The EIS claims that Resolution's water use adheres to Arizona's norms and values, but depleting groundwater aquifers is the exact opposite of Arizona's values.

Even the Arizona State Land Department objected that Resolution's groundwater withdrawals would cause a loss of development potential for more than 3,000 acres of state trust land in the Superstition Vistas Planning Area for a loss of \$536 million. After Resolution takes all the groundwater it needs, there is simply less water for other users.

Now, Resolution chooses to employ block cave mining because that is the cheapest way to mine this deep, low-grade ore body causing a 1.8 mile wide crater 1,000 feet deep. The copper is 7,000 feet below Oak Flat, but Resolution would destroy Oak Flat anyway. The EIS acknowledges that sacred perennial springs will be eradicated, and at least 18 different groundwater dependent ecosystems will be impacted.

So, in summary, this mine would have profound and irreversible impacts on the citizens of Arizona and the environment. For these reasons, I urge the Committee to advance the Save Oak Flat Act to stop this mine from going forward. Thank you.

[The prepared statement of Dr. Wells follows:]

PREPARED STATEMENT OF JAMES WELLS, PhD, ENVIRONMENTAL GEOLOGIST,
L. EVERETT & ASSOCIATES, ENVIRONMENTAL CONSULTANTS

I would like to thank Chair Grijalva, Chair Fernandez, and members of the House Subcommittee for Indigenous Peoples of the United States for inviting me to testify at this hearing about the Save Oak Flat Act, H.R. 1884. I urge Members of Congress to support this legislation because of the profound and irreparable cultural and environmental impacts that would ensue if the proposed Resolution Copper Mine were allowed to be developed. I also urge USDA to fully withdraw the current EIS for this project so a more complete analysis of alternatives can be performed. I am not anti-mining. However, copper is not a particularly rare commodity. We do not need to green-light every mining project if the cultural and environmental costs are too high, as they are for this project.

This is a project that could not meet the rather low bar required for mining on federal lands. For 150 years, the United States has promoted mining on federal lands. The 1872 Mining Law was written to encourage development of the West. It contains substantial incentives for private companies to mine on federal lands, including charging no royalties for extracting these public resources and generally defining hardrock mining as the “highest and best use” of public lands regardless of competing land uses such as recreation, logging, hunting, grazing, or cultural uses. Special legislative action was needed to make this project possible in the form of Section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA). The Save Oak Flat Act would reverse special treatment for the international mining companies, Rio Tinto and BHP through their joint venture limited liability company, Resolution Copper, and restore protections for Oak Flat that had been in place for over 65 years.

As technologies advance, we ask auto companies to build cleaner cars. We ask power plants to reduce emissions. Shouldn’t we be asking the same of mining? A mine like Resolution will have greater impacts on the environment compared to most copper mines in the U.S. due to the choice of mining methods. As shown on Figure 1, in addition to tailings (which are inevitable regardless of mining method employed), Resolution is insisting on destroying a vastly greater amount of Arizona landscape (including Oak Flat). This huge volume of rock and its aquifer would be disturbed and a large swath of landscape would be destroyed, not because this material has any value to Resolution, but rather because it is more convenient and more profitable to use block caving.

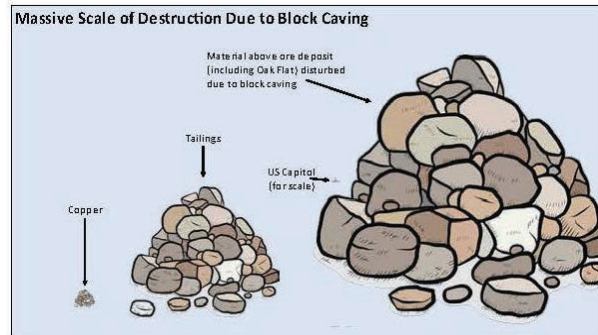


Figure 1. Relative volumes of copper, tailings and material above ore deposit that would be disturbed due to block caving at the Resolution Mine. US Capitol is shown for scale.

BACKGROUND AND QUALIFICATIONS

I am a Registered Geologist and I have been a practicing environmental geologist for nearly 30 years. My Bachelor's Degree is from Dartmouth College and my Masters' and PhD degrees are from the University of Washington in Seattle, all in Geological Sciences. For the last 7 years, I have advised the San Carlos Apache Tribe on environmental and water resource matters related to the proposed Resolution Copper Mine, as well as other matters.

At the invitation of the US Forest Service, I served on the Groundwater Modeling Workgroup which advised Tonto National Forest on its preparation of the Draft Environmental Impact Statement (DEIS), using complex groundwater modeling methods to predict water and ecosystem impacts from the proposed mine. The working group consisted of Forest Service and Resolution Copper personnel, as well as professionals from stakeholder agencies such as US Environmental Protection Agency, US Geological Survey, Arizona Game and Fish, and Arizona Department of Environmental Quality. Also, at the invitation of Tonto National Forest, I was also a member of the Resolution Copper Mine Water Resources Working Group which advised the Forest Service on its efforts to respond to public comments on the DEIS. For context, of roughly 30,000 comments submitted to the Forest Service on the DEIS during the public comment period, approximately 20% of the substantive comments related to water resources or water quality, demonstrating the public's deep concern about this issue.

The EIS prepared by Tonto National Forest identifies a number of profound environmental impacts from this project that cannot be mitigated. The scale of this project is hard to fathom and unfortunately the Forest Service fell short of its obligation under NEPA to take a hard look and ensure scientific integrity in its evaluation of these environmental impacts.

MINE WOULD CREATE MASSIVE NEW WATER DEMAND IN DESERT REGION ALREADY EXPERIENCING WATER SHORTAGES

The mine will consume enough water to supply a city of 140,000 people every year for 50 years. This is a vast new water demand for an area of the southwest that is already experiencing water shortages. Resolution's water use could be much higher than they are disclosing. The current estimate (accepted at face value by the Forest Service) promises that this mine will use about 1/3 of the average water (per ton of ore) as existing copper mines in the United States. This highly optimistic estimate is largely based on Resolution's assurances that it can implement significant and unproven water-saving procedures in its ore processing and tailings handling operation.

Even if one accepts Resolution's highly optimistic estimate for water usage, the mine will use about 775,000 acre feet of water over the life of the mine,¹ of which approximately 70% will be pumped from a large network of new extraction wells in the East Salt River Valley. 775,000 acre feet equals 250 billion gallons of water. It

¹FEIS, Appendix H, Table H-3. This is the volume of water estimated to be needed over the life of the mine for TSF Alternative 6, Skunk Camp, which is the Forest Service's preferred alternative.

is hard to visualize the immensity of this amount of water. A football field covers about one acre, so if the water Resolution plans to use was stored in a tank the dimensions of a football field, such a tank would need to be 147 miles high to accommodate all the water. The Salt River upstream of Phoenix is about 100 feet wide and 5 feet deep. For a river the size of the Salt River to hold the amount of water required by this mine, it would need to be more than 12,000 miles long, extending halfway around the world.

Arizona does not have enough water to accommodate this large new demand. Resolution's proposed Desert Wellfield is in the Phoenix Active Management Area (AMA) and is just north of the Pinal AMA. Active Management Areas were created by the state to better manage aquifers in parts of the state that were experiencing depleted groundwater resources. In an October 2019 study of the Pinal AMA, Arizona Department of Water Resources (ADWR) identified a future unmet demand of 8.1 million acre-feet.² Tens of thousands of people in Pinal County rely on groundwater for their water supply and already, private wells are drying up.³

There is simply not enough water to go around. In the Phoenix AMA, there are many municipalities and commercial operations that rely on groundwater from the very same basin that Resolution will be pumping from, including Phoenix, Scottsdale, Tempe, Mesa, Gilbert, Chandler, Apache Junction and other towns. Arizona's goal for the Phoenix AMA is to achieve safe yield by 2025. For a groundwater basin, "safe yield" means achieving a long-term balance between the annual amount of groundwater withdrawn and the annual amount of recharge, thus avoiding depletion of the aquifer. Even without Resolution's pumping, the Phoenix AMA has not achieved safe yield and cannot meet the 2025 goal. In its latest study, the Arizona Department of Water Resources predicted demand to exceed supply into the foreseeable future for this basin and also predicted irreversible loss of aquifer capacity due to overpumping.⁴

The Arizona State Land Department has determined that Resolution's groundwater withdrawals in the East Salt River Valley would cause a loss development potential for 3,440 acres of State Trust Land in the Superstition Vistas Planning Area, representing a "minimum potential loss to the Trust of at least \$536,640,000 in revenue."⁵ The reason for these profound losses is that other entities wishing to use groundwater in the Phoenix AMA must demonstrate a 100-year Assured Water Supply in order to secure project approval. After Resolution takes all the groundwater it needs, there is less groundwater in storage for other potential users. By green-lighting this mine, the people of Arizona are embarking on an uncontrolled experiment on social priorities pitting the state's agricultural, municipal and tribal interests against those of a multinational mining company and the mining company is winning.

RUSH TO FINALIZE THE ENVIRONMENTAL IMPACT STATEMENT

The FEIS was published on January 15, 2021, but Tonto National Forest later withdrew it on a temporary basis on March 1, 2021. The Forest Service chose to focus the EIS on evaluating different locations for the waste tailings. Considering this focus, it was surprising that the DEIS was issued without a competent evaluation of the geotechnical suitability and water quality impacts of Skunk Camp, the preferred Tailings Storage Facility (TSF) site. To make up for these omissions, Resolution embarked on substantial field investigations and computer modeling efforts, generating a large body of new information after the Forest Service issued the DEIS. This new information consisted of at least a dozen new studies and reports totaling thousands of pages that are relevant to environmental concerns. In particular, there is substantial new groundwater modeling work to evaluate the cumulative impacts to groundwater resources in the East Salt River Valley, site of the proposed Desert Wellfield where much of the water required by the mine would be pumped. Additionally, voluminous new studies of water quality impacts from the Skunk Camp TSF and a brand new assessment of possible surface water discharges from the mine operations under Resolution's AZDEPES permit have been prepared. All of this information was developed after publication of the DEIS, was not subject

² Arizona Department of Water Resources, 2019 Pinal Model and 100-Year Assured Water Supply Projection Technical Memorandum.

³ ABC15 News, Private Wells Running Dry in Pinal County, Oct. 24, 2019; <https://www.abc15.com/news/region-central-southern-az/private-wells-running-dry-in-pinal-county>.

⁴ Arizona Department of Water Resources, 2010, Modeling Report #22, A Salt River Valley Groundwater Flow Model Application. 100-Year Predictive Scenarios Used for the Determination of Physical Availability in the Phoenix Active Management Area.

⁵ Arizona State Land Department, November 7, 2019 Letter to Neil Bosworth, Tonto National Forest. (Reproduced on p. R-43 of FEIS).

to public review or comment, and was not adequately analyzed by Tonto National Forest to determine whether this new information could impact the preferred alternatives or mitigation measures set forth by Tonto National Forest in its FEIS.

Computer modeling in the EIS acknowledges that cumulative effects of Resolution's pumping along with other known demands in the East Salt River Valley are likely to result in a drop in groundwater levels of approximately 450 feet in parts of the Phoenix AMA. The computer modeling **did not** include any of the water demands resulting from future development in the Superstition Vistas Planning Area. This outcome would be profoundly contrary to the long-stated goal of the state to achieve safe yield in this groundwater basin. There is no serious analysis in the FEIS of potential mitigation measures from this impact on the state's water resources. Instead, the Forest Service noted that the state was likely required to grant Resolution a permit to withdraw groundwater for mineral extraction, as this is a non-discretionary permit under Arizona law provided certain conditions are met.⁶ The EIS further stated that "By definition, Resolution Copper's legally permitted use of water adheres to the norms and values placed on water by the State of Arizona." This is hardly the "hard look" at environmental impacts that is required under NEPA. Arguably, it is not adhering to the values of the State of Arizona to greenlight a project that is guaranteed to deplete scarce groundwater resources in the East Salt River Valley.

In addition to the failure to analyze cumulative impacts to water resources, Section 3003 of the FY15 NDAA created special requirements for the environmental review of this project. Specifically, it called for a single environmental impact statement and it required the USDA Secretary to engage in a collaborative process with affected Indian tribes to "(i) address the concerns of the affected Indian tribes and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities."⁷ Considering that the end result of this process would be the "eradication" of sacred springs and destruction of Oak Flat, it is legitimate to say that this requirement of Section 3003 has not been met. To fully comply with NEPA and the special requirements imposed in Section 3003 of the NDAA, the current EIS for this project needs to be withdrawn and the EIS process needs to start anew.

Without the Save Oak Flat Act, the Land Exchange will take place and Resolution Mine will be built. Some of the irreversible impacts from this project are summarized below.

CUMULATIVE IMPACTS ON WATER RESOURCES

Resolution Copper Mine will obviously require a vast amount of water in a desert region that is already experiencing water shortages. Arizona water law grants exceptional leeway to mines, which are essentially unregulated water users. As such, Resolution Copper may be entitled to develop a virtually unlimited number of wells and pump an unlimited amount of water from the East Salt River Valley. The Forest Service's preferred alternative TSF locating the tailings dump at Skunk Camp calls for pumping about 775,000 acre-feet of water over the life of the mine⁸ (of which 540,000 acre-feet would be from the Desert Wellfield and the remainder would mostly be supplied from dewatering of the mine site itself). The water proposed for withdrawal from the Desert Wellfield is a substantial amount of pumping, representing about 6.7 percent of the total available groundwater in the East Salt River valley subbasin.⁹ The EIS analysis of past, present and reasonably foreseeable future regional water impacts is inadequate. In some ways, disclosures in the FEIS are even less informative than the DEIS. In the DEIS, the Forest Service acknowledged that "groundwater demand is substantial and growing" and "total demand on the groundwater resources in the East Salt River Valley is substantial and could be greater than the estimated amount of physically available groundwater" (DEIS, p. 342). These sober assessments inexplicably do not appear in the FEIS.

As shown on Figure 2, the Forest Service's own research shows that Arizona has experienced moisture deficits even when averaged over the last 100 years. Colorado and other parts of the desert Southwest remain in an almost perpetual drought. A 2017 Report to Congress noted that the Colorado River, source of critical water supplies to Arizona via the Central Arizona Project or "CAP", has experienced lower-than-normal flows for the past 16 years, with some of the lowest annual flows in 900 years. The Report to Congress also noted that recent studies on the effects of

⁶FEIS, p. 971.

⁷NDAA, Section 3003, (c)(3)(A) and (c)(3)(B).

⁸FEIS, p. 48.

⁹FEIS, p. 418.

climate change suggest that “a transition to a more arid average climate in the American West” may be under way. Likely consequences of climate change include higher temperatures in the West, higher evapotranspiration, reduced precipitation, and decreased spring runoff.¹⁰

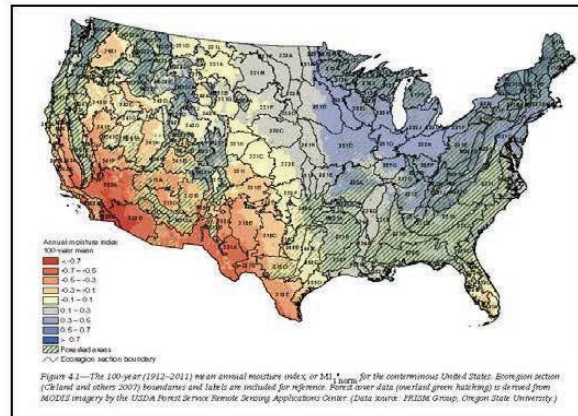


Figure 2. USDA 100-year moisture index, showing much of Arizona has a moisture deficit, even when averaged over 100 years. Source, USDA, 2012, *Forest Health Monitoring: National Status, Trends and Analysis*.

The FEIS fails to evaluate “reasonably foreseeable future” Colorado River shortages and cuts, as well as the events that will be triggered under the Drought Contingency Plan once the inevitable shortages occur. It also fails to look at the project’s impact on regional water resources when combined with these shortages.

REGIONAL GROUNDWATER IMPACTS

Resolution’s own assessment acknowledges that groundwater will be depleted by at least 10 feet (and in some places, more than 1,000 feet) over an area covering about 300 square miles. As shown on Figure 3, this is a consequence of dewatering at the mine site as well as massive amounts of pumping that will occur in the East Salt River Valley, about 15 miles west of the mine. No one knows how long it will take for the aquifers to recover after the mine closes, but Resolution once estimated that it would take about 1,000 years. According to the Forest Service, “Analysis of the economic value of the water used by Resolution Copper, the other beneficial uses to which water could be put, or extrapolation of economic harm to other entities due to Resolution Copper’s legally permitted use of water, is outside the scope of analysis of this EIS.”¹¹

¹⁰ Congressional Research Office, November 9, 2017, *Drought in the United States: Causes and Current Understanding*, pp. 14–15.

¹¹ FEIS, p. 813.

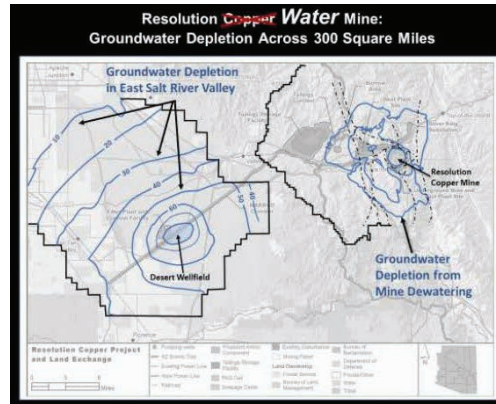


Figure 3. Map showing predicted groundwater drawdown from mine dewatering and from the Desert Wellfield. Sources: Base Map: DEIS, Figure ES-2; Desert Wellfield drawdown contours redrawn from DEIS, Figure 3.7.1-2 (Desert Wellfield modeling analysis area and maximum modeled pumping impacts); Mine model contours redrawn from WSP, October 31, 2018, Memo: Resolution Copper Groundwater Flow Model—Predictive Results, Figure 5 (Regional Groundwater Model Predicted Drawdown-Proposed Action Post Closure (Year 200); Faults are redrawn from WSP, February 2019, Resolution Copper Groundwater Flow Report, Figure 2.1 (Regional Geology Map).

LAND SUBSIDENCE IN EAST SALT RIVER VALLEY DUE TO GROUNDWATER PUMPING

The Forest Service did not conduct an analysis in the DEIS of land subsidence resulting from groundwater withdrawal, claiming such analysis was not feasible. However, in the FEIS, there is an analysis of land subsidence, noting that “drawdowns associated with the Desert Wellfield likely would result in subsidence of roughly 24 to 52 inches.”¹² This information was not disclosed in the DEIS and was not subject to public review and comment. This newly quantified environmental impact is important because land subsidence due to groundwater pumping causes a permanent reduction in the storage capacity of an aquifer. This means that even after the drawdown recovers from Resolution’s pumping, that portion of the aquifer in the East Salt River Valley will never hold as much groundwater again, thus constituting an unmitigable impact. Or, as admitted by the Forest Service, “An important aspect of subsidence is that it is irreversible; once sediment layers collapse when dewatered, they remain collapsed even if water levels recover.”¹³ As scientists and public officials know from other parts of the Salt River Basin as well as places like the Central Valley of California, land subsidence from groundwater pumping also causes harm to public infrastructure such as roads, pipelines and utility lines, as well as harming homes and other structures.

IMPACTS TO SPRINGS AND STREAMS

The EIS acknowledges that “Sacred springs would be eradicated by subsidence or construction of the tailings storage facility, and affected by groundwater drawdown.”¹⁴ In the arid southwest, springs and perennial streams are extremely rare and constitute irreplaceable habitat. Use of groundwater that impacts springs and streams is contrary to Tonto National Forest’s groundwater policy:

“Groundwater shall be managed for the long-term protection and enhancement of the Forest’s streams, springs and seeps, and associated riparian and aquatic ecosystems. Development and use of groundwater for consumptive purposes shall be permitted only if it can be demonstrated that such proposals will adequately protect Forest resources.”¹⁵

¹² FEIS, p. 412.

¹³ FEIS, p. 412.

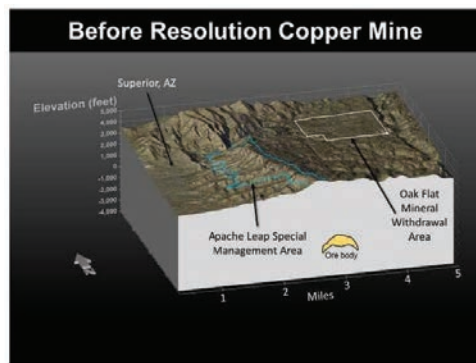
¹⁴ FEIS, p. 856.

¹⁵ Martin and Loomis, Keeping Our Streams Flowing: Tonto National Forest Groundwater Policy, in: Furniss, Clifton and Ronnenberg, eds., 2007, Advancing the Fundamental Sciences: Proceedings of the Forest Service National Earth Science Conference, October 2004, PNW-GTR-689, USDA, Forest Service, Northwest Research Station.

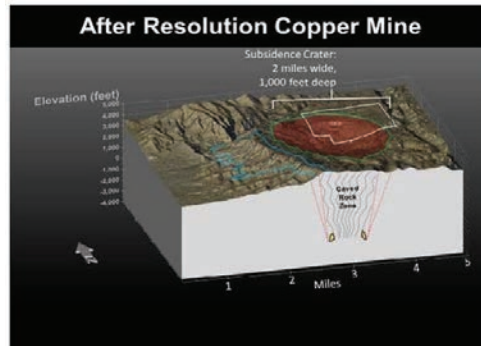
IMPACTS FROM BLOCK CAVE MINING

Resolution chose to employ block cave mining because that's the cheapest way to mine this deep ore body. A consequence of this mining method is that reclamation or restoration is simply impossible: just a sturdy fence and maybe some "no trespassing" signs.

Once mining commences, the formation of a subsidence crater becomes inevitable and unstoppable. Even Resolution Copper cannot stop this process once it has begun. Further, after the land surface collapses into Resolution's mine, creating the 1.8-mile wide subsidence crater, the Apache Leap Tuff Aquifer will be altered forever, irreversibly and permanently altering the region's water resources. This is the very definition of an irreparable harm. As stated in the FEIS, "The deep ground-water system is being and would continue to be actively dewatered, and once block caving begins the Apache Leap Tuff would begin to dewater as well."¹⁶



The Apache Leap Tuff Aquifer is a critical source of water for springs and creeks, many of them sacred to Western Apaches. This permanent impact would not occur if alternative underground mining methods were employed, but the Forest Service did not conduct an adequate analysis of alternative mining methods largely because it accepted Resolution's assertion that any method other than block cave mining would be too expensive.



The EIS disclosed a number of profound impacts due to the collapse crater that cannot be mitigated, including to scarce water resources. By failing to conduct an acceptable and competent evaluation of project alternatives that could avoid the impacts caused by the collapse zone, the Forest Service is allowing one factor (cost of mining; i.e., Resolution's profitability) to outweigh all environmental and social factors combined.

¹⁶ FEIS, p. 369.

MITIGATION OF IMPACTS TO GROUNDWATER DEPENDENT ECOSYSTEMS

The FEIS concludes that the Resolution Copper Mine project will or is likely to deplete water supplies and harm or destroy the streams, springs, seeps and other water features in Oak Flat, Ga'an Canyon (Devil's Canyon), Mineral Creek and Queen Creek: "Dewatering or direct disturbance would impact between 18 and 20 groundwater dependent ecosystems (GDEs), mostly sacred springs. While mitigation would replace water, impacts would remain to the natural setting of these places."¹⁷ The proposed mitigation for GDEs is inadequate. Mitigation plans are outlined in a September 2020 report.¹⁸ This report calls for replacing water flows in springs and creeks by pumping water from nearby wells (i.e., tapping groundwater from deeper in the aquifer), storing water in tanks and piping the water to the creek or stream or by constructing various water-collecting devices such as so-called "guzzlers," surface water capture systems or even trucking water in from alternative sources. Replacing a natural system with a manufactured facsimile of the system is not the intention of mitigation under NEPA. Just as it would not be permissible to replace the real Half Dome with a plaster model of Half Dome, it is not permissible to replace lost GDEs with artful but artificial copies of natural systems. It was not the intention of NEPA to replace nature with theme park-like imitations of nature.

The monitoring plan for GDEs is also inadequate because its discussion of triggers (i.e., occurrences or observations that would trigger mitigation activities) is vague and incomplete. The Montgomery Report¹⁹ reveals that Resolution has built in (and the Forest Service has bought into) any number of ways to avoid actually implementing mitigation measures for GDEs. In particular, the Plan explains that Resolution will somehow differentiate the impacts from its dewatering from other variables such as "changes in weather and/or climate, impacts to the regional and/or local groundwater system from other human causes, landscape changes such as landslides and fires, natural succession of the GDE into a new presentation such as an increase in phreatophytic plants coincident with a reduction in spring flow rates, or other reasons not included in this document." Other than noting that Resolution will employ "multiple lines of evidence" there is no quantitative or qualitative discussion of how Resolution will accomplish this difficult task. Considering that most of the GDEs covered by the monitoring plan have already been identified as likely to be severely impacted by mine dewatering, Resolution's methodology for identifying impacts to GDEs is unworkable and is inadequate under NEPA.

WATER QUALITY IMPACTS-ACID ROCK DRAINAGE

As noted in the DEIS, "The deposit is associated with hydrothermal alteration and includes a strong pyrite "halo" in the upper areas of the deposit, containing up to 14 percent pyrite. This mineralization has ramifications for water quality, as sulfide-bearing minerals such as pyrite have the potential to interact with oxygen and cause water quality problems (acid rock drainage)".²⁰ Much of the mineralized halo (i.e., rocks with abundant sulfide minerals but a lower grade of copper) will not be mined out, rather it will become a permanent part of the collapse zone.

The FEIS makes the unsupported assumption that the mineralized, fractured rock in the collapse zone will not be in contact with oxygen, thus will not form acid rock drainage. This is a highly optimistic conclusion that defies common sense. As the collapse zone forms, the rock will dewater as it is transformed into a giant rubble heap, increasing its hydraulic conductivity many orders of magnitude. For the purposes of groundwater modeling, Resolution assumes that the hydraulic conductivity²¹ of rock in the cave zone will increase by as much as a factor of a million: "Maximum hydraulic conductivity values were altered by a multiplier of 1E+6 or to a hydraulic conductivity of 100 ft/day, whichever occurs first . . . The maximum hydraulic conductivity value of 100 ft/day was selected because it is much higher than the natural, un-altered bedrock, but higher values caused the model to become unstable."²² This statement highlights another deficiency of the groundwater model:

¹⁷ FEIS p. 156.

¹⁸ Montgomery & Associates, 2020, "Monitoring and Mitigation Plan for Groundwater Dependent Ecosystems and Water Wells."

¹⁹ Montgomery & Associates, 2020, "Monitoring and Mitigation Plan for Groundwater Dependent Ecosystems and Water Wells."

²⁰ FEIS p. 173.

²¹ Hydraulic conductivity is a measure of how groundwater flows through an aquifer. This, in turn, affects the groundwater velocity through the aquifer. Solid rock has a very low hydraulic conductivity; sandstone has a higher hydraulic conductivity and very coarse grained sediments like gravels have even higher hydraulic conductivity.

²² WSP, February 2019, Resolution Copper Groundwater Flow Report, pp. 37–38.

hydraulic conductivity of rock in the collapse zone was arbitrarily limited to 100 ft/day because the model would crash if higher (i.e., more realistic) values were used.

Atmospheric air will easily penetrate the dewatered fracture zone, supplying oxygen into a subsurface environment that has been devoid of oxygen for thousands if not millions of years. This assumption (no oxygen thus no acid-generating reactions in to collapse zone) is incorrect and understates the environmental risks from acid rock drainage within the mine and in ore stockpiles. This assumption is also broadly inconsistent with Resolution's treatment of potentially acid generating (PAG) material in the tailings. In the tailings, Resolution acknowledges that PAG needs to be submerged under a layer of water to prevent contact with oxygen and minimize acid rock drainage. However, in the collapse pit, no such protection will exist, yet Resolution somehow concludes (and the Forest Service believed it) that acid rock drainage will not occur.

WATER QUALITY IMPACTS FROM THE TAILINGS STORAGE FACILITY

The scale of this project is hard to grasp, but the volume of tailings produced by Resolution Copper would fill the Rose Bowl to its brim, not once but nearly 1,800 times. This vast volume of waste material will permanently disturb 16,000 acres of land of which nearly 8,000 acres is Arizona State Land. The principal accomplishment of the EIS seems to be to propose a new location for the mine's 1.37 billion tons of tailings. Water quality impacts from the tailings is one of the most profound and concerning environmental issues for a mine of this size, yet there remains great uncertainty about the magnitude of water quality impacts from the TSF.

TAILINGS DAM RISK OF FAILURE

Tailings would be transported through about 20 miles of pipeline across sensitive habitat—including Ga'an Canyon—to the Skunk Camp TSP in Dripping Springs Wash, a tributary of the Gila River. Over the life of the mine, the TSF would grow to cover 3,995 acres²³ of this watershed behind a 3 mile long earthen dam and tower as much as 500 feet—about as high as the Washington Monument—above the natural land surface.²⁴ A failure of the tailings dam would put downstream lives at risk and would undoubtedly contaminate the Gila River. The magnitude of impacts from large tailings dam failures can be immense. The tailings dam at the Fundão Dam in Brazil was much smaller than the proposed Resolution dam (about 300 feet tall compared to 500 feet at Resolution; Resolution TSF will ultimately have nearly 20 times greater volume of tailings). The 2015 Fundão tailings dam failure killed 19 people and contaminated hundreds of miles of the Doce River, eventually spewing a toxic plume of tailings into the Atlantic Ocean, more than 400 miles downstream of the dam.

IMPACTS TO APACHE LEAP SPECIAL MANAGEMENT AREA

There is a high degree of uncertainty in Resolution's subsidence predictions, but the public has been assured that the subsidence crater will not extend into the Apache Leap Special Management Area. True or not, it is certain that the subsidence zone will creep up the eastern slope of Apache Leap and profoundly degrade the quality of this theoretically protected place. In 75 years, if we could stand together on the crest of Apache Leap, instead of the world-class view across Oak Flat, we would see a massive pit of collapsed rock, just a couple hundred meters away, devoid of life and gradually filling with toxic mine water. Imagine standing on the stairs of the US Capitol and seeing nothing but a 1,000-foot deep rocky pit, starting at the Capitol reflecting pool, swallowing not only the Smithsonian Museums and the Washington Monument, but extending all the way to the Lincoln Memorial. That's how immense this subsidence crater will be.

²³ The direct footprint of the TSF would be 3,995 acres however, according to the FEIS, a total of 8,647 acres would be off-limits to the public due to tailings operations.

²⁴ FEIS, p. ES-21.



CONCLUSIONS

Passage of the Save Oak Flat Act, H.R. 1884, is critical to stop this project that promises big profits to multinational mining companies, while imposing irreversible harm to the people and environment of Arizona. This mining project will have long-term consequences to the groundwater resources in Arizona as a whole and the Phoenix AMA, in particular, and, in some cases, permanent consequences. By pumping 176 billion gallons of groundwater from the East Salt River Valley, this project would make Arizona's goal for stewardship of its scarce groundwater resources all the more unreachable. Considering the effects of ongoing drought conditions and likely reductions in deliveries of Colorado River water to Arizona via the CAP, it is nearly certain that the new demand from Resolution's pumping of groundwater from the East Salt River Valley will lead to water shortages among the many users of this groundwater basin. Even more certain is the irreversibility of Resolution Copper's impacts to Oak Flat and the Apache Leap Tuff Aquifer which will be destroyed forever by the subsidence crater: permanently altering the region's water resources, causing local streams and springs to be "eradicated,"²⁵ many of which are sacred to Arizona Tribes.

QUESTIONS SUBMITTED FOR THE RECORD TO DR. JAMES WELLS, PHD, CHIEF
OPERATING OFFICER, L. EVERETT & ASSOCIATES

Questions Submitted by Representative Grijalva

Question 1. Your testimony quotes the FEIS that as a result of this project's groundwater pumping in the East Salt River Valley that the land there will actually subside 24 to 52 inches. Can you explain what this will mean for infrastructure in the area and the aquifer?

Answer. Land subsidence is a permanent consequence of overpumping groundwater. Land subsidence occurs when water is pumped out of the aquifer and the now empty pore spaces collapse. This not only leads to land subsidence, but the storage capacity of the aquifer is permanently reduced. In other words, even if water becomes available in the future to recharge the depleted aquifer, it will never hold as much groundwater as before. The maximum land subsidence predicted in the FEIS is 52 inches, which is more than 4 feet. Imagine what would happen to your home if one corner dropped 4 feet. As we have already seen in parts of the East Salt River Valley as well as places like the Central Valley of California, land subsidence from overpumping can cause dangerous and expensive damage to private homes, as well as public infrastructure like roads and power lines. Even the Central Arizona Project (CAP) is at risk from the predicted subsidence, as Resolution's proposed Desert Wellfield is only a few miles from the CAP canal.

²⁵ FEIS, p. 856.

Question 2. You note in your testimony that FEIS states that as a result of groundwater pumping for the mine and other known demands the groundwater levels will drop in some areas by 450 feet. What will this mean for the future of the people who live and work in this area?

Answer. This is a very long term consequence reported in the FEIS of the cumulative effects of Resolution's groundwater withdrawals in the East Salt River Valley as well as all other known water demands. This is a profound finding because it lays bare the fact that the State of Arizona's goal of "safe yield" (dating back to 1980 with the creation of groundwater Active Management Areas or AMAs) is being undermined—in part—because of mining operations' free reign to take groundwater from otherwise highly managed aquifers. For a groundwater basin, "safe yield" means achieving a long-term balance between the annual amount of groundwater withdrawn and the annual amount of recharge, thus avoiding depletion of the aquifer. A predicted drop of 450 feet in the East Salt River Valley aquifer is simply a stark indicator that Arizona is far off track in achieving its goal of safe yield. In practical terms, this finding means that folks with wells shallower than 450 feet will eventually see their wells dry up. Those who can afford it will drill deeper wells. Those who cannot afford it will probably need to move away, since a property without water is not habitable. In the very long term, this trend suggests that without better management, the aquifer in the East Salt River Valley will gradually dry out completely and all wells will dry out. Agriculture would probably not be feasible without a groundwater resource and municipal and industrial users would need to scramble to make up for this loss of groundwater.

Question 3. According to the FEIS, the dewatering and ground pumping of the mine will result in impacts on at least 18 groundwater dependent ecosystems. Can you explain what this will mean in practice on the ground for local habitat? And can you talk about why the mitigation measures proposed are inadequate?

Answer. One of the most important tasks of the groundwater modeling effort supporting the EIS was to assist Tonto National Forest (TNF) in evaluating future impacts to springs and perennial streams that support groundwater-dependent ecosystems (GDEs). Many people were disappointed in the lack of precision in the TNF's analysis of impacts to GDEs in the EIS. Unfortunately, the computer model used to evaluate this issue does not quantitatively simulate groundwater-surface water interactions. Instead, it was decided that a finding of hydrogeological "impact" would only be identified if the model predicted at least a 10-foot drop in the groundwater elevation in the immediate vicinity of a GDE. As stated in the FEIS,

"Based on combined professional judgment, the Groundwater Modeling Workgroup determined that to properly reflect the level of uncertainty inherent in the modeling effort, results less than 10 feet should not be disclosed or relied upon, as these results are beyond the ability of the model to predict." (FEIS, p. 375).

In short, TNF acknowledged that its scientific methodology (groundwater modeling) had a limit of precision of plus or minus 10 feet. TNF did not scientifically conclude that 10 feet or more of groundwater drawdown is needed to cause an impact on GDEs, this is just an arbitrary number based on limitations of the method of analysis, not some scientific principle. Indeed, common sense would suggest that if a spring is fed by shallow groundwater and someone caused the water table to drop 8 or 9 feet, the spring will probably dry out.

A consequence of the modeling issues discussed is that TNF probably underestimated the magnitude of loss, they do acknowledge that these impacts represent an "Irreversible and Irrecoverable Commitment of Resources," and that "Sacred springs would be eradicated by subsidence or tailings storage facility construction and affected by groundwater drawdown."¹

In my opinion, there are three main problems with the mitigation measures. First, it is not clear that Resolution will need to follow the mitigation measures once the land exchange occurs and much of the mine site becomes private property. Second, the mitigation measures do not protect or restore natural systems, they replace natural systems with artificial water features. TNF acknowledged this problem in the EIS: "Although mitigation would replace water, impacts would remain to the natural setting of these places." (p. ES-27).

Finally, the monitoring plan for GDEs is also inadequate because it incorporates vague and incomplete triggers (i.e., occurrences or observations that would trigger implementation of mitigation activities) which provide Resolution with ways to

¹ FEIS, p. 790, emphasis added.

avoid mitigation even if springs do start drying out. In particular, the mitigation plan explains that Resolution will somehow differentiate the impacts from its dewatering from other variables such as “changes in weather and/or climate, impacts to the regional and/or local groundwater system from other human causes, landscape changes such as landslides and fires, natural succession of the GDE into a new presentation such as an increase in phreatophytic plants coincident with a reduction in spring flow rates, or other reasons not included in this document.” Other than noting that Resolution will employ “multiple lines of evidence” there is no substantive explanation of how Resolution will accomplish this difficult task. Considering that most of the GDEs covered by the monitoring plan have already been identified as likely to be severely impacted by mine dewatering, TNF’s methodology for identifying impacts to GDEs is unworkable and is inadequate under NEPA.

Question 4. The Resolution Copper Mine needs at least 775,000 acre feet of water in order to be able to slurry both ore concentrate X miles and the toxic waste X miles through pipelines that need to be built across parts of Tonto National Forest not in the land exchange and other lands. This toxic waste will be dumped into tailings waste storage facility that will ultimately cover nearly 4,000 acres and stand nearly 500 feet tall. Can you explain more about the possible water quality problems as a result of this massive toxic dump?

Answer. The FEIS provides a brand new analysis of potential water quality impacts that was missing from the DEIS. Many people are surprised to learn that tailings storage facilities seldom contain liners, as would be required of a new municipal landfill. Thus, as rainwater soaks into the waste, picks up heavy metals and eventually reaches the bottom of the tailings. At this point, the contaminated water (or “leachate”) infiltrates into the native ground and impacts the underlying groundwater. Since there is no liner to prevent infiltration of leachate, this is an expected consequence of the tailings facility. None of this new work was subject to public review or comment. The FEIS finds that significant groundwater contamination will occur at Skunk Camp even with a seepage retention pond and downgradient interceptor wells to capture contaminated groundwater. Eventually, the groundwater plume is predicted to extend all the way down Dripping Springs Wash to the Gila River, which is approximately 13 miles from the proposed TSF.

Questions Submitted by Representative Gosar

Question 1. In your testimony, you write that Special legislative action was needed to make this project possible in the form of Section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA). Are you aware that the 2015 NDAA included a full lands package compromise that as you say received “special treatment”?

Answer. Other than Section 3003 which relates to Oak Flat, I do not have an opinion about other components of the NDAA for FY 2015.

Question 2. Were you aware that for 5 years, from March 2009 to March 2014, Congress did not add a single new wilderness area—a stretch that included the entire 112th Congress, marking the first time a Congress had not created a wilderness area since passage of the Wilderness Act in 1964. And that the Southeast Arizona land exchange was part of a 169 pages of energy and public lands provisions that were tucked into the must-pass defense bill in 2014. A package that also created nearly 250,000 acres of wilderness in Colorado, Montana, Nevada, New Mexico and Washington state, and protected about 140 miles of rivers. It added or expanded more than a dozen national parks and put mineral development off limits on hundreds of thousands of acres of federal land. Were you aware of that?

Answer. I am aware that Section 3003 of the FY 2015 NDAA was part of Title XXX of the Act which is described as “Natural Resources Related General Provisions.”

Question 3. Dr. Wells, it is my understanding that the FEIS, which you testified to extensive participation, is a reflection of a myriad of experts that analyzed all impacts and mitigations over a 7-year period. The Forest Service led this process and published a consensus view. What is the reason we should regard your dissenting opinion and ignore the extensive analysis that was done by dozens of experts and reflected in the FEIS?

Answer. The data I discussed in my testimony comes from the FEIS. I am not aware of any participating hydrogeology experts who disagree with the descriptions in the FEIS of the general magnitude of the disclosed impacts, although there were

robust discussions in the working groups about the accuracy and precision of future predictions. The issue I am helping to raise is whether these impacts are acceptable. Perhaps because of the unusual nature of the environmental review process mandated by Section 3003 of the FY 2015 NDAA, the FEIS does not address this question.

I disagree with your premise that the FEIS represents a consensus view of all experts. It is true that TNF convened advisory groups of experts, including the two I participated in: the Groundwater Modeling Working Group (advising TNF on groundwater computer modeling matters during preparation of the DEIS) and the Water Resources Working Group (advising TNF on its responses to water-related public comments during preparation of the FEIS). This was laudable. However, TNF made final decisions about how to analyze impacts and how to disclose them in the EIS. There were numerous disagreements among working group members. For example, US EPA issued a memo to the Water Resources Working Group questioning the adequacy of the water quality analysis for the Skunk Camp tailings storage facility (TSF).

Another example of an absence of consensus is the fact that TNF's own consultant, BGC Engineering USA, Inc., issued a report highly critical of the new Skunk Camp groundwater modeling effort (new work which was completed after publication of the DEIS) and those criticisms and suggestions were not addressed in the FEIS. Predictions of water quality impacts from new modeling efforts differ substantially from the information contained in the DEIS. TNF made the unusual decision of including both the old and new modeling results for Skunk Camp in the FEIS.² These results are profoundly different from one another: the decision to include two incompatible analyses of the same phenomenon muddies the waters with respect to disclosure of impacts and is arguably impermissible under NEPA.

The BGC review contains numerous criticisms of the model and suggestions for improvement. TNF did not incorporate the suggestions into the model or into the Final EIS. BGC also noted how different these modeling results are when compared to the earlier analysis disclosed in the DEIS. The DEIS determined that Resolution would only be able to ensure acceptable water quality at the Gila River if it was able to capture 90% of the contaminated groundwater seepage emanating from the Skunk Camp TSF (DEIS, p. 113). The new model finds that only 24% of the TSF seepage needs to be captured to avoid water quality exceedances. This is a significant change in the analysis of impacts that was incorporated into the FEIS without the benefit of public review and comment and is an example of a finding in the EIS that did not reflect a consensus opinion among participating experts.

One consequence of this situation is that the basis for comparing the alternative TSF sites for relative impacts to water quality has been compromised. Despite the TNF claim that the new Skunk Camp model can be used for comparison between the different TSF and mitigation alternatives,³ this is not the case. Predictions of the other TSF alternatives are still based on the earlier modeling efforts reported in the DEIS, which BGC has described as inferior to the new Skunk Camp analysis.⁴ As shown by the work at Skunk Camp, the new modeling effort gives vastly different results than the previous GoldSIM modeling. It appears that the methodology utilized in the DEIS was terribly inaccurate. Instead of applying the new methodology to all TSF alternative sites, TNF only updated Skunk Camp. This is a classic case of comparing apples to oranges. While the new modeling methodology is undoubtedly an improvement for the Skunk Camp analysis (although it could and should be further improved by responding to BGC's findings and EPA's comments), the water quality analyses for the other alternative TSF sites are unreliable. It would not be scientifically sound to compare the new Skunk Camp modeling results against the old modeling results (which used different methodologies) for the other TSF alternatives, thus we must conclude that the FEIS will be unable to reliably compare water quality impacts between alternative TSF sites. This in turn,

²"we chose to present the results of both the DEIS water quality model AND the FEIS water quality model, not solely the FEIS water quality model (which does show lower concentrations)." Chris Garrett (SWCA), December 11, 2020 email to Water Resources Working Group. (SWCA is TNF's EIS consultant.)

³"Alternatives are 'the heart of NEPA', and the analysis must allow us to compare those alternatives. So a third goal [of TSF water quality modeling] is to inform the decision-maker by comparing the outcomes from the different alternatives." (Chris Garrett, December 11, 2020 email to Water Resources Working Group).

⁴"GoldSim mass balance model [the methodology used in the DEIS] was improved upon through a numerical model utilizing Modflow-USG [the methodology developed after the DEIS] for Alternative 6—Skunk Camp" (BGC, p. 10, emphasis added).

leads to the conclusion that the FEIS will not be capable of justifying the selection of a preferred alternative, from the perspective of water quality impacts.

Another consequence of this situation is that Arizona Department of Environmental Quality (ADEQ) now lacks the information it needs to make a Clean Water Act Section 401 Water Quality Certification that the Resolution project will not cause exceedances of water quality objectives. For the TSF, this certification will rely solely on Montgomery/Resolution's criticized groundwater model. It is hard to see how ADEQ can make a reliable determination that quantitative, numerical water quality objectives will not be exceeded from a model that TNF itself has described as a "screening level model" and that "model results should only be considered an estimate."⁵

Question 4. Dr. Wells, you site that the public comments received in the DEIS of 30,000, 20 percent were regarding water concerns (6,000 comments). But the FEIS endeavored to address those concerns and after 45 days of public comment received only 13 total objections. Does this not reflect significant process in addressing concerns?

Answer. To my knowledge, there was no public comment period for the FEIS. One of my concerns—shared by many other parties—is that substantial new information was included in the FEIS that had not been previously disclosed in the DEIS and the public was denied an opportunity to review and comment on this new information.

Question 5. Dr Wells, you testify extensively to the impacts on water of this mine. The FEIS discloses that adequate groundwater exists for committed regional demands, including Resolution Copper's needs over the next 100 years. This was based on assessments by third-party water experts, with input from federal and state agencies. Can you explain why your view is so vastly different from so many independent water experts and federal and state agencies?

Answer. The FEIS assumes that Resolution has a legal right to however much water it needs and finds that Resolution will be able to physically pump the water it needs before the East Salt River Valley aquifer goes totally dry. However, the FEIS is very clear that this is not a sustainable situation and the groundwater resource will be progressively depleted.

In the DEIS, TNF acknowledged that "groundwater demand is substantial and growing" in the East Salt River Valley and "total demand on the groundwater resources in the East Salt River Valley is substantial and could be greater than the estimated amount of physically available groundwater" (DEIS, p. 342, emphasis added). These sober assessments inexplicably do not appear in the FEIS.

Question 6. You also refer to issues raised by the Arizona State Land Department, but I have a copy of a letter from ASLD that states clearly that their views have been mischaracterized and they do not have unaddressed issues with the project. As a matter fact they signed the programmatic agreement as part of the FEIS and states clearly they would not do so if they felt they could not mitigate impacts to State Trust lands. Were you aware of this?

Answer. My statement about the Arizona State Land Department (ASLD) was an accurate summary of a November 7, 2019 comment letter from ASLD to TNF which is reproduced in Appendix R of the FEIS. The FEIS does not describe this as a withdrawn or resolved concern. I am not aware of a subsequent letter from ASLD withdrawing these comments.

Question 7. You know the line about repeating a lie enough times people will believe it is true. Well, that is how I feel about this statement from Dr. Wells testimony. Your testimony asserts that the 1872 Mining Law was written to encourage development of the West. But there is nothing in legislative history to indicate that. The purpose was to incentivize private investment in a highly risky endeavor to supply the growing Nation with the minerals needed without risking taxpayer dollars. The Law recognizes that economically viable mineral deposits are rare and hard to find. The ownership of the minerals discovered is the reward for taking the risk. Everyone benefited, the discoverer and society. Development of the West was a consequence of discovering minerals in the West, not the purpose of the Law, unlike The Homestead Act. It seems that we face some similar issues today where we need to encourage these risky investments to ensure we have security of supply and can advance the low carbon future. Would you not agree that it is an imperative today as it was when the 1872 Mining Law was enacted?

⁵ Chris Garrett (SWCA) December 11, 2020 email to Water Resources Working Group.

Answer. As I stated in my testimony, the United States does need copper and other metals. However, we do not need to green-light every mining project if the cultural and environmental costs are too high, as they are for this project.

Question 8. My understanding is that USDA has withdrawn the EIS to ensure that the consultation requirements were met. The additional requirements called for in the NDAA bill were separate and additive to the NEPA process to ensure consultation on the land exchange. Why would that require an EIS process starting anew after 7 years of consultation and analysis?

Answer. My testimony was in support of H.R. 1884, the Save Oak Flat Act, which (if passed) would render the EIS moot. However, starting anew with the EIS process does not mean discarding all the data and analysis that have already been collected. It does mean (at minimum) conducting adequate tribal consultations; adequately collecting and analyzing new information to address the many areas not properly evaluated in the FEIS; and allowing public review and comment on the substantial new analyses that were conducted and data that was collected after issuance of the DEIS that are important components of the overall record and would assist the public in understanding TNF's assessment of alternatives and disclosure of impacts. In situations like this, it is customary to at least issue a Supplemental DEIS to allow for additional public review and comment. In particular, 40 CFR § 1502.9 requires that agencies "shall" prepare supplements if "There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." TNF has an opportunity to accomplish these things now that USDA has withdrawn the FEIS.

Question 9. Mr. Wells, as a water expert, you understand that solar production in desert areas requires significant water usage, in fact DOE estimates suggest that solar farms demand between 865 gallons per MWh and 1,057 gallons per MWh. Do you believe that large scale solar farms are a threat to groundwater resources in Arizona?

Answer. A more accurate estimate of water use for photovoltaic solar farms is 20 gallons per MWh. For a 1 MW solar farm, this corresponds to about ½ an acre foot of water per year which is thousands of times less water than would be used by Resolution Copper in a year. Regarding competing demands for a finite supply of water, I would say that all water demands—mining, solar farms, ecological, agricultural, municipal and commercial—must be understood, evaluated and allocated against the sustainable supply. I agree that hard choices are needed because this part of Arizona does not have enough groundwater to sustainably meet all of the competing demands.

Ms. LEGER FERNÁNDEZ. Thank you very much, Mr. Wells.

The Chair now recognizes the Honorable Mila Besich, the Mayor of the Town of Superior, Arizona.

**STATEMENT OF MILA BESICH, MAYOR, TOWN OF SUPERIOR,
ARIZONA**

Ms. BESICH. Good afternoon Chairman Grijalva, Ranking Member Westerman, Subcommittee Chair Leger Fernández, Ranking Member Young, and members of the Committee. I am Mila Besich, Mayor of the Town of Superior, a small community located 60 miles east of Phoenix, Arizona, and the closest community next to the Resolution Copper project.

Thank you for the opportunity to come before you today to tell you about my town and its history. Superior is a close-knit community with a long and rich history in mining that dates back to 1875. The town evolved as a center for commerce serving the mining industry throughout Arizona.

H.R. 1884, if passed, will be devastating for my community. The population of Superior is just over 3,000 residents and has grown by 8 percent since 2010. About 40 percent of the residents have lived in the town for more than 20 years, and there are a number

of multi-generational families. The median age of residents is 45.4 years old, which is well above the state and national median age.

We need to create job and business opportunities for our youth and working adults so that our community remains viable for generations to come. Many of the employed residents of Superior commute to jobs in Phoenix or other parts of the East Valley. Only about 15 percent of residents work in the local community because our business space and areas for business and commercial opportunities are land limited.

Superior is located at the base of Apache Leap Mountain and is surrounded by the Tonto National Forest, which is the fifth largest National Forest, and we are in the Globe Ranger District on the Tonto, which is one of the most mined districts in the lower 48 states.

The areas surrounding Superior offers a diversity of climate zones from desert vistas to mountainous areas with snow and waterfalls. This stunning natural landscape creates a perfect setting for world-class outdoor recreation. The combination of scenery, rich cultural experiences, and gastronomy make for our community to be lively and diverse.

My family has been in this area for five generations. Many of my friends and neighbors in Superior have roots tracing back seven or eight generations. When I graduated from Superior High School in the 1990s, opportunities were limited, and, in fact, my formative years did not include any hint of bright days of a mining boom.

As a community, we truly understand the booms, busts, and risks associated with mining. We have also learned how critically important it is to participate in these important permitting processes and follow up on all environmental regulations. Mining will always be part of our economic DNA.

The Resolution Copper project presented a unique opportunity to help us build Superior's future and develop a diversified economy. We are a town with a mine. This includes working with the mining industry and government officials to ensure that an operational copper mine is a net positive for Superior, our region, and our state.

Superior remained at the table and actively participated in the FEIS process. To start over would be counter to the best interest of the people of Superior. We strongly support the rights of our Apache neighbors, that their voices be heard. But what has been overlooked in recent media reports is that through the entire EIS process the Forest Service and interested parties have worked and consulted with the tribes.

The EIS process was long and laborious, but it achieved exactly what was intended: An intense process that has taken all of the stakeholders' concerns and melded it into one document to address these diverse and divergent views.

Superior needs jobs and private capital investment so we can continue to thrive. And while this may be an unintended consequence, it is real. H.R. 1884 will repeal the land exchange that was enacted by Congress in December 2014. The land exchange is mission critical to Superior's ability to attract housing and economic development opportunities. Enactment of H.R. 1884 will essentially deprive Superior of the ability to build a more diverse

economy and prosperous future for our children, youth, and families.

Chairman Grijalva, you have been a champion for Arizona, and your long tenure and honorable service to our great state are respected and appreciated. However, our town's future is highly dependent on this mine opening; therefore, we reluctantly oppose your bill and ask that Secretary Vilsack approve the FEIS in a timely fashion so that we can get our project back on track to protect Superior and the Copper Corridor region.

Thank you for the opportunity to testify, and I would like to invite you to visit Superior and the Copper Corridor. I am happy to address any comments or questions you or the members of the Committee might have.

[The prepared statement of Ms. Besich follows:]

PREPARED STATEMENT OF MAYOR MILA BESICH, TOWN OF SUPERIOR, ARIZONA

Good afternoon Chairman Grijalva, Ranking Member Westerman, Subcommittee Chair Leger Fernández, Ranking Member Young and members of the Committee. I am Mila Besich, Mayor of the Town of Superior, a small community located 60 miles east of Phoenix, Arizona.

Thank you for the opportunity to come before you today to tell you about my Town and its history. Superior is a close-knit community with a long and rich history in mining that dates back to the first mining claim in the region in 1875. The Town evolved as a center of commerce serving the mining industry in the Copper Corridor of southeastern Arizona. However, copper mining is a volatile industry that has gone through numerous boom and bust cycles since the 1870s, turning many former mining communities into ghost towns.

The population of Superior is currently reported at 3,063 and has grown by about 8 percent since 2010. About 40 percent of the residents have lived in the town for more than 20 years and there are a number of multi-generational families. The median age of residents is 45.4 years and about 19 percent of residents are over the age of 65, which is slightly above the state average, but similar to Pinal County overall.

Many of the employed residents of Superior commute to jobs in Phoenix or other parts of the East Valley. Only about 15 percent of residents work in the local community. However, tourism could create small business opportunities that would allow more residents to work closer to home and could provide second income opportunities for families.

In Superior, we are proud to say that we're a town where mining is one of the major industries but not the only industry and thus the need to diversify our local communities with other economic opportunities. My Town is located at the base of Apache Leap Mountain in the high desert and is surrounded by the Tonto National Forest, which is the fifth largest national forest in the country covering close to 2.9 million acres in northeastern Arizona, extending north from Superior to the Mogollon Rim. The area surrounding Superior offers a diversity of climate zones from desert vistas to mountainous areas with snow and waterfalls. This stunning natural landscape creates the perfect setting for tourism related to hiking, camping, birding, hunting and other outdoor activities. Three local segments of the Legends of Superior Trail (LOST) were recently completed making Superior an Arizona National Scenic Trail Gateway community. The combination of scenery, rich cultural experiences and gastronomy make for a lively and diverse town.

My family has been in this area for five generations and my children are part of that fifth generation. They are seeing a new future of opportunity for Superior and for our Copper Corridor region. Many of my friends and neighbors in Superior have roots tracing back seven or eight generations. When I graduated from Superior High School in the 1990s, opportunities were extremely limited and, in fact, my formative years did not include any hint of the bright days of a mining boom. My family has been actively involved in community leadership throughout all our generations, and I have served as Mayor of Superior since 2016.

For the past 20 years, leaders in Superior have been tasked with developing a diversified economy, but we would be remiss to think that mining would not be part of this plan with rich copper reserves and a long history of mining, these rich copper ore deposits are not going to magically disappear and we must figure out solutions

to how the these mines will work within our communities without our communities becoming solely reliant on the extraction industry. We have used the Resolution Copper project as a unique opportunity to help us build Superior's future. This includes working with the mining industry and the Resolution Copper EIS to ensure that the Resolution Copper Project is a net positive for Superior and our region. The Town of Superior has been actively involved in the FEIS process and to start over again is not in the best interest of the people of Superior and not fair to all of those stakeholders, including our Town, who will benefit greatly from this process and have actively participated in this arduous process.

On March 1, 2021, the U.S. Department of Agriculture directed the Forest Service to withdraw the Notice of Availability and rescind the Final Environmental Impact Statement (FEIS) and draft Record of Decision. This action has paused the many years of consultation by the Forest Service and the numerous stakeholders and the public—folks that participated and were at the table. We are hopeful that the Administration will move forward with the process and release the FEIS and Draft Record of Decision after consulting with all of the relevant stakeholders.

In order to survive and grow, Superior needs jobs and private investment. This mine is critical to the economic viability of our Town and region. In short, we need this mine to open with the full permitting in place as soon as possible. And yes, we need it to be done in a way that preserves not only the economy of the region, but also respects the cultural and environmental sensitivity of the region and the tribes. And while we strongly support the rights of our Apache neighbors' voices to be heard, the fact remains that Resolution Copper and the Forest Service, through the EIS process, have worked and consulted with the tribes throughout this process. The EIS process was a long and laborious but it achieved exactly what was intended: an intense process that has taken all of the stakeholders concerns and melded it into one document to address these diverse and divergent views.

While we like to say that Superior is a town with a mine—and not a mining town—mining is in our DNA and the Resolution Copper mine will be a huge boost to our economy. More than half of the 600 workers on-site will live within 40 miles of the mine. The mine is expected to support 3,700 direct and indirect jobs for Arizonans, creating 2,600 jobs in Pinal County alone and adding an estimated \$60 billion to the state's economy over the 60-year life of the mine. Resolution Copper will also be purchasing around \$546 million per year in goods and services from local businesses.

As the nation looks to build a clean energy future, where copper will be an essential building block, Arizona's Copper Corridor holds the equivalent of Yukon gold. Some of the richest and most accessible copper ore deposits are found here in eastern Pinal and southern Gila counties. Two of the three copper smelters left in the United States operate in our region. Mining is vital to the economy in this part of Arizona, and it can be done responsibly while protecting the environment and the beautiful landscape that we love and cherish.

The land exchanged in the legislation that this bill will repeal will directly benefit Superior. For instance, we will obtain land south of the airport that will allow us to build new housing, retail and other development. This will allow us to provide housing for the expected doubling of our population because of this new mine and economic opportunities. Ironically, it will also prevent future mining claims in this area that several companies currently hold. Mr. Chairman, I'm sure this is something that you support.

This new mine will also allow Superior to diversify our economy. We have plans to build a new multi-generational center and new business incubator with an emphasis on bringing new tech companies and jobs to the area. These can only be realized by the opportunities this new mine will present.

Chairman Grijalva, you have been a champion for Arizona and your long tenure and service to our great state are appreciated. However, our Town's future is highly dependent on this mine opening. Therefore, we reluctantly oppose your bill and ask that Secretary Vilsack approve the FEIS in a timely fashion so we can get this project back on track and protect the future of Superior and the Copper Corridor region.

Thank you for the opportunity to testify today. I would be happy to address any comments or questions you or members of the Committee might have.

QUESTIONS SUBMITTED FOR THE RECORD TO MILA BESICH, MAYOR OF THE TOWN OF
SUPERIOR, ARIZONA

Questions Submitted by Representative Gosar

Question 1. How long has the NEPA process taken?

Answer. The NEPA process to open a mine in America begins the day an extraction company determines it will need to access federal lands to construct its operations in order to mine the ore deposit. These extraction companies conduct years of study, data gathering and analysis before determining if it is feasible to begin the federal permitting process. That initial data is often used as a baseline for the NEPA requirements.

Environmental Impact Statements (EIS) can vary in length depending on the magnitude of the project. For the Resolution Copper project, discussions on the permits required for the construction of the project on their property and the federal lands have been taking place for well over 20 years. The timeline for the actual EIS development began when Resolution Copper submitted its official mine plan of operations in 2013. During this ensuing 8-year period, there have been countless public meetings and comment periods.

Question 2. How many different changes has the mine project undergone—to both the scope and because of tribal and public input?

Answer. During the 26-year history of the development timeline of the Resolution Copper Mine, there have been numerous changes. For instance, the location of the tailings sites has changed at least three times. As further study had been completed, there have been changes to where Resolution Copper will place the filtration plant and concentrator.

As for public input, the project has evolved over the years to allow for access to Oak Flats for as long as possible. Early on, it was proposed that as soon as the lands were exchanged, the public would lose access to the Oak Flats Campground. At this point, it is planned that the public will have access to the Oak Flats Campground as long as it is determined to be safe.

The tailings location is another example of public participation affecting the location of this one aspect of their footprint. When Resolution Copper no longer had the opportunity to pipe tailings to the then-shuttered Pinto Valley mine, they returned to the drawing board to find a different tailings location. The company studied its options and presented them to the Community Working Group (CWG). The CWG is comprised of local stakeholders that have worked together for years to study critical impacts of the mine, and then communicate their findings to the public as well as to the company. Resolution Copper funds a contracted facilitator to work with the CWG, and this has been very helpful given the complexity of the issues associated with a mining operation on the scale of this proposed mine.

Question 3. Could you talk about some of the concessions made throughout the consultation process to mitigate the impacts of the mine?

Answer. I can speak specifically for the Town of Superior. When the Draft Final Environmental Impact Statement (DEIS) was released, we quickly learned that the impacts to our Town infrastructure, socioeconomics, police and emergency services by Resolution Copper would cost the Town of Superior upwards of \$1 million annually. The DEIS reported that the Resolution Copper project would only generate \$350,000 in actual revenue to the Town. Clearly, just based solely on this economic data, we understood that the proposed project—without appropriate mitigations—would be a net negative for Superior. We utilized the comment period to address our concerns with the Forest Service and Resolution Copper. As a result of our focused advocacy, we were able to negotiate agreements to put measures into place that would mitigate the adverse impacts to our citizens and the Town's financial stability.

The issues of water usage for the Resolution Copper Mine are very complex and involve the layered complexity of state and federal law, as well as the entrenched positions of key water rights owners. No water in the Southwest goes unclaimed and the mine will have to purchase most of their water on this open market. The market itself will regulate the availability of the water rights and the market will balance the competing interests. The physical availability of the water is a separate issue, and we and our water provider Arizona Water company have worked with Resolution Copper to develop mitigation measures to assure that groundwater in the desert well field area, that supplies the Town, remains available indefinitely.

The effects of mine dewatering on Queen Creek exacerbate cumulative impacts caused by over 130 years of mining under the creek. Water that would normally

flow down the creek seeps through the fractures caused by this mining activity and into old mine workings that eventually lead to the current workings. It is then pumped out to irrigate crops elsewhere, or for mine operations. Resolution Copper has contracted with the Town to study this problem and work to restore the Creek's natural flow. They have committed to provide baseline flows and to complete a hydrological study to determine how much water is lost to dewatering and to provide replacement water. In addition, they will place a conservation easement through the Town to restore the Creek. While this involves a small fraction of the water the mine will use over its life span, this impact is very important to the Town's survival and ability to maximize tourism as a part of a diversified economy.

Question 4. Could you talk about the community investments that have been made in anticipation of the project?

Answer. Resolution Copper has been a key community partner from their early days providing support to our local non-profits and the school district, as well as providing funds for strategic planning that allows the Town of Superior to diversify our local economy. In 2019, the Town of Superior, Superior Unified School District, Rebuild Superior Inc. and the Superior Chamber of Commerce signed multi-year funding agreements. These agreements invested private dollars from Rio Tinto (the parent company of Resolution Copper) into community and economic development programs, the Multi-Generational Center, education infrastructure for our school district and capacity-building funding for the Superior Chamber of Commerce and Rebuild Superior Inc. The Superior Chamber of Commerce and Rebuild Superior Inc. both provide important programs and services that advance the economic and community development for Superior.

Question 5. As part of the land exchange legislation in 2014, the Town of Superior was authorized purchase some parcels of land. How would the inability to purchase these lands impact Superior?

Answer. When the land exchange was proposed, a provision in the bill allowed the Town of Superior to purchase 546 acres of federal lands adjacent to our Town boundaries, which includes the reversionary rights to the Superior Municipal Airport and the Fairview Cemetery. This would at least double the amount of land available in Superior for possible future development, and some of the property is uniquely suited to the highest and best uses for the future of the community.

The purchase of the reversionary right for our airport will mean that Superior will finally be able to legally subdivide the property and fully develop the airport and the airport contiguous properties. Superior desperately needs this land to be able to increase available lands for economic development and housing. Without the ability to purchase these lands, Superior will not be able to increase housing availability, create economic development and job opportunities, expand our industrial park or develop our airport.

We are also under a tight time frame. At this time, we have less than 18 months left in our agreement with the Department of the Interior to purchase these lands before another mining company could start developing additional drill sites to explore for copper in this area. This proposed drilling plan is not in the best interest of the Town of Superior or the Boyce Thompson Arboretum. In fact, this other mining company will most likely begin its drilling for copper ore along the scenic and beautiful US 60, creating great harm to our budding visitor/tourism industry.

Question 6. In your testimony you mention the Town of Superior is seeking to expand its recreational economy. Can you talk a bit about how Resolution Copper and recreational users interact now? Do you believe mining and recreation can co-exist into the future?

Answer. I absolutely believe that mining and recreation can co-exist and in a mutually beneficial manner. Over the past decade, Resolution Copper has helped to support key projects such as the development of the Legends of Superior Trails (LOST), which is the first gateway community connector trail to be constructed along the Arizona National Scenic Trail. We are proud of this accomplishment. Specifically, the Queen Creek Canyon segment of the LOST trail is located on Resolution Copper property. Access and use agreements have allowed residents and visitors to access this segment of trail and most recently it has become an important attraction to our downtown due to the proximity of the trail head to the heart of Superior.

Resolution Copper has also developed additional agreements with the Queen Creek Climbers Coalition and REI to allow for bouldering and rock climbing on their property. The rock climbing in our region is world renowned and I am pleased the Resolution Copper has remained committed to allowing access. Their predecessor,

Magma Copper, never tried to restrict access to these climbing locations or the Queen Creek trail, so there is precedence that these are important recreation areas.

To help further develop our recreation economy, Resolution Copper has funded facilitation of many outdoor recreation groups that recreate in and around Superior on the Tonto National Forest. This group has been named the Recreation Users Group (RUG) and they have been meeting for the past 8 years to develop a planned system of trails within the Tonto National Forest that also connect into the local Superior LOST trail system. The RUG plan was approved by the multi-member group and submitted into the EIS. The plan would help to build upon the existing trails and roads and improve recreation access for both residents and visitors to the area.

Furthermore, Resolution Copper has committed to replacing the Oak Flats Campground with a new modern campground with facilities at the Castleberry Ranch which is actually located in our Town's municipal boundaries. Resolution has committed to funding the construction of this campground, within 6 months of the Record of Decision being signed, as per our mitigation agreements. We urgently need this campground sooner rather than later. Recreational demand continues to grow in our area. In 2014, the Apache Stronghold organization was allowed to permanently set up their encampment at Oak Flats making it often difficult for those not associated with their organization to enjoy Oak Flats. Any further delay in settling this FEIS is affecting our ability to improve and increase outdoor recreation amenities to our community.

Question 7. Have you or your staff had an opportunity to review the Final Environmental Impact Statement in detail, yes or no? Do you believe the outcome is thorough and should proceed? Have you been able to work with Resolution Copper to find solutions for issues outside of the EIS scope?

Answer. Superior's Town Manager Todd Pryor read the Draft EIS in its entirety—all 1,400 pages—twice. After his study period, he prepared "homework" for our Town Council to reference the pages in the document where it was essential that our elected officials needed to review, provide input and fully understand the policy, economic and societal implications of the proposed operations. Working with our Town Manager and others, the Town Council not only developed positions and policies on the proposed mining operations and its impacts, we also hosted our own public meeting regarding our findings within the EIS seeking more public input. Through this study session, we then finalized our comment letter. We used this study session and comment letter to inform our local residents of the mitigations we were seeking to ameliorate or neutralize the adverse impacts of the proposed mine.

We have read through the Final EIS to ensure our requests for mitigations were included and we have not found any discrepancy. The Town has not filed any objections to the FEIS. However, the Recreation Users Group and the Legends of Superior Trails Inc. did submit an objection that the miles of trails that would be constructed by Resolution Copper as mandated by the FEIS were significantly less than were proposed in the DEIS.

Question 8. In your opinion what would it mean to your community and surrounding region if the Land Exchange were to be repealed, or if the FEIS is not re-published.

Answer. If the Land Exchange were to be repealed or the FEIS not be re-published, it would be devastating for our community. Superior and its residents have been waiting for well over a decade for the opportunity to purchase this land in order to expand opportunities for housing, economic development and jobs, which at present are severely limited. Our mitigation agreements with Resolution Copper are staged to go into force at various points in time. For instance, when the Record of Decision is signed, Resolution Copper will fund the construction of the new Castleberry Campground and new trail system, which are vitally important community amenities. Further delays will create more hardship for the Town and for outdoor enthusiasts from Arizona and beyond who want to avail themselves of these facilities.

If we cannot purchase our land exchange parcels, prior to our agreement with the Department of the Interior, expiring, there is a chance we will never be able to purchase these lands and Superior will be forced to have significant mining operations on our western boundary. Those operations will create far more damage to our community and aquifers, as those operations will likely need to be open pit mines. This is not in the best interests of Superior.

Our Town leadership has been participating in this arduous and extensive process and if we were forced to start over, it would be a significant financial burden to the

town. Our administrative staff consists of a Town Manager, Town Clerk, Finance Clerk and an Administrative Assistant. Actively participating in these permitting processes is part of our accountability to our residents; however, these protracted multi-year processes require an inordinate amount of time, resources and effort to effectively navigate through their complexities.

Ms. LEGER FERNÁNDEZ. Thank you so much, Mayor Besich, for your witness testimony.

We will now turn to questions from our Members. We will begin with Chairman Grijalva.

Mr. GRIJALVA. [inaudible] the Oak Flat transfer. More importantly, if tribal consultation had been codified at the time of Section 3003's insertion into the NDAA in 2015, could this land transfer have been prevented?

And the other thing is, you briefly mentioned traditional cultural properties, and I would really like you to elaborate on those and explain their importance.

And thank you, Madam President.

Ms. LEGER FERNÁNDEZ. Chairman Grijalva, is that question directed to President Sharp? You were cut off at the beginning, I believe.

Mr. GRIJALVA. Oh, I am sorry. Yes, it is. Thank you. Would you like me to repeat that?

Ms. SHARP. Yes, please. I couldn't hear the beginning of the question. Thank you.

Mr. GRIJALVA. The issue of tribal consultation and the role that it would have played in the creation of legislation that mandated this land transfer in Oak Flat. If tribal consultation was codified at the time this section was inserted into the 2015 National Defense Act, could the land transfer have been prevented?

And then I think the point that you mentioned about traditional cultural properties, just to elaborate on that and explain their importance. With that, I turn it over to you, and sorry about the glitch there.

Ms. SHARP. Yes. Thank you, Chairman. I really appreciate that question.

The issue of consultation for Tribal Nations, it is one that ensures that we have political equality with another sovereign, with our trustee, the United States. When we don't have consultation, we are vulnerable to another sovereign taking unilateral action against our lands, territories, and resources, not only without hearing our voice, but we think that we need to have consent in those relationships.

None of that was accomplished here, and what it meant was this bill was passed without the knowledge, the wisdom, the timeless honored traditions of the San Carlos Apache people and was done unilaterally. So, the legislation itself was entirely void of any of that connection with the San Carlos Apache people.

And to your point about tribal traditional, cultural properties, that too is an important point to mention, that not only is it important to recognize those areas where there is a geographical footprint, but there are traditions and there are connections to sacred sites and lands that can only be understood by consulting with

Tribal Nations and in hearing from our perspective. These are things that you cannot find on the internet, study in a book, or any other environmental study. So, it is absolutely important that we be directly engaged and consulted with, and I appreciate the question.

[Speaking native language]

Mr. GRIJALVA. Thank you.

Dr. Wells, if I may, your testimony mentions that you are part of a groundwater modeling work group for environmental review process. From your participation in this process, do you believe the citizens of nearby communities in Pinal County and others of the state should be concerned about the water scarcity if Resolution Copper moves forward, and if so, why?

Dr. WELLS. Thank you, Chairman, for that question. The answer is unreservedly, yes. Nearby communities need to be concerned about water scarcity, frankly, even without Resolution, and this only makes it worse.

Another thing to keep in mind is the other major source of water for the state is the CAP, the Central Arizona Project, which brings in water from the Colorado River. And as a Member mentioned earlier, if the water levels in Lake Powell decline to a certain level, there will be automatic restrictions, which would result in very large reductions in Arizona's delivery of Colorado River water. And according to the Bureau of Reclamation's most recent estimates, there is almost a 50 percent chance of that happening just in the next 2, 3, or 4 years.

Mr. GRIJALVA. Thank you.

And, President Lewis, it is good to see you. Can you talk about what it would mean—well, let me go to the other point that you made in your written testimony. You mentioned Rio Tinto's actions that destroyed Indigenous rock shelters in Australia, and I mentioned it as well. What has Rio Tinto's response been to that devastation at the gorge, and how does that parallel with Oak Flat?

Ms. LEGER FERNÁNDEZ. Chairman Grijalva, given the technical difficulties, I will allow an extra 30 seconds for this. So, President Lewis?

Mr. LEWIS. Yes.

Mr. GRIJALVA. Thank you.

Mr. LEWIS. Like in the testimony, just the destruction of sacred sites, obviously they are irreplaceable, and I think that is what the main concern for tribes is. Once these sacred sites are lost, they cannot be brought back, they cannot be mitigated, they cannot be replaced.

So, I think that is what we got the most out of looking at that other sacred site issue that happened over there, is that it is irreplaceable. And as we know, tribes are limited in their sacred sites, and that is what I feel about that.

Ms. LEGER FERNÁNDEZ. Thank you very much.

Mr. GRIJALVA. I yield back.

Ms. LEGER FERNÁNDEZ. Thank you, Chairman Grijalva.

Ranking Member Westerman is now with us and has asked that he be allowed to give his opening statement at this time. I will

recognize Ranking Member Westerman for his opening statement, and then I will also recognize him to ask his questions at this time.

Congressman Westerman, are you with us?

If he is not here, I will now turn to Congressman Young.

Mr. YOUNG. Thank you, Madam Chair. And I thank the witnesses again. This is a very controversial issue, and I am always interested in the conflict. But to Mayor Besich, how long did it take? Do you think the NEPA analysis was rushed, or do you think it took some time?

Ms. BESICH. This has been an incredibly long process for everyone involved. Since the land exchange was approved, we have been in a permitting process for probably a decade, at least going through developing the draft EIS and coming to the final EIS that was released in January.

Mr. YOUNG. OK. Do you think the Forest Service did an adequate job?

Ms. BESICH. They did a more than adequate job. They were very thorough and provided all of the partners opportunities to consult and interact with them and the process.

Mr. YOUNG. Has Rio Tinto been asked about—instead of the cliff-type mining, about the possibility of undersurface mining? Has that been discussed at all in this consultation?

Ms. BESICH. I believe that Rio Tinto has suggested how they are planning on mining this ore body, but I am not aware of any other further consultations with the Forest Service and Rio Tinto.

Mr. YOUNG. OK. Because that is one thing that interests me. I understood the religious concept and the sacred ground, but I would wonder if there would be opposition, in fact, if it was underground mining, because this ore is quite deep, the way I understand it, and that is something we may consider.

I am open minded on this. I was part of this program. I have gone through every hearing on it, and I want to listen to the author of the bill. But we keep talking about it, I talked with the President yesterday, about modern technology and it all includes copper, and if there is a way, I would just as soon make sure we can do it safely here, rather than buying it from Australia or some other country. So, I think we all ought to take that into consideration.

And, Madam Chair, with that, I am going to yield back. I have another appointment. I will say I am sorry for Ranking Member Westerman. I don't know where he is. This Zoom stuff drives me crazy. But thank you, Madam Mayor. I was a mayor, hardest job I ever had, so I don't envy you.

Ms. BESICH. Thank you, Congressman.

Ms. LEGER FERNÁNDEZ. Thank you, Congressman Young.

The Chair will now recognize Congressman Gallego for 5 minutes.

Mr. GALLEGO. Excellent. Can you hear me? Thank you.

First question is for Mr. Wells. You, I think, describe what happens in case we have to go through a drought contingency where we fall to certain levels, which means that people will have to stop using water, farmers, some municipalities. Would the mine be exempt from that situation, let's say that if the state has to go through some type of drought contingency?

Dr. WELLS. Thank you, Congressman. I am just a geologist and not a lawyer, but I will tell you what I think. I think the answer is, the mine would be exempt from that because the drought contingency plan describes how water from the Colorado River would be allocated, and the mine would be pulling groundwater from the East Salt River Valley.

So, it is my understanding that, yes, they would essentially be exempted from any water use reductions.

Mr. GALLEG0. OK. We should probably get some clarification on that.

President Lewis, back on water, your testimony pointed out the estimate that the proposed amount will deplete at least 87,000 acre-feet of water in the Oak Flat area and pump more than .5 million acres from your groundwater from central Arizona. So, we know how this impacts obviously the valley where I am in central Phoenix, or south Phoenix, I should say. But how does this really impact Tribal Nations, which I think don't necessarily have as much of the water infrastructure that would be helpful when we are dealing with droughts?

Mr. LEWIS. Yes, Congressman. Well, as we know, water is life. Obviously, if water were to be depleted from a reservation, obviously it takes away the life of the reservation. There are many tribes in Arizona. We are spread out. We have tribes on the Colorado River. We have tribes like San Carlos that are up in the mountains. We have desert tribes.

So, water is very important to tribes, obviously. And I think the protection of water, especially in Arizona, has been seen through the drought contingency plan of tribes being at the table with all of those different things that are going on with this looking at this drought contingency plan in the future of what is going to happen.

And I think that is what is most important to this with tribes. If they lose their water, obviously they lose their cultural resources, they lose things like that. So, that is really what is important. Water is life.

Mr. GALLEG0. Thank you. I yield back.

Ms. LEGER FERNÁNDEZ. Thank you, Congressman Gallego.

The Chair would now recognize Mr. Obernolte for 5 minutes.

Mr. OBERNOLTE. Thank you, Madam Chairman, and thank you very much for holding this hearing. I think this is an incredibly important topic, because when we consider the wide variety of land that is held by the Federal Government and the competing demands on that land, I think Congress exercises a really unique responsibility to recognize those competing interests.

On the one hand, we have here the tribal interests, the sacred lands, the concern about resources like water; and on the other hand, we have the desire to have strategic minerals mined here in the United States, the recognition that that has to happen somewhere, and the jobs and the prosperity that that is going to bring to a very rural region of the country. So, I think this is very appropriate for us to be discussing this topic.

I had a question for Mr. Lewis. Following up on the comments of Ranking Member Young, he was asking about whether or not there might be a compromise here, whether or not the areas of tribal significance could be avoided, whether or not different

mining technologies could be used to extract that copper from one of the richest deposits of copper in the world.

So, Mr. Lewis, is there some kind of compromise here that would preserve the aspects of this land that you are concerned about and yet still allow the copper to be extracted?

Mr. LEWIS. So, I think I can't fully answer that. I think the San Carlos Apache could better answer that question. Obviously, tribes aren't against mining, but with this type of mining and the potential destruction of the sacred sites and the depleting of water, I think that is more of a technical issue for the San Carlos Apache to be able to answer as far as mitigation. But at the end of the day, this type of mining would destroy sacred sites. So, I would probably refer that back to the San Carlos Apache, who actually live in the area.

Mr. OBERNOLTE. OK. So, Ms. Sharp, same question to you. Is there a half a loaf here that can satisfy the desire to get access to these minerals on Federal land and yet still respect those tribal rights that I think we all very much appreciate?

Ms. SHARP. I believe if the United States truly honored its trust and treaty obligations and understood what sacred sites and religious freedom meant to the rights of Indigenous peoples, it would be quite clear that the United States is not even in a position to ask that question and make that calculus.

If a Tribal Nation says we have a sacred site, this is where we have an identity, the United States must honor that. It must honor the right of Indigenous people, to them practicing religious freedoms for millennia in a place that is not only essential to their spiritual health but their very core of their identity. It is wrong to even ask that question, to make a calculus.

It would be like saying, if there was a copper mine discovered underneath the Vatican, would it be OK to desecrate the Vatican to access rich resources? I think the answer would be no.

Mr. OBERNOLTE. Thank you. I think I am—Ms. Sharp?

Ms. SHARP. Hello? You cut out at the beginning of that, and I couldn't hear the question. You are buffering.

Mr. OBERNOLTE. OK. Let me state it again. I think I understand the point that you are making. Forgive my ignorance here though, is the entire site a sacred site or just portions of it?

Ms. SHARP. I couldn't answer that definitively. I know that there are sacred sites in that space. I have seen a map of it. It is quite a large footprint. And I would imagine that whole area, just like in our area here at Quinault, we have sacred sites in certain places.

But there is a geographical area that represents our ancestral homelands, and accessing it and being able to not only practice in certain spaces but the ability to access those entails a whole geographical area. And I just couldn't speak directly to that, about how encompassing that is for the San Carlos Apache people to not only practice their religious freedoms but to access it.

Mr. OBERNOLTE. All right. Well, thank you. I will yield back. Let me just say that, like the Ranking Member, I am hopeful that maybe there is a compromise that can respect the rights that I think we all want to respect and still allow Federal land to be used for a purpose that I think benefits—

Ms. LEGER FERNÁNDEZ. Mr. Obernolte, you are buffering. I want to see if we can hear your statement. Can you hold on just a second because I would like to hear your statement, but you seem to be cutting out.

Mr. Obernolte, I will give you time to complete your statement because you did cut out, and I believe you were trying to make an important closing to your questioning. I will give you time to do that right now.

Mr. OBERNOLTE. We are having mutual technical difficulties here. But I just want to reiterate what the Ranking Member was talking about—about perhaps finding a compromise here that respected both tribal rights and the vested public interest in extracting a strategic mineral from within the Continental United States.

Thank you, Madam Chair, and I yield back.

Ms. LEGER FERNÁNDEZ. Thank you, Mr. Obernolte.

The Chair will now recognize Congresswoman McCollum.

Ms. MCCOLLUM. Thank you, Madam Chair. I am going to make an observation. We have talked a lot about mining, but there is another way we can mine and it is recycling. And we do know that people will go through abandoned buildings or homes that are left unoccupied, businesses to strip the copper out.

So, it is valuable, and we should be looking at doing more as a government for recycling these precious minerals and reusing and reducing the amount of disruption we do to our environment.

Water has been discussed. Water has great value. As several people have pointed out, you can't live without the essence of water; yet, we don't place a dollar value on it, and because it doesn't have a dollar value it goes up against things that do have dollar values.

So, with that, Madam Chair, I do have something I would like to ask President Lewis. I want to thank you for your testimony on behalf of fellow tribal leaders in Arizona. You shared some very powerful words about the value of the sacred Oak Flat area to the Western Apache people. This was their land, and this still is your land, and I would like to highlight one part of your testimony because I think it is incredibly important.

When I served as a state legislator in Minnesota, I worked in the general legislative committee, and we dealt a lot with cemetery laws and places where there were burials and sacred sites and that. We did everything in our power to respect that, and so I bring that value and that ethic with me here.

But, sir, you stated in your testimony, and it was very moving, and I quote from it, "It will 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 a foreign mining interest." And I couldn't agree with you more.

But for those who might like some more education and understanding of tribal tradition and religion, could you maybe talk a little more about the precedent that this would be setting to exchange Federal land that is currently protected, a known traditional, cultural property to a foreign—and I want to stress this—to a foreign mining company whose activities will destroy this sacred

site. Mr. Lewis, could you tell us some more of what you would like us to know?

Mr. LEWIS. Thank you for those words.

What I know about tribes in Arizona, there are 22 tribes in Arizona. Each one of them has its own beliefs. Each one of them has its own sacred rituals, all the way down to, like you mentioned, burial rituals.

So, I don't want to speak for how another tribe does it, but every tribe has its own unique way of doing things. And what is important to know in this case is that if something is lost, like a sacred site or a burial site, for instance, here in San Carlos, once it is gone, it is gone forever. There is no way of bringing it back or mitigating it or doing anything to right that wrong. And I think that is what is important here and what we are trying to get across is once that is gone, you can't bring it back.

And as far as San Carlos is obviously being against the mine, you could probably—I don't want to speak for them, I don't want to say exactly what it means to them.

Ms. MCCOLLUM. I appreciate that. Thank you for that.

I just want to refresh everybody. There was a great vocal opposition to this, and the Southeast Land Exchange was pushed through in a last-minute rider on the Fiscal Year 2015 NDAA, a defense bill, without allowing a vote in the House or the Senate. So, we have never had a clear vote on this. We have never been given that opportunity. And I remember the shock and anger I felt by the use of that tactic was outrageous, and I also remember rallying with you, Chairman Grijalva, as tribal leaders and Native youth came to our Capitol lawn that summer, and I said I would stand with them.

So, Madam Chair, I am so glad you are having this hearing today, and I thank you for the opportunity to ask a question.

Ms. LEGER FERNÁNDEZ. Thank you very much.

The Chair will now recognize Congressman Rosendale for 5 minutes.

Mr. ROSENDALE. Thank you, Madam Chair, for the hearing today. And, Chair Grijalva, please accept my condolences for you and your staff. Thank you very much to the panel also, the entire panel, for joining us today.

As you may know, Montana is a leader of copper production, with copper being the second most produced mineral in Montana. It accounts for a significant percentage of the state's GDP. In 2020, the United States saw a decrease in copper production by 5 percent, and the United States imported 50 percent of its nonfuel mineral commodities.

I find these statistics deeply troubling as we enter an era marked by innovation and global competition for telecommunications, electronics, and renewable energy technologies. The United States is the safest, most environmentally friendly country for mineral production. We have regulations in place to ensure stringent environmental standards are met, and much greater protections for our workers than anyplace else. U.S. mineral import dependence and the concentration of mineral supply from certain countries is a growing threat to economic growth, competitiveness, and national security.

All that being said, Mayor Besich, could you please talk about the community investments that have been made in anticipation of this project?

Ms. BESICH. Thank you, Representative Rosendale.

Resolution Copper has been making significant investments. Prior to the draft EIS coming out, we developed several agreements, one for education where they fund our schools in a 5-year increment for \$300,000. We have a multi-generational center agreement, which is helping us to recession-proof our community services, such as our senior center, library, and, in addition to our multi-gen center, we will also add an entrepreneurial and innovation center, which will grow and help support future entrepreneurs and existing entrepreneurs in our community.

They have also funded our Chamber of Commerce to help us with promoting Superior and helping our existing business community grow, and also rebuild Superior, where we have been working on housing redevelopment, and really making sure that Superior is ready to support this monolithic mining operation.

Mr. ROSENDALE. Excellent, excellent.

What impact would this legislation and the repeal of this land exchange have on your community?

Ms. BESICH. We are very concerned if the land exchange is repealed because our opportunity for growth and economic diversification is tied to this land exchange. The Town of Superior will be able to purchase 546 acres of Federal Forest Service land, so we can develop additional housing and commercial and business opportunities. If this land exchange is further delayed and/or rescinded, we have to start at the drawing board. This has been an incredibly arduous process for the Town of Superior to actively participate. So, it would be devastating for us to start all over again.

Mr. ROSENDALE. So, clearly, you wouldn't have the resources available to continue this work for your education, to take care of your seniors, and to develop this housing for your housing needs?

Ms. BESICH. Absolutely not. This would really set us back probably two decades at this point if we had to start all over again.

Mr. ROSENDALE. And, finally, as part of the land exchange legislation in 2014, the Town of Superior was authorized to purchase some parcels of land. How would the inability to purchase those lands impact Superior?

Ms. BESICH. Quite frankly, we will not be able to grow or expand. We are already in a pinch for needing affordable housing and additional business opportunity. Without this land, Superior will be held in a holding pattern probably indefinitely.

Mr. ROSENDALE. OK. Thank you so much for your testimony today.

Madam Chair, I would yield back my time. Thank you.

Ms. BESICH. Thank you.

Ms. LEGER FERNÁNDEZ. Thank you, Mr. Rosendale.

The Chair will now recognize Representative Lowenthal for 5 minutes.

It appears Mr. Lowenthal is not with us right now, so the Chair will now recognize Mr. García for 5 minutes.

Mr. GARCÍA. Thank you, Madam Chair and Ranking Member, and, of course, to all of the witnesses that we have heard from.

Last year, I met with a young girl named Vanessa from the San Carlos Apache Tribe. She talked about the importance of Oak Flat and what the sacred site means in a young woman's coming-of-age ceremony. And now Oak Flat, a sacred site to many Tribal Nations for the past 1,500 years, is at risk of being destroyed for a mining operation. It may not be our religion, but to Vanessa's family, the death of the lands is the death of their daughter, who will be unable to become one with the earth.

Plain and simple, this is a violation of the sanctity of ancestral lands of Indigenous peoples. You destroy it, and it is gone forever.

A question for President Lewis, thank you for your testimony and for joining us today. You state in your testimony that moving forward with this project 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.

Can you talk about the precedent of exchanging a known traditional cultural property to foreign mining companies who will destroy it, that this would establish here in our country?

Mr. LEWIS. Thank you for the question, Representative García.

Again, looking at the impact that this would have on tribes as setting a precedent would be the impact of destroying of a sacred site. As we know, and I think you made your statement earlier, that the destruction of a sacred site is irreplaceable. And to tribes, I think I agree with you, the importance of that may be more important to the tribes than people that aren't familiar, but the destruction of a sacred site, and the irreplaceable act of doing that is what is probably the most important thing to the tribes.

Mr. GARCÍA. Thank you, President Lewis.

You mentioned the destruction of 46,000-year-old Indigenous rock shelters in Australia. What has been Rio Tinto's response to that devastation of Juukan Gorge? And how does this parallel Oak Flat?

Mr. LEWIS. Not to be totally familiar of how that exchange went, but the irreplaceable sacred site is, I think, what is most important. And to think that you can replace a sacred site with jobs or money, that is not acceptable to Tribal Nations.

Mr. GARCÍA. Thank you, sir.

In closing, I would just ask my colleagues, if Oak Flat were a Christian holy site, would we even be having this discussion? As we consider the harmful impacts of bulldozing through and desecrating sacred sites, let us not forget that this is ultimately about profits. The poorly vetted proposal from Resolution Copper, a joint venture run by foreign mining companies, will come at a great cost to the communities closest hit, all of which was done with little consultation with tribes, and all of which is happening because of the midnight rider that is giving our public lands, the sacred lands of tribes, to a corporation.

I yield back, Madam Chair.

Ms. LEGER FERNÁNDEZ. Thank you, Mr. García.

The Chair will now recognize Mr. Bentz for 5 minutes.

Mr. BENTZ. Thank you, Madam Chair, and thank everyone for their most interesting testimony.

A couple of remarks about the need for copper. The first, perhaps people should be reminded that a current automobile, conventional car, uses between 18 pounds and 49 pounds of copper; a hybrid vehicle, about 85 pounds of copper; a plug-in vehicle about 132 pounds of copper; and a battery electric vehicle about 183 pounds of copper.

So, as we look into our future, which I think is going to be electric, we need four times as much copper for each car. This is nothing to be argued over. It is just the facts.

And we also recently became aware, because of the COVID challenge, of the fragility of our supply chains when we are trying to import this precious metal from other countries, and the incredible risk we face if we rely upon countries that don't share our interests in protecting our Indigenous peoples. Why would we want to put our fate in their hands?

I place this situation before President Sharp, as I am now going to ask her a question about how we balance, given the existential challenge that we face with these climate issues. How are we going to meet these challenges and balance against them the important religious issues we have now been hearing about?

Would you please address that? Thank you.

Ms. SHARP. Yes, absolutely, and I appreciate that question.

The first point I would make is, and it goes back to my remark earlier, that the ability for a Tribal Nation to exercise its religious freedom is something that was gifted to us by our Almighty Creator. These are things that are absolutely central to our identity, central to our spiritual health, and the cost that a question of balancing interests, it is unconscionable to think that we are even having that question.

When I hear the Mayor talk about the toll that the potential of not passing this bill would wreak on her community, that is a direct result of the failure of the United States to honor the basic human and civil rights of Indigenous peoples to begin with.

So, that is one price that will be paid. There is another price for desecrating the spiritual health and well-being of the San Carlos Apache for which there is no way to bring that back. There is no way to fund that. There is no way to, in any way, monetize that.

So, to even begin to analyze the question of balancing, I can't even let my mind go to that place, because this is something that is so central to who we are, and the precedent that this would create, not only at San Carlos Apache, but all across Indian Country, if we can monetize our spiritual health, if we can monetize that which the Creator gifted to us, if we can monetize our very identity, clearly that would create a path where all Indigenous peoples risk even surviving another generation. I can't even get to that place.

Mr. BENTZ. Thank you, President Sharp.

And a question for Dr. Wells. I just want probative perspective, the 13,000 acre-feet of water this project would use each year, those are my numbers, and my understanding is that, under the Colorado River Compact, Arizona is to end up with 2.8 million acre-feet of water a year, and I know that could go down; but to put that in perspective, this project would use 13,000 acre-feet. The Colorado project allocates 2.8 million acre-feet to Arizona.

I just want to cull that out and suggest that the hypotheticals that we are using trying to show how much 13,000 acre-feet is is interesting, but it needs to be played both directions.

And with that, Madam Chair, I yield back.

Ms. LEGER FERNÁNDEZ. Thank you very much, Congressman Bentz.

I will now recognize myself for 5 minutes.

I really understand the delicate needs that we are trying to grapple with this hearing, the need for copper and the certain level of independence. But I am struck by two comments. One is, once it is gone, it is gone forever, as we heard from President Lewis. And I am thinking about the comment that we heard at our last Subcommittee hearing where we were encouraged to use Indigenous women, wisdom from a wonderful Hawaiian woman, and that is the need to protect our planet while we move forward on developing our future. And it is really important that we learn the lesson of placing long-term protections over short-term prospects.

And I think some of those concerns were reflected in several letters that we received, including from the San Carlos Apache Tribe, the Navajo Nation, and the Advisory Council on Historic Preservation, outlining their concerns with the transfer of Oak Flat. And I ask unanimous consent to submit these to the record.

[The information follows:]

ADVISORY COUNCIL ON HISTORIC PRESERVATION
WASHINGTON, DC

March 29, 2021

Hon. Tom Vilsack
Secretary of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Re: Resolution Copper Mining Project and Land Exchange, Tonto National Forest,
Pinal County, Arizona

Dear Mr. Secretary:

In accordance with Section 106 of the National Historic Preservation Act (54 USC § 306108) (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), I am conveying to you the final comments of the Advisory Council on Historic Preservation (ACHP) regarding the U.S. Department of Agriculture (USDA) Forest Service (FS) Tonto National Forest's (TNF) proposed Resolution Copper Project and Southeast Arizona Land Exchange. On February 11, 2021, the ACHP terminated Section 106 consultation, having determined that further consultation to reach an agreement would be unproductive. I would again like to express the ACHP's appreciation for USDA's intervention on March 1, 2021, halting the statutory timeline to transfer the land for the project as this will allow you more time to consider our comments at this critical juncture. In accordance with 36 CFR § 800.7(c), the ACHP is providing these comments, which you must consider and respond to before reaching a final decision on the undertaking.

Background

On December 19, 2014, President Barack Obama signed into law the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291) (NDAA), which directed a land exchange between the U.S. Government (USDA and Department of the Interior) and Resolution Copper Mining, LLC (Resolution Copper) for the purposes of extracting copper deposits known to be present in lands within the TNF. In the exchange, Resolution Copper would receive 2,422 acres of National Forest System (NFS) land known as the Oak Flat Federal Parcel in return for 5,344 acres of private land owned by Resolution

Copper. The land exchange would facilitate Resolution Copper's proposed copper mine by removing the Oak Flat parcel from federal ownership, therefore eliminating the mining restrictions put in place by Public Land Order 1229.

As the agency required by law to transfer the property, the FS is responsible for carrying out the Section 106 review and consultation regarding both the proposed Resolution Copper Project and the Southeast Arizona Land Exchange (jointly, the undertaking). The NDAA did not modify the Section 106 requirements for this undertaking. However, because the NDAA requires specific actions be taken by the FS, the parties to the Section 106 review were unable to consider alternatives that would avoid all adverse effects to historic properties. Further, the NDAA placed additional requirements on the FS and Resolution Copper regarding consultation with Indian tribes and impacts on cultural and archaeological resources. This included seeking *"to find mutually acceptable measures to—(i) address the concerns of the affected Indian tribes; and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper"* and, as part of the agency's analysis under the National Environmental Policy Act (NEPA), identifying *"measures that may be taken, to the extent practicable, to minimize potential adverse impacts on those resources, if any."* These NDAA requirements are independent of the standard Section 106 procedural requirements, adding further complexity to the consultation process. The Programmatic Agreement (PA) that was being negotiated under Section 106 referenced the agency's concurrent compliance with these measures in the NDAA. The NDAA also established a timeline for the land exchange, requiring it to occur no later than 60 days of the FS issuance of the Final Environmental Impact Statement (FEIS).

Undertaking

The undertaking consists of the General Plan of Operations (GPO) to be approved by TNF for an underground copper mine submitted by Resolution Copper on land currently administered by the TNF, the Arizona State Land Department (ASLD), and private landowners, and the exchange of lands between Resolution Copper and the United States as directed by the NDAA. The GPO to conduct mining operations includes the mine site, associated infrastructure, a transportation corridor, and a tailings storage facility. Resolution Copper proposes to conduct mining using a technique known as panel caving, which uses a network of shafts and tunnels constructed below the ore body located within the Oak Flat Parcel. While the proposed mining would occur underground, the removal of the ore would cause the ground surface to collapse, creating a subsidence area at the Oak Flat Federal Parcel that would result in a crater between 800 and 1,115 feet deep and roughly 1.8 miles across. Additionally, several alternatives are being considered for the permanent disposal and management of the mine tailings, including an alternative on Bureau of Land Management (BLM) administered lands. The undertaking spans the life of the mine, which is envisioned to occur in three distinct phases: construction, operations, and reclamation, spanning roughly 56 years. At the end of operations, facilities would be closed and reclaimed in compliance with permit conditions.

Historic Properties and Effects

The TNF made an extensive effort to identify historic properties, including the development of a comprehensive area of potential effects (APE) to guide identification efforts. The APE divides the effects of the undertaking to three zones—physical effects within the project footprint and Oak Flat Federal Parcel; auditory effects within two miles of the project footprint and Oak Flat Federal Parcel; and visual/atmospheric/socioeconomic effects within six miles of the project footprint, including the historic districts of Globe and Miami, Arizona. To support identification efforts within the APE, the TNF, with the assistance of Resolution Copper, also implemented a tribal monitoring program that utilized inventories/survey efforts conducted with tribal monitors and tribal field visits to identify historic properties of traditional religious and cultural importance within the APE. These efforts were used to expand and augment existing and ongoing identification efforts including past surveys and ethnographic studies conducted by and in consultation with Indian tribes.

Early on in the consultation process, the TNF determined that the undertaking would result in adverse effects to numerous identified historic properties, including the National Register of Historic Places-listed Chí'chil Bildagoteel Historic District, known also as Oak Flat. The TNF identified Oak Flat as a historic property of religious and cultural significance to Indian tribes and a Traditional Cultural Property (TCP) significant to multiple Apache tribes. The TNF previously recognized the site as having physical and spiritual integrity essential to the continuation of traditional

Western Apache cultural practices, particularly to the San Carlos Apache Tribe. On March 4, 2016, the National Park Service listed Oak Flat on the National Register as a historic district and TCP under Criteria A, B, C, and D with particular emphasis on its association with Apache oral history and as a venue for ongoing Apache participation in traditional social activities. As part of the undertaking, Chí'chil Bildagoteel Historic District would be directly and permanently damaged by the subsidence area proposed for the Oak Flat transfer parcel.

At the time of the release of the final draft PA, the TNF had identified 644 archaeological sites in the portions of the APE that included the Oak Flat Federal Parcel, GPO project areas, and the proposed tailings locations. Of these, 506 sites were determined eligible for the National Register, 22 required further evaluation, one was a natural gas line exempt from further Section 106 review, and 116 sites were determined not eligible for the National Register. Forty-two of these eligible sites would leave federal ownership, along with the Chí'chil Bildagoteel Historic District, as part of the land exchange and would be permanently damaged by proposed mining operations. Another 377 of these sites would be affected by the TNF's proposed preferred alternative for the processing and disposal of mine tailings, which would occur on state and private lands.

In addition to these identified historic properties and known adverse effects, the TNF also identified several other properties of traditional religious and cultural importance within the APE that would require further evaluation. The TNF determined that further identification efforts would be required for various portions of the APE, specifically those zones related to auditory, visual, atmospheric, and socioeconomic effects. To address this, the TNF proposed to phase the identification of additional historic properties. The TNF had further determined that the undertaking would result in numerous potential auditory, visual, and atmospheric effects to known and yet to be identified historic properties.

Section 106 Process

The ACHP recognizes that this consultation posed unique challenges for all parties involved. The constraints placed on the consultative process due to the legislated nature of a substantial portion of the undertaking juxtaposed with the magnitude of the adverse effects to historic properties severely restricted the TNF's ability to consider alternatives to avoid or minimize those effects. Further, attempting to resolve adverse effects to historic properties as immensely important as Oak Flat, a property of religious and cultural significance to Indian tribes, in addition to potentially affecting more than 500 other sites eligible for listing on the National Register, made reaching agreement on appropriate steps to resolve these effects very difficult.

Based on the documentation provided, the TNF appears to have initiated consultation with Indian tribes for the undertaking in 2015 following passage of the NDAA, though these efforts were not consistently characterized as Section 106 consultation. Records provided to the ACHP also suggest that as early as 2003, the TNF had carried out preliminary discussions with affected Indian tribes concerning the potential land exchange, exploratory activities by Resolution Copper, and the development of historic property inventories and ethnographic surveys. It is not clear whether any of these interactions were characterized as Section 106 consultation. On March 31, 2017, the TNF initiated consultation with the Arizona State Historic Preservation Officer (SHPO). On December 7, 2017, the TNF notified the ACHP of its finding of adverse effect for this undertaking, and on December 21, 2017, the ACHP informed the TNF that it would participate in the consultation.

Consultation has included the SHPO; the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Yavapai-Prescott Indian Tribe, the Ak-Chin Indian Community, the Fort Sill Apache Tribe, the Pascua Yaqui Tribe, and the Tohono O'odham Nation; and other consulting parties, including Archaeology Southwest, Arizona Mining Reform Coalition, Boyce Thompson Arboretum, Inter Tribal Association of Arizona and others, and resulted in the development of a draft PA that would provide a mechanism for further identification and evaluation of historic properties as the undertaking was implemented, as well as a broad array of measures to attempt to resolve identified adverse effects. Because of the size and complexity of the undertaking and the scale of the adverse effects, the PA included a suite of proposed mitigation measures. These measures included treatment plans for data recovery efforts for the numerous historic properties that would be physically destroyed or damaged as part of the undertaking, including a specific plan developed solely for the Oak Flat Parcel. The agreement also featured a variety of off-site measures in the form

of mitigation funds that would support tribal initiatives, including cultural resources, education, and youth programs; archaeological database funding; and development funds for historic properties in the local community. While initially these measures were vaguely defined, the TNF, through consultation and clarifying communication with Resolution Copper, refined and clarified them in the draft PA.

On July 9, 2020, Terry Rambler, Chairman of the San Carlos Apache Tribe, requested that the ACHP support the prompt completion of the PA and that it review and report on whether the TNF has complied with Section 106 regarding this consultation. On July 21, 2020, the ACHP responded to Chairman Rambler with its recommendations on moving the consultation process forward as well as committing to review and provide an advisory opinion on the TNF's compliance with Section 106 for this project pursuant to 36 CFR § 800.9(a). The ACHP undertook this assessment following its review of the revised PA in September 2020 and outreach to the San Carlos Apache Tribe, the TNF staff, and other consulting parties. Based upon the ACHP's ongoing participation in consultation, the ACHP was able to utilize many existing records and ongoing correspondence. On December 15, 2020, the ACHP provided its observations and recommendations to the TNF on how to continue moving the Section 106 consultation process forward. The letter recommended TNF provide consulting parties with a summary of responses to comments received on the latest version of the PA, respond to the ACHP's recommendations on improving transparency in communication and consultation, and consider hosting a final meeting of consulting parties to discuss how the TNF responded to comments and its intent to finalize and execute the PA. Additionally, the ACHP provided two recommendations to the TNF that were focused on broader, long-term efforts to improve Section 106 consultation within the Southwestern Region.

On December 23, 2020, the TNF responded to the ACHP's letter, and on December 29 released the final version of the PA, indicating its intent to move forward with its execution. On January 8, 2021, to inform the ACHP's decision on whether to sign the proposed PA, the ACHP again requested the TNF provide clarification on several items, including its coordination of the Section 106 review with the development of the FEIS under NEPA. On January 15, 2021, the TNF released the FEIS, which included an unsigned version of the PA. The issuance of the FEIS triggered the statutory timeline in the NDAA, requiring the TNF to execute the land transfer within 60 days.

On January 26, 2021, the TNF responded to the ACHP's January 8 letter. The TNF's response included correspondence from the Regional Forester regarding the ACHP's long-term recommendations. The same day, the TNF provided a copy of the final PA for the ACHP's signature. All other Signatories (the TNF and SHPO) and Invited Signatories (the BLM, U.S. Army Corps of Engineers, Resolution Copper, Salt River Project, Arizona State Land Department, and Arizona State Museum) had signed the agreement. On February 11, 2021, the ACHP terminated consultation pursuant to 36 CFR § 800.7(a)(4) and notified Acting TNF Supervisor Tom Torres accordingly. On March 1, 2021, the FS announced that USDA had directed the TNF to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision for the Resolution Copper Mining Project and Land Exchange. Following discussions with FS staff, the ACHP learned that the decision to withdraw the FEIS halted the statutory timeline to transfer the land for the project following the publication of the FEIS.

Execution and implementation of the proposed PA for this undertaking would have been one way for the TNF to fulfill its Section 106 responsibilities for this undertaking. Because the ACHP terminated consultation in this case, however, it is now your responsibility, as the head of the agency, to consider and respond to these advisory comments in reaching your decision on the undertaking in order to complete the Section 106 process. In accordance with the statute, you may not delegate this responsibility. 54 U.S.C. § 306114.

To inform the development of these comments to you, the ACHP solicited input from consulting parties and the public. The ACHP received more than 500 comments regarding the proposed undertaking and its potential effects to historic properties from consulting parties and members of the public. The ACHP submits the following findings and recommendations to you for your consideration in making your final decision on this undertaking.

ACHP Findings

Chí'chil Bildagoteel (Oak Flat) is a historic property of profound importance to multiple Indian tribes and plays a significant role in their religious and cultural traditions, and the proposed measures in the PA are not sufficient considering the severity of adverse effects to this property and numerous other historic properties.

The historic significance of Oak Flat cannot be overstated and neither can the enormity of the adverse effects that would result to this property from the undertaking. Oak Flat would be directly and permanently damaged with a substantial portion of the property being destroyed through subsidence. In addition, hundreds of other historic properties would be destroyed or otherwise adversely affected by the undertaking. The ACHP recognizes the intent of the PA's mitigation measures to account for the loss of these historic sites. While the ACHP routinely advises agencies to seek creative ways to mitigate adverse effects where possible, it finds the mitigation measures within the PA to be wholly inadequate in light of the magnitude of adverse effects to this and other historic properties of such significance to numerous Indian tribes. The importance of attempting to develop adequate measures to resolve adverse effects in this case is further underscored by Section 110(a) of the NHPA, which requires the agency to give special consideration to preserving the historic and cultural values of the nationally significant Oak Flat (54 U.S.C. § 306102(b)(2)).

The Tonto National Forest was frequently challenged to effectively and consistently consult Indian tribes on the resolution of adverse effects and in the development of the PA.

Multiple Indian tribes notified the ACHP of their concerns that the TNF's consultation with them was inadequate, and the delay in TNF addressing these concerns diminished the effectiveness of its early efforts to consult. The TNF struggled to manage its consultation efforts with Indian tribes and to ensure that consultation informed the overall Section 106 review for this undertaking. It is clear that the TNF intended to carry out tribal consultation, including government-to-government consultation, and solicit tribal input. However, the TNF's records show the undertaking was not fully defined for Indian tribes at the outset of the Section 106 review process and that the agency's early outreach efforts to tribes often lacked transparency and consistency. The ACHP recognizes the TNF undertook efforts later in the process that worked to improve consultation, such as the development of the tribal consultation plan.

The Tonto National Forest had difficulty managing the pace of consultation and coordinating the Section 106 process with other federal environmental reviews.

As previously observed in the ACHP's assessment provided to the TNF on December 15, 2020, pursuant to 36 CFR § 800.9(a), the TNF was inconsistent in managing the pace of consultation and coordinating the Section 106 process with other federal environmental reviews and the concurrent requirements of the NDAA. The TNF's communication on the purpose of, and audience for, consultation meetings was often irregular and erratic. There was a general lack of clarity delineating the Section 106 consultation from the NEPA review process and public outreach. This confusion was further exacerbated by the TNF's efforts to meet the requirements of the NDAA regarding consultation with Indian tribes and measures to minimize impacts on cultural and archaeological resources. The ACHP recognized the improvements made by TNF in the Section 106 consultation process but also noted that valuable time was lost due to miscommunications during earlier consultation. Lastly, the publication of the FEIS, which started the statutory 60-day time limit for the land transfer, challenged the TNF's ability to conclude the Section 106 review for this undertaking within the stated timelines.

Due to its controversial nature and the high level of public interest in this undertaking and its effects, the Tonto National Forest would have benefited from expertise within the Region and Washington Office to assist it in managing this consultation.

Throughout the Section 106 review, the ACHP highlighted the challenges faced by the TNF during this consultation, including the inability of the TNF staff to commit to certain measures and persistent confusion regarding the timeline for completing the Section 106 process. The ACHP recognizes the concerted efforts of the TNF's Heritage, Tribal Relations, and Environmental Program staff as they sought to manage and maintain the consultation process along with the other concurrent reviews. However, the scope and magnitude of this undertaking exhibited the clear need for stronger agency support to the TNF to respond to consulting party questions and concerns, specifically those of Indian tribes. Efforts such as the dedicated Heritage staff assignment from the Region would have been more beneficial to this consultation had it occurred sooner and would have been strengthened by parallel assignments across the Tribal Relations and NEPA programs as well. While recognizing consultation was centered at the TNF, the ACHP encouraged more direct

avenues for the TNF to seek support and resources from the Region, including such things as facilitation support for consultation meetings. The need for this support was further emphasized by the complex role Regional and Washington leadership appear to have had in the management of the FEIS schedule (which due to its implications on the timing of the land exchange further complicated and constrained the management of the Section 106 process). The ACHP believes more outwardly visible and transparent communication on the role the FS leadership had in this decision process and the constraints placed on the TNF would have aided the TNF in communicating with consulting parties on its decision process.

Undertaking Recommendations

USDA should work with the Administration and Congress to take immediate steps to amend or repeal the legislation directing the transfer or otherwise prevent it from happening as proposed.

The ACHP was encouraged by the USDA's decision on March 1, 2021, to direct the TNF to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision (ROD) for the project. It is also encouraged by the FS' commitment to consult Indian tribes and other stakeholders further on the effects of this undertaking on, among other resources, historic properties. The ACHP urges the FS to explore directly with the Administration and Congress, and in consultation with other stakeholders, any and all opportunities to amend or repeal the exchange portion of the NDAA. It is evident that legislative action in this situation to stop this exchange would provide the most complete and appropriate protection of Oak Flat and the hundreds of other historic properties that stand to be affected by the transfer and subsequent mining activities.

USDA should use further discussions with Indian tribes and other stakeholders to develop and evaluate alternatives and further modifications to the undertaking that might avoid adverse effects while also pursuing additional steps to modify or prevent the land transfer.

As part of its efforts to conduct additional consultation with Indian tribes and evaluate its required environmental, cultural, and archaeological analyses for the project, the TNF, with the support of FS leadership, should take further steps in discussions with all stakeholders to develop and reevaluate any alternatives or modifications to the undertaking that could avoid or minimize adverse effects to historic properties. Such efforts should include a reassessment of alternative and more sustainable mining techniques in an effort to prevent subsidence at Oak Flat, including, if feasible, those techniques that were previously considered and rejected by the FS and Resolution Copper. Further, USDA should employ all measures at its disposal to incentivize the consideration of such alternatives.

If USDA chooses to proceed with the undertaking as described, the Forest Service should commit to carrying out mitigation measures in the proposed PA, in consultation with the consulting parties.

If USDA decides to proceed with the undertaking as described, the ACHP recommends the FS commit to implementing the terms of the PA, including but not limited to the phased identification process, the historic property treatment plans, and the listed mitigation measures in cooperation with Resolution Copper and the other invited signatories and in consultation with the consulting parties. These terms could be incorporated in to the final ROD and/or as part of other agreements made with Resolution Copper and other signatories. As stated earlier, the NDAA includes independent requirements that the FS must meet (e.g., to address the concerns of Indian tribes and minimize the adverse effects on the affected Indian tribes resulting from mining and related activities) that extend beyond and in addition to the procedural requirements of Section 106. The ACHP encourages USDA to exercise its authority to the fullest extent to fulfill these requirements alongside the proposed measures in the PA. Furthermore, the ACHP recommends the TNF, Resolution Copper, Indian tribes, and other consulting parties continue to consult over the life of the project to continue to evaluate and seek ways that might minimize adverse effects to historic properties as mining progresses both through the utilization of new mining techniques and in response to mine production. Given the FS' renewed commitment to consultation with Indian tribes, the ACHP recommends their efforts occur at a government-to-government level, with senior FS leadership, utilizing the full breadth of the FS' resources to support such consultation.

General Recommendations

The Forest Service should evaluate how the Regional and Washington Offices can provide more timely guidance and support for controversial or challenging Section 106 consultations.

USDA should allocate resources within the FS for identifying and supporting complex Section 106 reviews early in the planning process that, while maintaining the individual Forest Unit's autonomy, could strengthen the agency's ability to carry out the consultation process. This is particularly salient given the frequent pressure placed on the FS Heritage Programs for large scale and complex undertakings. Such resources could include providing project-specific consultation support, including but not limited to additional staffing, facilitation support, and funding for travel to assist consulting party attendance at meetings. The identification of such consultations earlier on and the engagement of Regional and Washington Offices would allow these offices to convey best practices and lessons learned from other similar consultations and even consider detailing more experienced Heritage Staff to assist in certain consultations. The FS should leverage its existing network of heritage professionals to create a mechanism to direct knowledge, support, and resources to individual Forest Units when a controversial or challenging Section 106 consultation is identified.

The Forest Service should work to identify and implement opportunities to better coordinate environmental and historic preservation reviews for large-scale projects.

USDA and the FS should work with stakeholders to evaluate the existing guidance on consultation on mining activities in NFS lands, and to identify internal and Administration-driven improvements that might be pursued, particularly in how the various environmental reviews are managed as a part of this process. This consultation was emblematic of many of the challenges and constraints affecting previous and ongoing consultations regarding mining-related undertakings. The FS should seek perspectives from a broad array of stakeholders, including SHPOs, Tribal Historic Preservation Offices, Indian tribes, industry representatives, and other interested parties. These discussions should aim to assist the FS in developing a more collaborative approach, in keeping with the FS' policy regarding Heritage Management, which seeks to "[f]ully integrate opportunities for preservation, protection, and utilization of cultural resources into land use planning and decisions," by identifying and fostering the implementation of more sustainable mining activities on NFS lands (Forest Service Manual-Chapter 2360 Heritage Program Management).

The Forest Service should pursue initiatives to strengthen early coordination with Indian tribes in this Region regarding proposed mining activities.

USDA should continue to leverage and expand upon the FS initiatives such as the "Tribal Cultural Sensitivity Training" under development in the Southern Region and the annual "To Bridge a Gap" conference that includes participants from the Southern and Eastern Regions. These and other such efforts represent innovative measures to develop and improve relationships with Indian tribes, and through these relationships, work to improve the Section 106 consultation process. The ACHP's previous recommendation to consider establishing an advisory board comprised of representatives from Indian tribes with an interest in the protection of historic properties of religious and cultural significance on FS-managed lands was born out of the benefits the ACHP has seen from Region-wide initiatives by the FS to engage in long-term consultation relationships with Indian tribes. The ACHP recommends the FS leverage the extensive resources available within the Offices of Tribal Relations and Heritage Resources to implement expanded consultation with Indian tribes.

Conclusion

Given the potential magnitude of impacts to highly significant historic properties, the ACHP urges USDA to carefully consider and carry out these recommendations. Section 800.7(c)(4) of the Section 106 regulations requires you, as the head of the agency, to take these comments into account in reaching a final decision on the undertaking. As mentioned above, per Section 110(l) of the NHPA (54 USC §306114), you may not delegate this responsibility. A summary of your decision regarding the undertaking that contains the rationale for the decision and evidence of consideration of the ACHP's comments must be provided to the ACHP before making a final decision on the undertaking and shared with the Section 106 consulting parties and the public.

As the USDA and FS continue to consult on the potential effects of the proposed undertaking, the ACHP may provide additional advisory comments or technical assistance based on its responsibilities pursuant to the NHPA. If, however, the proposed undertaking and the potential effects to historic properties change, TNF should reinitiate the Section 106 review process with all consulting parties including the ACHP, to take into account the potential effects of the modified undertaking.

As the heads of federal agencies, we have a responsibility to exercise leadership in the preservation of the Nation's irreplaceable cultural heritage. In that spirit, I hope you will see these recommendations as a wise path forward.

I look forward to your response.

Sincerely,

RICK GONZALEZ, AIA
Vice Chairman

Statement for the Record
SAN CARLOS APACHE TRIBE
Terry Rambler, Chairman
on H.R. 1844, the Save Oak Flat Act

April 11, 2021

My name is Terry Rambler. I am the Chairman of the San Carlos Apache Tribe ("Tribe"), representing 16,900 tribal citizens. The United States entered into the ratified Apache Treaty of Santa Fe in 1852 to end hostilities. The original San Carlos Apache Reservation boundaries were established by President Grant on November 9, 1871. The current Reservation boundaries span 1.8 million acres. The U.S. Cavalry, through brutal military campaigns, forcibly removed Apache bands to the Reservation in the latter half of the 1800s. The San Carlos Apache people remain deeply connected to our traditions, our ancestral homelands, and the Reservation that we have called home since we were first put here.

On behalf of the San Carlos Apache Tribe, I want to thank Rep. Grijalva and the bill's co-sponsors for introducing H.R. 1884, the Save Oak Flat Act, which would repeal Section 3003 of the National Defense Authorization Act for Fiscal Year 2015 ("FY15 NDAA"). If enacted, the Save Oak Flat Act will restore federal protections to the area, preventing it from disposal or mining. In so doing, the bill will preserve our Apache cultural resources, religious activities, and way of life. H.R. 1884 will also protect our region's water and environment. The Save Oak Flat Act represents a true act of environmental justice and aligns with President Biden's promise to employ an "all-of-government" approach to ensure that environmental justice is a consideration in decision-making across the federal government.

Background and Summary

The Resolution Copper Mine ("Project") will destroy Chi'chil Bildagoteel (Oak Flat), a traditional cultural property ("TCP") listed on the National Register of Historic Places and other cultural resources of the San Carlos Apache Tribe and other tribes. If Oak Flat is transferred and the Project is approved, it will destroy with this sacred place our religion and way of life. My people will no longer be able to access the area for ceremonies, or to pray, or to gather our medicinal plants and traditional foods. As acknowledged in the Trump Administration's rushed Final Environmental Impact Statement ("FEIS"), Chi'chil Bildagoteel (Oak Flat) will cease to exist. In its place will be a 1,000-foot deep by 1.8-mile-wide crater.¹ The Project will also cause severe impacts on the already depleted water resources of the entire region, harm local ground and surface waters, and cause irreparable damage to the environment.

To move forward, the project required the United States to transfer Oak Flat and with it 2,422 acres of federal lands located within the Tonto National Forest ("TNF") to Resolution Copper Mining, a joint venture of foreign-owned mining corporations Rio Tinto (United Kingdom/Australia) and BHP Billiton, Ltd. (Australia). Rio Tinto began lobbying for legislation to accomplish the land transfer in the early 2000s.

¹Final Environmental Impact Statement ("FEIS") for Resolution Copper Project and Land Exchange, p. ES-3 (Rescinded on March 1, 2021).

The legislation, known as the Southeast Arizona Land Exchange, was first introduced in 2005. That bill and more than a dozen similar bills introduced after 2005 drew nationwide opposition from Tribal governments, Tribal organizations, religious groups, local citizen groups, and recreational and environmental groups, and failed to advance in Congress. Tribes nationwide opposed the bill because of the dangerous precedent that it would set by being the first and only Act of Congress that would transfer a known Native sacred place to a foreign-owned mining corporation for that corporation's sole benefit.²

The most recent version of the bill, H.R. 687, was pulled from the House floor twice in the 113th Congress due to lack of support. The Senate companion bill, S. 339, did not have the votes to even move out of the Senate Committee on Energy and Natural Resources.

Despite this lack of support in Congress, the Southeast Arizona Land Exchange Act was attached as a rider (Section 3003) to the FY15 NDAA in December 2014. Rep. Tom Cole and Rep. Betty McCollum championed an amendment in the Rules Committee to strike Section 3003 from the NDAA. However, no amendments were ruled in order and no further debate or consideration could be made. The FY15 NDAA was enacted into law on December 19, 2014.

Section 3003 was written to maximize profit to the foreign-owned mining corporate beneficiary, while limiting public input, and minimizing accountability on the part of the corporate mining beneficiary. The provision mandates that USDA transfer Oak Flat and 2,422 acres of TNF lands to Resolution Copper within 60 days of *publication of a legally compliant Final Environmental Impact Statement*.³ Section 3003(c)(9)(B) expressly states that:

Prior to conveying Federal land under this section, the Secretary shall prepare a single environmental impact statement under the National Environmental Policy Act of 1969 . . . which shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities.

As noted above, the Project includes: the construction and operation of the largest and deepest underground copper mine in North America; and development of a tailings waste dump, a pipeline corridor, and electrical transmission lines that would cross national forest land. The limited analysis that led to the FEIS confirms that the Project will destroy a Traditional Cultural Property listed on the National Register of Historic Places and cause significant adverse impacts on the water and environment in the Forest and throughout the region. Any federal action of this magnitude requires a comprehensive review before moving forward. However, the Trump administration attempted to cut short the analysis and rush the legally required environmental review, publishing the FEIS on January 15, 2021, days before Inauguration Day.

On February 11, 2021, the Advisory Council on Historic Preservation ("ACHP") terminated consultation with TNF pursuant to the National Historic Preservation Act ("NHPA"). ACHP noted that "it is clear that the proposed undertaking would destroy significant historic properties, including the highly significant Oak Flat, and the measures in the PA are not sufficient to adequately resolve those adverse effects. The ACHP believes that further consultation in this case would be unproductive." In terminating the NHPA consultation, ACHP refused to sign the programmatic agreement with TNF, which would have documented the Forest Service's compliance with the NHPA and its implementing regulations.

On February 19, 2021, Chairman Grijalva with 23 Members of Congress sent a letter to then-Acting Secretary of Agriculture Shea, highlighting the significant legal and procedural deficiencies in the FEIS, and urging him to "withdraw the FEIS and

²In addition to the significant concerns raised in this hearing, the entire Project should raise serious strategic foreign policy concerns. Rio Tinto's single largest investor is Chinalco, China's state-owned aluminum producer. Rio Tinto held the controlling stake in the Rössing Uranium Mine in Namibia, partnering with the Iran Foreign Investments Company. In 2018, Rio Tinto sold its stake in Rössing to the state-owned China National Uranium Corporation.

³Section 3003(c)(10).

thoroughly review and address its numerous flaws, including several federal Special Use Permits required for the proposed mine.”⁴

On March 1, 2021, USDA directed the Forest Service to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision (“DROD”). The Department’s stated purpose for rescinding the FEIS is to provide an opportunity for the agency to conduct a more thorough review of the Project’s impacts and ensure the agency’s compliance with federal law.

The Biden Administration’s withdrawal of the FEIS was welcome news. However, the announcement also noted that it will likely require an Act of Congress to stop the Resolution Copper Mine and save the Apache religion, our culture and way of life, and the region’s water supply for future generations. H.R. 1884 would accomplish this goal, and we urge this Committee to approve the bill and advance it to final passage this year.

In addition to advancing H.R. 1884, we urge you to work with and encourage the Biden Administration to address the significant deficiencies in the rescinded FEIS. We encourage the Administration to: (1) fully examine and analyze the significant impacts of the entire Project (including the mine site, associated infrastructure, transportation corridor, and proposed tailings storage facility) on areas of cultural significance and on the region’s water and environment; (2) with the developed record of impacts, conduct meaningful government-to-government consultation with all impacted Tribal governments; and (3) seriously consider alternatives to proposals listed in the rescinded FEIS as well as methods to mitigate the adverse impacts of the Project before consideration of reissuing an FEIS that complies with all federal laws and regulations.

The Known Impacts of the Project Support Passage of H.R. 1884

While the Trump Administration’s rushed review and publication of the FEIS (now rescinded) was legally and procedurally deficient, even the limited information uncovered about the Project’s significant impacts provide ample evidence to support the enactment of H.R. 1884, which would fully repeal Section 3003 and stop the Project.

The FEIS, while flawed and unfinished, confirms many of the significant impacts that the Tribe has warned of for years: the Project will result in the certain destruction of Oak Flat and will adversely impact the water resources throughout the region for generations to come. The impacts of the Project cannot be overstated: (1) Chi’chil Bildagoteel (Oak Flat), a TCP listed on the National Register of Historic Places, burial sites, spiritual areas, cultural landscapes, sacred springs and other water resources, food and medicinal plants, and hunting, fishing, and gathering areas will be forever destroyed;⁵ (2) the water, groundwater, and related resources of the area will impact the region’s water resources for generations to come, even accepting Rio Tinto’s optimistic estimate for water usage at face value—the mine will use 775,000 acre feet of water,⁶ of which approximately 70 percent will be pumped from new extraction wells in the East Salt River Valley; and (3) the Project’s infrastructure will leave its dark footprint on the Tonto National Forest and nearby lands, encompassing 39,272 acres (over 61 square miles), including the 2,422-acre Oak Flat Federal parcel, 1,861-acre subsidence area, 953-acre West Plant Site and Silver King Road realignment, 7 mile transmission line, 685-acre railroad corridor and adjacent components, 553-acre filter and loadout facility, a 9,611 acre tailings waste dump storage facility and certain to be Superfund Site in the future, as well as mitigation areas.⁷

The following pages detail the Project’s destruction unveiled in the deficient and now rescinded FEIS.

Desecration and Destruction of a Native American Religion

The FEIS confirms what we have warned for years. The dangerous precedent set by slipping Section 3003 into the FY15 National Defense Authorization Act, authorizing the transfer of a known Native American sacred place and with it hundreds of traditional cultural resources to a foreign-owned mining corporation will result in certain destruction. As laid out in the FEIS:

⁴Letter from the House Committee on Natural Resources to Acting Secretary of Agriculture Shea (Feb. 19, 2021) (<https://naturalresources.house.gov/imo/media/doc/2021-02-19%20HNRC%20to%20USDA%20re%20Oak%20Flat%20FEIS.pdf>).

⁵FEIS at 824.

⁶FEIS, Appendix H, Table H-3.

⁷FEIS at 821 (Additional indirect and atmospheric areas will require creation of a 6-mile buffer around all project and alternative components of the Project).

The direct impacts on TCPs and special interest areas from construction of the mine and associated facilities constitute an irreversible commitment of resources . . . *Sacred springs would be eradicated* by subsidence or construction of the tailings storage facility, and affected by groundwater drawdown. Changes that permanently affect the ability of tribal members to access TCPs and special interest areas for cultural and religious purposes also *consist of an irreversible loss of resources*. For uses such as gathering traditional materials from areas that would be within the subsidence area or the tailings storage facility, *the project would constitute an irreversible loss of resources*.⁸

The Project will result in a 1,000-foot deep by 1.8-mile-wide crater. This will destroy Chi'chil Bildagoteel (Oak Flat) with no chance of ever restoring the damage. The Apache people will no longer be able to access our holy place. The impacts of the Project go far beyond Oak Flat. The nearly 40,000-acre footprint of the Project will also destroy dozens of sacred springs, and hundreds of other traditional cultural properties, including burial sites, petroglyphs, cultural landscapes, food and medicinal plants, and more.

For hundreds of years, the Oak Flat area, known in Western Apache as Chi'chil Bildagoteel meaning "a broad flat of Emory oak trees", has been a place of cultural and religious significance to our people. Oak Flat is not only a sacred area for the San Carlos Apache Tribe, but as noted by the ethnographic study prepared for TNF, 9 other tribes have traditional ties to the area.⁹ These tribes have cultural resources on and maintain strong cultural ties to this land.

The Tonto National Forest encompasses Oak Flat. Like the vast majority of federal lands, TNF is carved out of the ancestral homelands of Indian tribes. Our historical and spiritual connection to these lands was never extinguished. Instead, our connection, ability to access these federal lands for religious purposes is guaranteed through treaties, federal court decisions, Executive Orders, laws, and regulations.¹⁰

Apaches on the Reservation have ancestors who came from the Oak Flat area before being forced to Old San Carlos. Tribal members' ancestors passed their knowledge to their descendants who are alive today. Our people have lived, prayed, and died in the Oak Flat area for centuries before this mining project was conceived. Oak Flat is a place filled with power—a place where Apaches conduct ceremonies such as Holy Ground and the Sunrise Dance that celebrates a young woman's coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. Oak Flat is the *goiii'* (home) of our *diyi'n* (sacred power), visited by our ga'an (spiritual beings) who provide us with healing and spiritual services. Oak Flat is the foundation of our religious beliefs.

Tonto National Forest officials have been aware that Oak Flat encompasses a place of cultural and spiritual importance to the San Carlos Apache Tribe and other tribes for many years. In January 2012, the TNF began the formal consultation process with tribes regarding the nomination of Chi'chil Bildagoteel to the National Register of Historic Places. This exhaustive process included archival research, interviews with Apache elders, and fieldwork to identify cultural sites. By July 2014, the TNF sent a draft nomination to the Arizona State Historical Preservation Office for comment and followed up with others seeking comment. In December 2015, TNF formally submitted the nomination to the National Park Service.

Recognizing its historical and cultural importance, and after over four years of documenting the cultural importance of Oak Flat and going through the proper federal agency process, on March 4, 2016, the National Park Service listed Chi'chil Bildagoteel/Oak Flat on the National Register as a historic district and Traditional Cultural Property, emphasizing its association with Apache oral history and as a venue for ongoing Apache participation in traditional social activities.

⁸ FEIS at 856.

⁹ Ethnographic and Ethnohistoric Study of the Superior Area, Arizona, Hopkins, Colwell, Ferguson, and Hedquist, p. iii.

¹⁰ Federal laws acknowledge legal rights of Native Americans to access to federal lands of religious significance. E.O. 13007, Indian Sacred Sites, requires federal agencies to provide access to and ceremonial use of Indian sacred sites by religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. The American Indian Religious Freedom Act (AIRFA), the Archaeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Religious Freedom Restoration Act (RFRA), and the National Historic Preservation Act (NHPA) all seek to protect Native sacred places located on federal lands.

The Advisory Council on Historic Preservation, in its NHPA Section 106 comments to Secretary Vilsack, confirmed these facts.¹¹ The ACHP found that:

Chi'chil Bildagoteel (Oak Flat) is a historic property of profound importance to multiple Indian tribes and plays a significant role in their religious and cultural traditions . . . The historic significance of Oak Flat cannot be overstated, and neither can the enormity of the adverse effects that would result to this property from the undertaking. Oak Flat would be directly and permanently damaged with a substantial portion of the property being destroyed through subsidence. In addition, hundreds of other historic properties would be destroyed or otherwise adversely affected by the undertaking.

To address concerns posed by the Project, ACHP urged “the Forest Service to explore directly with the Administration and Congress, and in consultation with other stakeholders, any and all opportunities to amend or repeal the exchange portion of the NDAA.”

We are in full agreement with ACHP. The very opportunity to save our religion, culture, and way of life is through passage of H.R. 1884.

Devastating Impacts on the Region's Water Resources

In addition to the certain destruction of our holy place, Chi'chil Bildagoteel, our sacred springs, burial sites, petroglyphs, and cultural landscapes, the flawed FEIS confirms that our desert region cannot afford the Project's massive water demands. Simply put, Arizona does not have enough water to accommodate the demands of the Project. These findings further support the passage of H.R. 1884.

Prior to passage of the land exchange, Resolution Copper and other supporters of the mine insisted that there would be no impact on water supplies or water quality. In 2011, Resolution Copper President John Cherry testified, “Resolution Copper has already spent more than \$33 million to date studying the hydrogeology in and around the mine project, and has drilled more than 30 holes in the area to assess the water resources. These activities so far show little if any impact to local water quantity or quality from the new operations . . .”¹² Although it underestimates the impacts on water resources, the FEIS confirms that this could not be any further from the truth. In fact, there will be substantial impacts to water quantity and quality for the entire region for generations to come.

Since 2009, Resolution Copper has engaged in mine dewatering activities on their land near Oak Flat that has caused groundwater levels below Oak Flat to drop over 2,000 feet, and near Superior, water levels to decline roughly 20 to 90 feet.¹³ This is even before the land exchange and actual mining project begins.

The FEIS concludes that the Project will harm or destroy the region's natural waters, streams, springs, seeps and other water features in Oak Flat: “Dewatering or direct disturbance would impact between 18 and 20 groundwater dependent ecosystems (GDEs), mostly sacred springs. While mitigation would replace water, impacts would remain to the natural setting of these places.”¹⁴

In addition, even under Resolution Copper's optimistic estimate (fully accepted by TNF), the mine will use 775,000-acre feet of water.¹⁵ The majority of the water (70 percent) will need to be pumped from a large network of new extraction wells in the East Salt River Valley where tens of thousands of people already rely on groundwater for their water supply. I refer the Committee to the testimony of James T. Wells for a full detailed examination of the Project's water demands on the East Salt River Valley, the irreversible loss of aquifer capacity, and resulting impacts the citizens of Phoenix, Scottsdale, Tempe, Mesa, Gilbert, Chandler, Apache Junction and other towns.

The Arizona State Land Department (ASLD) shared its concerns regarding the Project's water demands and impacts on the East Salt River Valley. ASLD, in a letter to TNF dated November 7, 2019, warned that the Resolution Copper's heavy groundwater pumping, ranging from 180,000 acre-feet to 600,000 acre-feet over the life of the mine, will result “in the loss of the development of at least 3,440 acres of State Trust land” in the Superstition Vistas Planning Area. Nearby State Trust land was recently auctioned to a developer for \$156,000 an acre. ASLD concluded that Resolution's “negative impact of the proposed ground water consumption

¹¹ See ACHP letter to USDA Secretary Vilsack (March 29, 2021) (<https://www.achp.gov/sites/default/files/2021-03/VilsackResolutionCopperLTR20210329.pdf>).

¹² House Committee on Natural Resources Hearing, 112–40, p. 47.

¹³ Draft Environmental Impact Statement (DEIS), at 312.

¹⁴ FEIS at 156.

¹⁵ FEIS, Appendix H, Table H-3.

sourced from Superstition Vistas Planning Area far outweighs the estimated financial benefits to the Trust resulting from other aspects of the project *by a factor of 20:1*,” with a “minimum potential loss to the Trust of at least \$536,640,000 in revenue.”¹⁶

An acre-foot of water equals roughly 325,851 gallons. Under even the most conservative estimates, the mine would consume at least 256 billion gallons of water—enough water for up to 168,000 homes over 40 years. Resolution Copper admits that at least 550,000-acre feet of water coming from East Salt River Valley groundwater will be required to slurry toxic waste through over 20 miles of pipelines to Skunk Camp, the area Resolution Copper seeks to dump 1.37 billion tons of toxic waste across 2,300–5,900 acres that will be higher than the 40-story Chase Tower, the tallest building in Arizona. This groundwater pumping will result in water levels being drawn down 199 feet in some areas, which, in turn, could cause the land to subside by as much as 52 inches and impact the Central Arizona Project canal, municipal infrastructure, and agricultural infrastructure.

Of equal importance to the San Carlos Apache Tribe is the devastating impacts that the ill-conceived Resolution Copper Mine project will have on the region and state’s surface and groundwater. The demands of the Project will deplete, destroy and poison substantial, limited and precious surface and groundwater resources for the region.

Based on ASDL’s stark assessment, it is clear the Resolution Copper project would seriously and negatively impact State Trust land and therefore its beneficiaries, including K-12 public schools and Arizona’s three state universities.

Again, even the cursory review of the Project’s water demands included in the rescinded FEIS support the expeditious passage of H.R. 1884.

American Copper is Destined for China

Throughout its consistent shell game, Resolution Copper has repeatedly claimed that this Project will supply up to 25 percent of United States’ domestic copper demands.

First, the United States is not facing a shortage of domestically produced copper concentrate. In fact, in 2019, the U.S. was the fifth largest exporting nation in the world shipping \$2.3 billion of copper ore abroad. More to the point, the copper that would be produced from this project will never move through the doors of U.S. manufacturers. Instead, Resolution’s copper concentrate production is most likely bound for export markets as the United States has only three operating copper smelters.

Resolution Copper has never publicly stated where its copper concentrate will be refined. Arizona’s two smelters are owned and operated by competitors including Freeport-MacMoRan’s Miami smelter and Grupo Mexico’s Hayden smelter. Rio Tinto operates the third U.S. smelter in Garfield, UT, where it processes concentrate from the Bingham Mine and appears to have limited excess capacity.

More likely, Resolution’s copper concentrate is bound for China, which is by far the world’s largest importer of copper ore. As noted above, Rio Tinto’s single largest investor is the government of China through Chinalco Mining Corporation International. This one fact makes the entire Project a strategic foreign policy concern, one that must be approached with caution and revisited.

Resolution Copper fought against any amendments to the Southeast Arizona Land Exchange that would have required the company to keep any copper produced from the Project in the United States. During House floor debate on the Land Exchange, Chairman Grijalva pointed out that “Rio Tinto has a long-established partnership to supply copper to China—they repeatedly stated—and at a hearing refused to say what percentage of the copper generated from Federal lands would be retained and processed in the United States.”¹⁷ At the close of this debate on H.R. 687, the bill was pulled from the House floor by the Republican majority because it lacked the votes for passage.

The Administration Must Cure the Legally Deficient FEIS

As noted above, Tribal governments nationwide applaud the USDA’s March 1, 2021 decision to rescind the FEIS and DROD to provide an opportunity for the agency to conduct a more thorough review of the Project’s impacts and ensure the agency’s compliance with federal law.

However, the next steps taken by the Administration are equally critical. The Biden Administration must correct the significant legal and procedural deficiencies in the rescinded FEIS. This should require re-development of a Draft EIS that

¹⁶ Arizona State Land Department, November 7, 2019 Letter to Neil Bosworth, Tonto National Forest. (Reproduced on p. R-43 of FEIS).

¹⁷ Congressional Record, H5853 (September 26, 2013).

provides a fully informed record. With an informed record, the Administration must then conduct full and meaningful government-to-government consultation with all interested Tribal governments, utilizing these consultations and related discussions to develop and evaluate alternatives and modifications for the Project to avoid and mitigate adverse impacts.

While the FEIS confirmed much of the destruction that the Tribe warned about for years, the FEIS understates certain impacts, and completely fails to consider reasonable alternatives to mitigate the certain damage on tribal cultural resources, the region's water, and the environment. In some cases, the FEIS makes assumptions about baseline models that skew the results, and in other cases, the models themselves are not accurate enough to be used to fully understand all of the impacts. In sum, these deficiencies prevent a full understanding of the environmental impacts of the Project.

The most glaring omission in the FEIS involves its failure to fully examine the adverse impacts of the Project's water demands. The FEIS estimates that the total quantity of external water needed for the life of the mine is 590,000-acre feet.¹⁸ The Forest Service notes this water use amount is in addition to the approximate 87,000 acre feet of water that will be dewatered to serve the Project's tunnels, shafts, and underground infrastructure.¹⁹ In fact, Resolution Copper's GPO shows that the total water usage over the life of the Mine will be closer to 786,626 acre feet. The Administration must address this discrepancy in future examinations as it works to cure the deficiencies in the rescinded FEIS.

I again refer the Committee to the testimony of James T. Wells for a more detailed description of the failures of the FEIS to adequately evaluate the geotechnical suitability and water quality impacts of Skunk Camp, the preferred Tailings Storage Facility (TSF) site, as well as the flawed models used to determine the cumulative effects of Resolution's pumping and other known demands in the East Salt River Valley.

Another glaring oversight on the water demands is the FEIS' failure to determine the source of the water needed for the Project. The Forest Service states that "the entire amount of makeup water needed for the mine was assumed to be physically pumped from the Desert Wellfield."²⁰ However, the FEIS fails to determine how and where all this mitigation water will come from. The FEIS instead relies on future Arizona state water permitting processes. As a result, the FEIS fails to analyze the physical availability of Arizona's water resources on a local, regional, or state-wide basis that will be consumed for the Project.

Instead, the rescinded FEIS admits that the actual water use by the Project would be determined by the Arizona Department of Water Resources at some time in the future, long after the Section 3003 environmental review has been completed. This includes a determination of the "unavoidable impacts" and related mitigation measures associated with the massive dewatering of the East Salt River valley stemming from Resolution Copper's Desert Wellfield.²¹ This is unacceptable. The Biden Administration must work to fully determine the extent of these "unavoidable impacts", analyze them, and subject the findings to full public review before it considers revisiting a Section 3003 FEIS.

A determination of all sources of water, including the availability of the water supply, as well as the location, rate of pumping, and the governing legal authorities must be examined, and be subject to public review and input before inclusion in any future FEIS.

Finally, the Forest Service has failed to include any information or opportunity to comment on the appraisals required pursuant to Section 3003. Despite repeated requests from the public and stakeholders to provide this mandatory public review of the appraisals, the prior Administration refused to provide any meaningful information on the appraisals to the public before it published the now rescinded FEIS.

Section 3003 includes a unique appraisal requirement designed to maximize profits for the foreign-owned mining corporations that will benefit from the Project. In floor debate on the Southeast Arizona Land Exchange, Rep. Peter DeFazio, highlighted the "bizarre . . . payment scheme, which would be controlled entirely by the company using proprietary information." He noted that the provision, later included as Section 3003, will "trade away a multi-billion asset for a few thousand acres of recreation land."²²

¹⁸ FEIS at ES-25.

¹⁹ FEIS at 405.

²⁰ FEIS at 969.

²¹ FEIS at 422.

²² Congressional Record, H5851 (September 26, 2013).

Before reconsideration of the required environmental review pursuant to Section 3003, the Biden Administration must put forth the mandatory public review of the appraisals also required under this dangerous provision.

Conclusion

For centuries, Oak Flat, Chi'chil Bildagoteel, has been a sacred place for Apaches and other tribes. It is a place of power, a holy place where we practice our religion, gather our medicinal plants and Emory oak acorns. The United States recognized the spiritual importance of Oak Flat, listing the area as a traditional cultural property on the National Register of Historic Places. The RCM project will destroy Chi'chil Bildagoteel. There is no mitigation that can be done, no replacing Chi'chil Bildagoteel once it is gone. We cannot build it somewhere else.

I testified several times before Congress in opposition to the Land Exchange/Project. The objections raised prior to adding Section 3003 as a last-minute rider to the FY15 NDAA ring as true today as they did then. Resolution Copper/Rio Tinto crafted Section 3003 (the Southeast Arizona Land Exchange) to mandate the land transfer regardless of the findings of the environmental analysis, knowing that the level of destruction and environmental damage that will result from the Project would disqualify it from gaining approval under any other process. The result is a special interest give-away of unprecedented proportions to a foreign owned entity with no attachment to our nation. Simply put, the American public cannot afford this deal.

To stop the certain destruction of Chi'chil Bildagoteel (Oak Flat), our religion, and way of life, we respectfully urge the Committee to advance H.R. 1884. In addition, we ask that you work with the Biden Administration to ensure that the many legal and procedural deficiencies in the rescinded Section 3003 FEIS are cured, and with a fully informed record that the Administration engage in full and meaningful government-to-government consultation with all impacted Tribal governments. Too much is at stake to advance the Project without fully understanding its impacts.

THE NAVAJO NATION
WINDOW ROCK, AZ

April 12, 2021

Hon. Teresa Leger Fernández, Chair
U.S. House of Representatives
Subcommittee for Indigenous Peoples of the United States
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1884 the Save Oak Flat Act

Dear Chairwoman Fernandez:

First and foremost, we thank you for your support and sponsorship of H.R. 1884—the Save Oak Flat Act. As this bill is considered by the Subcommittee for Indigenous Peoples of the United States, we respectfully request the support of the Subcommittee for the long-term protection of Oak Flat.

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 American people have set foot at Oak Flat to conduct ceremonies, to offer prayers, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing.

Tribal leaders and allies have been working for over 18 years to protect the Oak Flat area from foreign mining conglomerates—Rio Tinto and BHP Billiton—who, through their joint venture Resolution Copper Mining, LLC, seek to develop the largest and deepest copper mine in North America. As part of a closed-door deal during the last days of a lame-duck Congress in December 2014, 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 the sacred Oak Flat area, 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.

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 Jan. 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 February 11, the Advisory Council on Historic Preservation (ACHP) declined to sign the Programmatic Agreement under the National Historic Preservation Act (NHPA) Section 106 process preventing its execution, stating “[i]t is clear that the proposed undertaking would destroy significant historic properties, including the highly significant Oak Flat, and the measures in the PA are not sufficient to adequately resolve those adverse effects.”

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 to these important resources and ensure the agency’s compliance with federal law.” Importantly, USDA noted that because the land exchange was directed under the FY15 NDAA that “long term protection of the site will likely require an act of Congress.”

Although flawed, the withdrawn FEIS acknowledged that Resolution Copper’s proposed mining activities 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 also cause irreversible destruction to thousands of acres of public lands and contaminate already scarce water sources. The block-cave mining technique will create a 1.8-mile-wide crater (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 potentially 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 will be taller than the Washington Monument and potentially span over 15,000 acres.

The Save Oak Flat Act will repeal Section 3003 and withdraw the Oak Flat area from mining laws to permanently protect this sacred area. We respectfully request that you co-sponsor the Save Oak Flat Act. Protecting tribal sacred areas and cultural resources is essential to upholding the federal trust responsibility.

We appreciate your consideration of H.R. 1884. We stand with the San Carlos Apache Tribe and many others who support the long-term protection of Oak Flat. Should you require additional information or need to contact our office, please reach out to Santee Lewis, Executive Director, Navajo Nation Washington Office, slewis@nnwo.org or (202) 981-4331. Thank you.

Respectfully,

Jonathan Nez,
President

Myron Lizer,
Vice President

Ms. LEGER FERNÁNDEZ. I want to begin with this concern about water. And, Dr. Wells, your testimony about a 450-foot drop in the water table is quite alarming. As somebody who once had a domestic well and helped others build wells for their smaller communities, this is quite alarming.

So, I would like to ask you about the Trump administration’s rush to complete the FEIS and publish it just 5 days before the end of their administration. Now, the Biden administration rescinded the FEIS, but can you explain some of the most significant deficiencies of the FEIS as it relates to water resources?

Dr. WELLS. Yes, Chairwoman. Thank you for that question.

I believe that the biggest deficiency in the EIS process with respect to water resources was taking a hard look, as NEPA requires, of the cumulative impacts on groundwater resources in Arizona, and in particular, the East Salt River Valley.

Another thing I will point out is that after the draft EIS was published, there were major new studies that were completed and incorporated into the final EIS without public input, and the opportunity for public comment, and that included some really fundamental things, like water quality impacts at Skunk Camp, which is where the tailings dump would be, and none of this was subject to public review and comment because the final was rushed to publication.

Ms. LEGER FERNÁNDEZ. Thank you.

And, Mayor Besich, I share so many of your concerns about creating economic opportunities in our rural communities. I think that is basically a big job and task of us as public servants. But I am also concerned about the way in which the proposed mine may hinder other economic opportunities. I would like, and I will be pursuing, I can assure you, the need to invest in those communities like yours, which may have relied on mining, or fossil fuels in the past, and the importance of creating the infrastructure that we need, rather than, perhaps, depending on foreign companies to help keep our kids in school, I will pursue making sure that we have adequate funding for education, which is what we are trying to do with the new infrastructure bill.

Dr. Wells, though, I want to ask you a quick question about your testimony, about there was acid rock drainage. What is acid rock drainage? And how might that impact recreational opportunities in an area?

Dr. WELLS. I have an hour-long lecture on that.

Ms. LEGER FERNÁNDEZ. You know what, I only have 20 seconds left.

Dr. WELLS. OK.

Ms. LEGER FERNÁNDEZ. Maybe you can cite your lecture.

Dr. WELLS. Mining waste includes sulfide minerals, like pyrite. When that is exposed to air and water, it oxidizes, it rusts, it releases sulfuric acid. That, in turn, leeches toxic metals out of the rock, and that gets into our surface and groundwater, and it is really about the most significant environmental impact worldwide from mining.

Ms. LEGER FERNÁNDEZ. Thank you very much for completing that so quickly.

In that case, the Chair will—I understood that Congressman Westerman had, indeed, joined us.

Mr. WESTERMAN. Madam Chair, I am sorry, I didn't hear you. I think your microphone muted earlier, so I didn't hear you call on me. Sorry about that.

Ms. LEGER FERNÁNDEZ. Well, it is nice to have you with us. The Chair now recognizes you, Congressman Westerman.

Mr. WESTERMAN. Thank you, Madam Chair.

I have been hearing a lot of talk about a rushed process, but looking at the data, this process has taken 20 years, with 130,000 submitted comments, 35,000 submitted comments from the draft

EIS, and there are only 13 objections during the period for the final EIS, and only one was from an Indian tribe, which was the San Carlos Apache Tribe.

Mayor Besich, do you think it is necessary for the Forest Service to throw away 20 years' of work, and a nearly 3,000-page environmental impact statement and, quote, "start over" as some other witnesses are calling for?

Ms. BESICH. No, it is not necessary. Their work has been adequate and complete, and it would be devastating for Superior and the surrounding area for this process to start over.

Mr. WESTERMAN. Thank you, Mayor.

Dr. Wells, you testified extensively to the impacts on water from this mine. If the EIS discloses that adequate groundwater exists for committed regional demands, including Resolution Copper's needs over the next 100 years, further Resolution Copper has proactively stored more than 50 percent of predicted water needs from renewable sources, the EIS impact statement discloses the effects of withdrawing those renewable sources and additional water needs along with current and future water users. This was based on assessments by third-party water experts, with input from Federal and State agencies.

Can you explain why your view is so vastly different from so many water experts and Federal and State agencies?

Dr. WELLS. Thank you for that question, Congressman.

I served on the Tonto National Forest Groundwater Working Group for the draft and final EIS, and I can tell you that there are a number of hydrology experts that express the same concerns that I have. There is not enough water in the East Salt River Valley for all of the competing uses.

With regard to the groundwater that Resolution has banked—and that is correct, they have banked a lot of water from the Central Arizona Project—through kind of a fluke of Arizona law, it is not even stored in the same place where Resolution will be pumping their water from. So, in that area where Resolution will be pumping from—it is an area called the Desert Wellfield—there will be quite substantial impacts due to that pumping.

Mr. WESTERMAN. Thank you, sir.

And, Madam Chair, I can't see the timer, but I will go into the next questions here, and just cut me off if I go past.

Resolution Copper is in the Copper Triangle, where there are many operations between the proposed site and the San Carlos Apache Reservation. I understand there are at least 11 tribes that have taken part in the consultation process. The majority of them are actively participating in the NEPA process in consultation with the U.S. Forest Service.

Ms. Sharp, what is San Carlos' position more broadly with active mining? I understand that there is active mining immediately adjacent to the reservation, that water from the reservation is provided for use in those operations.

Ms. SHARP. Yes. Thank you for the question, Congressman.

I can't speak directly to their position on other mining interests, but I can speak in general to the San Carlos Apache position, with respect to tribal consultation and the ability for them to voice their concerns, raise issues in a consultation process, and I think what

we are witnessing and what you described as the 20 years of well-documented work, that is, again, a direct result of the failure to consult at the front end, and we are paying for the price.

So, it is necessary to re-engage and honor the relationship that the United States has with the Tribal Nations going forward if we are going to continue to work through this issue in a way that ensures the trust responsibility is upheld.

Mr. WESTERMAN. And my understanding is that the Apache Leap, which is of religious significance, an additional acreage was given a special management area designation, will these areas be affected by the subsidence that may occur over the life of the project?

Ms. SHARP. Just from my personal perspective, and what I recall from when the original legislation was passed in the NDAA, I recall a press release that a company did, and it assured the San Carlos Apache people they would be able to exercise their religion and their spiritual health and well-being in these places, but what caught my attention was there was a provision that said so long as it is safe.

So, that told me that in 2015, there was an idea that at some point in the future, it was not going to be safe for the San Carlos Apache people, and it was a springing expectation at some point in the future.

So, I would say that if there isn't an entire ability for religious freedom, it is not religious freedom.

Ms. LEGER FERNÁNDEZ. Thank you very much, President Sharp.

And, yes, we have gone over about a minute, so we will now move, and the Chair will recognize Congressman Stauber if he is here. Congressman Stauber.

Mr. STAUBER. Thank you very much, Madam Chair.

I would just like to make a few comments. I would like to make a comment about the bill history itself regarding the Oak Flat Land Exchange. The Southeast Arizona Land Exchange and Conservation Act was debated for nearly a decade in Congress before it was enacted. The exchange was part of a 56-bill bipartisan compromise package that was included in the Fiscal Year 2015 NDAA and not a lone midnight rider that some allege.

And thank you, Chairman Grijalva and Ranking Member Young, for allowing me to join today to discuss a mining project seeking to extract the critical minerals needed for renewable energy, national security, and everyday life. It undergoes a rigorous review process for decades, receives hundreds of thousands of comments, makes adjustments, puts a plan together, and moves forward. The company signs a project labor agreement with the local building trades union committing to high-wage union labor.

Democrats then take the presidency and Congress, ignore pledges made to domestically sourced critical minerals and hire union labor, and then attempt to undermine workers and local officials to appease activist groups with armies of lawyers and deep pockets.

No, I am not talking about mining in my great state of northern Minnesota. Today, we are talking about Resolution Copper.

Mayor Besich, the iron range mayors in my district in northern Minnesota want mining in northern Minnesota because they are

proud of their resources and they want the investment in their communities and schools just like you. Could you discuss what it means to have 1,500 direct jobs in a small town like yours that have high-quality, family sustaining wages?

Ms. BESICH. Representative, thank you very much for your question. And I applaud the efforts of your iron range mayors in Minnesota. I have actually followed some of the techniques that they have used to ensure that the extraction industry funds important and critical things like infrastructure, education, and economic development, because I think we all understand that we are proud of our extraction-based industry, but we also know we have to diversify.

Having these types of jobs in our community will give us a new opportunity to sustain our community for additional generations. As I stated in my testimony, my children are the fifth generation of our family. They have the opportunity to grow up here and consider mining as the opportunity, or to be entrepreneurs or support other tech-based jobs that we are trying to attract here in our community, because we are thinking outside of the box and oftentimes, following our predecessors in northern states that are making policies that are good for mining communities.

Thank you.

Mr. STAUBER. Thank you for your comments, Mayor.

So, to close, I would like to share two quotes: First, from the Boilermakers Local 627, President Jacob Evenson, about the Biden administration's FEIS reversal. "The USDA's decision means our members, most of which are Navajo and Apache tribal members, will continue to hope and wait for the day when they can clothe their families, feed their parents, and put shoes on little feet."

And then the second from the Arizona Building and Construction Trades Council, President Aaron Butler, regarding the companion bill to H.R. 1884. Quote, "On behalf of Arizona's workers and families, I ask that you not support Senate 915, a shortsighted bill that will do long-term harm to Arizona's skilled workforce and economy."

So, in closing, I would like to enter the following letters into the record: The first is the commitment made by Resolution Copper to the community in the EIS, and also, the consultation record in the EIS for Resolution Copper, which is close to 70 pages.

And union support letters, support letters from the Arizona Building & Construction Trades Council, UA Local 469 Plumbers and Pipefitters Union; United Steelworkers Union; and Boilermakers Local 627.

And tribal support letters thanking the Forest Service for the consultation process; San Carlos Apache Tribal Member Cody Elgo; Jerome Kasey, the Vice Chairman of the White Mountain Apache Tribe; and John Huey, Chairman of the Yavapai-Apache Nation.

And local business and stakeholder support letters: Arizona Chamber of Commerce; Greater Phoenix Economic Council; Greater Phoenix Leadership; Valley Partnership; Superior County Chamber of Commerce; Copper Corridor Economic Development Coalition; Southern Arizona Business Coalition; Laura Skaer; Women's Mining Coalition; Oddonetto Construction, Queen Creek Coalition, and Resolution Copper.

And, then, the state and local support letters: Governor Ducey of Arizona; State Senator Shope of Arizona, District 8; Pinal County District Leaders; Gila County District Leaders; Towns of Superior, Kearny, Miami, Winkleman, and Hayden; City of Apache Junction; Greater Phoenix Leadership, Eastern Arizona Counties Organization; and the Community Working Group.

Madam Chair, I request unanimous consent to have these in the record.

And to Mayor Besich, I will just tell you, stay in the fight. We need these critical minerals. They are a part of our strategic national security, and we are blessed to have these minerals in our earth in this great country.

Madam Chair, I yield back.

Ms. LEGER FERNÁNDEZ. Yes. Without objection, so ordered.

[The information follows:]

STATE OF ARIZONA
OFFICE OF THE GOVERNOR

March 16, 2021

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Vilsack:

I was very disappointed by the Department of Agriculture's (Department) actions on March 1st to direct the U.S. Forest Service (USFS) to reverse completed federal actions for the Resolution Copper Mine and Land Exchange Project.

Resolution Copper is a vital project for economic development that will also ensure a reliable supply of copper and other critical minerals for the nation. The project is estimated to be able to supply up to 1 billion pounds of copper annually, which represents 25% of the U.S. domestic demands. The Draft Environmental Impact Statement (EIS) prepared by the U.S. Forest Service (USFS) estimates that the total direct and indirect economic impacts to the State of Arizona will total \$1 billion per year.

Arizona state agencies have been closely involved in the lengthy and thorough process that produced the Final Environmental Impact Statement (FEIS) and Draft Record of Decision. I have high confidence in the process and the resulting documents. The unprecedented retroactive step of rescinding a FEIS is very troubling and has implications beyond this single project. The vast amount of Federal land in Arizona means that federal actions, such as the completion of an EIS, are a fact of life for many large and important projects in our state. Discretionary retroactive decisions such as this one will cast a shadow on any large infrastructure project in the state and create uncertainty for these projects. Such actions cannot continue.

I respectfully request an opportunity to discuss with you the timeline for the Department to get the project back on track, as well as how the Department will treat other existing permits and projects in Arizona. Thank you for your consideration.

Sincerely,

DOUGLAS A. DUCEY,
Governor

ARIZONA STATE BUILDING & CONSTRUCTION TRADES COUNCIL
PHOENIX, ARIZONA

March 31, 2021

Hon. Senator Mark Kelly
United States Senate
Dirksen Senate Office Building, Suite B40B
Washington, DC 20510

Re: Request to Withhold/Abstain Support—Senate Bill 915

Dear Senator Kelly:

As the President of the Arizona State Building and Construction Trades Council (AZBTC), I represent thousands of professional craftspeople who are members of our 15 building trade-affiliated unions. I write to you today to respectfully request that you make Arizona's workers and their families a priority and withhold support for Senate Bill 915, reintroduced by Sen. Bernie Sanders on March 23, 2021, and not co-sponsor this detrimental bill.

Senate Bill 915 repeals section 3003 of the National Defense Authorization Act for Fiscal Year 2015, effectively reversing the land exchange agreement between the federal government and Resolution Copper Mining, LLC. This would shut down the proposed Resolution Copper Mine project near Superior, denying thousands of Arizonans high-paying, quality jobs and suppressing millions of dollars in much-needed economic investment in our region's economy.

Passage of SB 915 would be a huge step backward in our country's efforts to implement progressive energy policies and mitigate the impact of climate change. Arizona workers support the Biden Administration's Build Back Better initiatives and the "Buy Clean, Buy American" sentiment that goes with it. Copper mining and production are essential to manufacturing of electronics and medical equipment, as well as the implementation of green technologies and proposed clean energy projects. Our country's future depends on copper, and Arizona, with its rich copper deposits, is poised to play its role to create a cleaner future for our children and grandchildren. Arizona's union workers are trained and ready to be part of these green solutions.

Arizona's workers deserve quality jobs that provide livable wages and benefits, and SB 915 would take jobs away from the hardworking union members of our state. AZBTC and Resolution Copper Mines have signed a Memorandum of Understanding that ensures that union labor will be used during the construction, operation and shut-down phases of the mine over the next 50 years. A properly trained and experienced workforce is critical to economic growth, and by partnering with AZBTC, Resolution Copper Mining is demonstrating its commitment to generations of Arizona's highly skilled workers. The mine will create more quality jobs for residents of the Copper Triangle, including those with tribal affiliations and armed services veterans. Resolution Copper Mine will employ nearly 5,000 tradespersons during its 10-year construction and ramp-up phases. Once completed, the mine will employ 1,500 during its projected 40 years of operation, paying an estimated \$134 million in wages and benefits each year. Many of these jobs will be staffed by union members who have highly specialized training and experience that prioritizes safety, efficiency and quality craftsmanship.

Senate Bill 915 ignores the will of workers whose skills and expertise will be vital to the construction and operation of the mine. Resolution Copper Mining has actively engaged the public in every step of this seven-year planning and permitting process, which started under the Obama administration and garnered bipartisan support including that of late Senator John McCain. Because of public input, this project includes protections for tribal sacred sites and sensitive ecosystems to ensure that the land and its history are preserved for generations to revere and enjoy. The building trades community, which includes members who live in Southeastern Arizona and have tribal affiliations, have added their voices in support of this project because they know that it will provide opportunities for generations of workers, and enable them to stay close to their families and communities. The mine will create an additional 2,200 indirect and induced jobs in the surrounding communities, which will benefit the workers' families and tribes in the area. These investments will revitalize small towns, boost the tax base to support schools and infrastructure, and grow the local economy to lift up the middle class.

On behalf of Arizona's workers and their families, I ask that you not support SB 915, a short-sighted bill that will do long-term harm to Arizona's skilled workforce and economy.

Sincerely,

AARON BUTLER,
President

ARIZONA STATE BUILDING & CONSTRUCTION TRADES COUNCIL
PHOENIX, ARIZONA

April 2, 2021

Secretary Tom Vilsack
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Re: Request to Complete and Publish the EIS for Resolution Copper Mining in Arizona

Dear Secretary Vilsack:

As the President of the Arizona State Building and Construction Trades Council (AZBTC), I represent thousands of professional craftspeople who are members of our 15 building trade-affiliated unions. I write to you today to respectfully request that the USDA and the USFS complete and publish the Environmental Impact Statement for the land exchange for the Resolution Copper Project in Arizona.

Delaying the land exchange for the Resolution Copper Mine project near Superior denies thousands of Arizonans high-paying, quality jobs and suppresses millions of dollars in much-needed economic investment in our region's economy.

The Resolution Copper Mine is a big step forward in our country's efforts to implement progressive energy policies and mitigate the impact of climate change. Arizona workers support the Biden Administration's Build Back Better initiatives and the "Buy Clean, Buy American" sentiment that goes with it. Copper mining and production are essential to manufacturing of electronics and medical equipment, as well as the implementation of green technologies and proposed clean energy projects. Our country's future depends on copper, and Arizona, with its rich copper deposits, is poised to play its role to create a cleaner future for our children and grandchildren. Arizona's union workers are trained and ready to be part of these green solutions.

Arizona's workers deserve quality jobs that provide livable wages and benefits, and delaying or denying the land exchange would take jobs away from the hard-working union members of our state. AZBTC and Resolution Copper Mines have signed a Memorandum of Understanding that ensures that union labor will be used during the construction, operation and shut-down phases of the mine over the next 50 years. A properly trained and experienced workforce is critical to economic growth, and by partnering with AZBTC, Resolution Copper Mining is demonstrating its commitment to generations of Arizona's highly skilled workers. The mine will create more quality jobs for residents of the Copper Triangle, including those with tribal affiliations and armed services veterans. Resolution Copper Mine will employ nearly 5,000 tradespersons during its 10-year construction and ramp-up phases. Once completed, the mine will employ 1,500 during its projected 40 years of operation, paying an estimated \$134 million in wages and benefits each year. Many of these jobs will be staffed by union members who have highly specialized training and experience that prioritizes safety, efficiency and quality craftsmanship.

Resolution Copper Mining has actively engaged the public in every step of this seven-year planning and permitting process, which started under the Obama administration and garnered bipartisan support including that of late Senator John McCain. Because of public input, this project includes protections for tribal sacred sites and sensitive ecosystems to ensure that the land and its history are preserved for generations to revere and enjoy. The building trades community, which includes members who live in Southeastern Arizona and have tribal affiliations, have added their voices in support of this project because they know that it will provide opportunities for generations of workers, and enable them to stay close to their families and communities. The mine will create an additional 2,200 indirect and induced jobs in the surrounding communities, which will benefit the workers' families and tribes

in the area. These investments will revitalize small towns, boost the tax base to support schools and infrastructure, and grow the local economy to lift up the middle class.

I am proud to be the voice of Arizona's workers and their families, especially on a matter that is so very important to the future of Arizona's workforce and economy. I would like to request a meeting with you and your staff to further discuss the Resolution Copper Mine project.

Sincerely,

AARON BUTLER,
President

March 17, 2021

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

As the Mayors of the municipalities in Arizona's Copper Corridor and County Supervisors of Gila and Pinal Counties, we are writing to you about a matter of critical importance: the completion and publication of the Final Environmental Impact Statement (FEIS) for the Resolution Copper Mine. We, along with many tribes and stakeholders in the region most affected by this proposed new mine, strongly support the long and arduous process that resulted in the publication of the FEIS in the *Federal Register* on January 15, 2021.

We are gravely concerned that any delay in completion and issuance of the FEIS for Resolution Copper will cause irreparable harm to our region and the precious way of life that we have always known. Further, we are equally concerned about the delay in the release of the Capstone Pinto Valley FEIS, for the same reason.

As leaders in Arizona's Copper Corridor, we are keenly aware of the role this industry serves in developing clean energy and continued technological advancement. We also have first-hand experience in navigating through the boom-and-bust cycles of the mining industry. We all have worked hard to create more resilient and economically diverse communities, and to become less dependent on the extraction industry. The mining industry is important to our region and state, not only through the private capital investment and jobs that it generates, but also the other direct and indirect benefits that accrue to communities where it is based.

With respect to the Resolution Copper project, the FEIS and resulting land exchange will have a lasting effect on all of our communities, and in particular, in Superior where the mining operations will take place. We have actively participated in the process from the moment legislation was signed into law in 2014 as did every community and stakeholder in the region.

Ten of the 11 tribes in the region actively participated in the process as well. One tribe chose not to participate in the process and most likely has no intention of doing so. But, because they have objected vociferously and garnered sympathy from many individuals and the media in the U.S. and around the world who have never been to our region, this process has been halted. This is patently unfair to those communities, tribes and stakeholders that worked tirelessly to forge an agreement with the mine to mitigate many of the impacts from this activity.

Let us be clear: we love and honor our Native American brethren and sisters. Their voices must be heard and respected. They deserve a seat at the table. Ten tribes participated in this process and their voices need to be heard and respected too. And, so do the voices of small communities and stakeholders such as ours who see this new mine as an economic lifeline to our economically challenged communities.

We are acutely aware that no negotiation or process is perfect. However, the FEIS process did exactly what it was supposed to do by forcing all stakeholders to the table to negotiate the best outcomes for all involved. Delaying the release of these FEIS and including additional tribal consultation will only create more consternation in a process that has entailed more than seven years of earnest and arduous work. The mitigations that have been put into place through this process will provide our communities with the means to advance our economic development and achieve greater economic diversity.

With respect, we urge you to direct the immediate release of the Resolution Copper and Capstone Pinto Valley FEIS, consummate the Resolution Copper land exchange as required by law, and move this process forward for the benefit of the tribes and communities that fought hard to strengthen their communities.

Thank you, Mr. President, for your attention to these matters which are of critical importance to us all.

Most respectfully,

Mila Besich, Mayor,
Town of Superior

Jamie Ramsey, Mayor,
Town of Kearny

Sammy Gonzales, Mayor,
Town of Miami

Dean Hetrick, Mayor,
Town of Hayden

Louis C. Bracamonte, Mayor,
Town of Winkelman

Kevin Cavanaugh, Supervisor,
Pinal County

Woody Cline, Supervisor,
Gila County

Jeff Serdy, Supervisor,
Pinal County

ARIZONA STATE SENATE
PHOENIX, ARIZONA

February 25, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

As a member of the Arizona State Senate, representing District 8, I reach out to you on behalf of not only the individuals directly involved, but the thousands of people whose lives will benefit from the Resolution Copper project and Programmatic Agreement. Born and raised in Florence, Arizona, I have been fortunate enough to see the development and growth that has evolved throughout our desert oasis firsthand. Additionally, as an Arizona native, I have a personal attachment and appreciation for the unique beauty and culture our desert has to offer our great State. Now, as an Arizona State Senator, it is of the utmost importance that Arizona continues to succeed while upholding and cherishing our native roots. With the best interest of the communities of Arizona in mind, I strongly encourage ACHP to support and sign off for the Resolution Copper project.

This project is set to bring remarkable economic growth and development to Pinal County and the communities surrounding it. The copper mine is not only an opportunity for economic growth, millions of dollars in wages, and support of small businesses, the project represents Arizona's longstanding mining heritage. Furthermore, the Programmatic Agreement in complete alignment with Section 106 requirements considers years of consultation with Native American tribes and communities to ensure every person's voice has been heard. The Programmatic Agreement specifically spells out imperative measures to conserve the cultural heritage among our communities. Such measures include the Emory Oak Collaborative Tribal Restoration Initiative, Copper Triangle Cultural Heritage Preservation Fund, the development of an alternative Oak Flat Campground, and that is just the beginning. Further, the Final Record of Decision will trigger the preservation, development, and conservation of our beloved communities. Thus, the Resolution Copper Programmatic Agreement clearly represents the values of the Arizona people—development and growth while cherishing our cultural heritage.

Representing not only the countless groups and stakeholders supporting the project for years, but each community member of Arizona, I undoubtedly believe the Resolution Copper project is in the best interest of Arizona. I strongly request ACHP to reconsider its position on the Resolution Copper Programmatic Agreement and am hopeful ACHP will join the other signatories.

Sincerely,

SENATOR T.J. SHOPE,
State Senator of Arizona, District 8

March 23, 2021

Hon. Tom Vilsack, Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Vilsack:

For more than four decades, key business organizations in Arizona including the Arizona Chamber of Commerce, Greater Phoenix Economic Council, Valley Partnership and Greater Phoenix Leadership among others have made it our mission to improve the greater Phoenix area and the State of Arizona by bringing together talent, resources and leadership to create action on priority issues. We represent Arizona business leaders and their employees across a diverse range of industries. Together, we work to advance initiatives, public policy and projects that will strengthen the future of Arizona.

We are writing to express our concern over the USDA's recent decision to rescind the Final Environmental Impact Statement (EIS) and Draft Record of Decision from the Resolution Copper project near Superior, AZ after years of thorough, independent, meaningful public consultation by the Forest Service that started in the Obama administration. This decision now unnecessarily delays significant benefits the project would bring to citizens in our region after they participated in good faith along with the Forest Service and almost a dozen other taxpayer funded federal and state agencies. The USDA has undermined the good work by the career-level staff within the Forest Service and tells every member of the public their time and effort was wasted. The decision to rescind the Final EIS will have a chilling effect on future decisions by businesses to invest in our state.

As you know, Resolution Copper is developing one of the world's most significant untapped domestic sources of copper in Arizona's Copper Triangle, an area with a long and rich history of mining. It is one of the single largest private investments in Arizona's history.

This project is a crucial part of America's clean energy future. Once in operation, the mine could supply up to one-quarter of the nation's copper demand. That's vital fuel for American innovation. Copper is an essential component in electric vehicles, battery storage, wind turbines, solar panels and other clean energy technologies.

With demand for copper growing exponentially worldwide, the Resolution Copper project will bring enormous economic benefits to our state at a time when we need such investment more than ever to rebound from the severely negative economic impacts of COVID-19. The mine will employ about 1,500 workers and will pay approximately \$134 million per year in total compensation when fully operational, primarily to a workforce that lives within 40 miles of the project. The project will also generate an estimated 2,200 additional indirect jobs. And it has won strong support from local labor leaders. All told, Resolution Copper could contribute \$1 billion in economic value for Arizona annually over the project's 60-year estimated life. It will boost state and local tax revenues by between \$88 million and \$113 million each year of operations, while the federal government could see an extra \$200 million in tax revenues per year.

As leaders from some of Arizona's most prominent companies, we know what factors into decisions about whether or not to invest in a state. That is why we are so troubled by the USDA's last-minute decision concerning Resolution Copper, which the agency did without consultation with local leaders and communities.

After all, legislation to facilitate the land exchange between the Tonto National Forest and Resolution Copper passed Congress with bipartisan support in December 2014 and was signed into law by President Obama. The Final EIS issued by the

Forest Service in January reflects a decade of formal consultation with Native American tribes and community stakeholders. It outlines detailed plans to address and mitigate community concerns about the project's impact, while delivering lasting benefits to the region.

The federal permitting process was nearly unprecedented in both its scope and its length. Entrenched voices of opposition who routinely oppose any and all development have been heard. Their voices, however, should not cast permanent doubts about this future investment in our state. Arizona is a state that relies so heavily upon mining, when it is required that businesses submit to lengthy and complex federal permitting and EIS review processes, then we must ensure that process is followed and respected.

Now is not the time to play politics with Arizona's economic future. We urge you to review the facts, reaffirm trust in the extensive independent EIS process and allow the Resolution Copper project to move forward so that all Arizona citizens may realize the benefits.

Sincerely,

Garrick Taylor,
Interim President & CEO
**Arizona Chamber of Commerce
& Industry**

Chris Camacho,
President & CEO
**Greater Phoenix Economic
Council**

Neil Giuliano,
President & CEO
Greater Phoenix Leadership

Cheryl Lombard,
President & CEO
Valley Partnership

PRESS RELEASE

International Brotherhood of Boilermakers—Lodge 627

PHOENIX—Today the Resolution Copper project was put on hold by an order from the United States Department of Agriculture. This mine located near Superior, Arizona, will bring thousands of new jobs to rural Arizona and put hundreds of Boilermakers to work. Boilermakers Local 627 Business Manager and Secretary Treasurer Jacob Evenson released the following statement in response to the project setback:

"I am extremely angry and disappointed in the USDA's decision today. This mine will put hundreds of Boilermakers from Local 627 to work at a facility that needs a skilled and trained workforce. Every time decisions like this are made by DC bureaucrats, our Boilermakers are out of a job. The USDA's decision means our members, most of which are Navajo and Apache tribal members, will continue to hope and wait for the day when they can clothe their families, feed their parents, and put shoes on little feet."

"The process by which the land exchange occurred was legal and proper. Throughout this process, Resolution Copper consulted with multiple tribal nations throughout the state of Arizona. Hundreds of our Boilermakers that are also tribal members have been at the table helping shape the vision of the Resolution Copper mine. To have a clean energy revolution, we need copper to power our windmills, move electric cars, and operate solar panels. We demand the USDA reissue the Final Environmental Impact Statement without delay and continue progress toward construction. Our members, which number in the tens of thousands, are watching and will remember."

In Solidarity Local 627

Jacob Evenson
Business Manager/Secretary Treasurer

CITY OF APACHE JUNCTION
APACHE JUNCTION, ARIZONA

February 22, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

As the Mayor of Apache Junction, I have spent years of my life dedicated to the preservation and success of not only Apache Junction, but the communities surrounding us. To ensure only the best for our communities, other community leaders and I have devoted our lives to listening to our people and having their desires be heard. Along with this continued support, we continue to stand behind our culture, and preserve the heritage and treasures the desert gives to us. To further the success of our communities, I have been involved in and supportive of the Resolution Copper project for several years. The Resolution Copper project not only will have a substantial impact on Pinal County, but the many communities surrounding it.

After tirelessly working for the past several years to have this project see its end, it was heart breaking to hear the White House Advisory Council decided to terminate their consultation on the Programmatic Agreement after involvement with the project for several years and months of commitment. It was quite shocking to hear that ACHP had such a substantial change of heart, as most of the interested parties and stakeholders have continuously supported the Resolution Copper project. The imperative impacts of the Resolution Copper project are monumental for the communities surrounding Pinal County. Specifically, the project spells out measures to address the cultural heritage surrounding the Native American Tribes and local Copper Communities by including ways we can preserve such communities moving forward. Such examples of preservation from the Programmatic Agreement itself include a Native American Education Endowment, Native American Tribal Endowment, and additional preservation funds and initiatives. Further, FEIS mitigations triggered by a Final Record of Decision include community development funds, preservation of communities, and constructing new trails to embrace our beautiful desert. These measures are just the beginning of the positive impacts the Programmatic Agreement and Final Record of Decision will bring to our communities.

With the support of the leaders and communities behind this project, including myself, I am hopeful and confident ACHP will change its position on the Resolution Copper Programmatic Agreement and join all other required signatories on the Programmatic Agreement. Thank you for your consideration and the opportunity for our communities to be heard.

Sincerely,

CHIP WILSON,
Mayor of Apache Junction

SAN CARLOS APACHE TRIBE

July 18, 2016

Resolution EIS Comments
P.O. Box 34468
Phoenix, AZ 85067-4468

To Whom It May Concern:

My name is Cody Elgo, I am a member of the San Carlos Apache Tribe who works for a contractor that provides services to Resolution Copper. I have to be honest with you, at first I did not want to write this letter but the more I hear some of my tribal leaders speak against the Resolution Copper project, the more I begin to think that they are interfering with my livelihood. Before my employment, I had a very tough time looking for a job in San Carlos. You see, there are very few jobs available so the job pool is highly competitive. Hence, I write because I have experienced firsthand how difficult it is to get a job in the area and how important it is to hold on to local employment opportunities because I want to live and work near my family and community. I want to make a difference that will help other tribal members get a job, learn a trade, participate in training, and have the ability to provide for their families like I do.

Because I have heard that the Forest Service will be consulting with my tribal council on the Resolution Project, please consider:

1. an employment plan for Resolution Copper to hire and retain San Carlos Apaches as direct employees and indirect employees working for contractors.
2. a plan to train and provide educational opportunities for San Carlos members in the various jobs that will be required at Resolution Copper either as full time or contract.
3. a plan with Resolution Copper to work with and further increase the ability of San Carlos tribal businesses that can provide services to the Resolution Copper project.

Furthermore, I have heard that Resolution Copper will be the mine of the future, different than the historic mining that has happened in the area, with new technology combined with the current environmental regulations. How is the proposed mine different from existing mining methods in the Copper Triangle and what are the positions needed to be filled when in construction and production phase? Can the EIS please describe the modern mining technology, the new regulations for protection of the environment and the kind of positions and jobs needed when in construction and production as these jobs will require a skill that can be used outside of mining?

Thank you for taking the time to address my inquiries. I want to make sure that there is a clear path for everyone to benefit from this company because I believe there is true opportunity for people to benefit and applaud Resolution Copper for the good deeds they have done thus far. I support this project and hope to see it through to production.

Sincerely,

CODY ELGO,
San Carlos Apache Tribal Member

COMMUNITY WORKING GROUP
PHOENIX, ARIZONA

February 23, 2021

Mr. Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for ACHP and USFS Finalizing the Programmatic Agreement:
Resolution Copper Mining Project and Land Exchange

Dear Mr. Daniel:

Please accept these comments on behalf of the Community Working Group (CWG) in response to the Advisory Council on Historic Preservation's (ACHP) request for public input for the Resolution Copper Mine Project and Land Exchange. The ACHP actions to terminate the Programmatic Agreement at the last minute and decline to sign after years of participation by the public and after ALL other federal and state agencies have signed is unprecedented.

1. Please approve the Programmatic Agreement (PA) for the Resolution Copper Project. This agreement contains provisions that are vital to historic preservation, cultural integrity, and economic prosperity for everyone in this region, whom our members broadly represent. Of specific importance to the Community Working Group are:

- Establishment of a Copper Triangle Historic Preservation Fund aimed at addressing effects from the project on historic properties and other community infrastructure throughout the Copper Triangle region
- Development and initial funding of a new Castleberry Campground as mitigation for Oak Flat, to include cultural resources interpretive information

The PA also contains provisions that we believe must be valuable to tribal interests, including:

- The Emory Oak Collaborative Tribal Restoration Initiative
- Foundation for Tribal Program Funding
- Tribal Cultural Fund
- Tribal Education Fund
- Archaeological Database Funds

This agreement has been widely vetted with the affected residents, eleven affected tribes, agencies, and varied interests in this region. As we understand it, all of the required and invited signatories to the PA have signed it, except the ACHP, and the vast majority of Native American Concurring Parties have also agreed to its provisions.

Further, and much broader in scope, the Environmental Impact Statement (EIS) that is dependent on approval of the PA contains agreements and mitigation measures negotiated through seven years of good-faith collaboration among the affected communities, Forest Service, and Resolution Copper Company, without which the effects of this project would be devastating to the human and physical environment and economies of this region.

We believe that the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) processes have been carefully and admirably carried out, as envisioned, for this project, and that the objectives of reducing impacts to a significant extent have been met. Throughout the process, agreements have been forged among the affected parties, local communities, Resolution Copper Company, and the Tonto National Forest that address most of the major issues of concern to this region that were evidenced before the EIS began. The result of these agreements is that the many communities and individuals initially concerned or opposed to the Resolution Copper Project are now supportive of the project, ONLY because, over many years, reasonable balance has been achieved between impacts and meaningful mitigation commitments.

2. Historic resources and cultural history are important, along with prehistoric and Native American cultural resources. *"Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies, in consultation with state and tribal partners and other stakeholders, to consider the effects of undertakings, proposed to be carried out by them or subject to their assistance or*

approval, on historic properties to ensure that historic preservation needs are considered along with project requirements.”

Mitigation agreements for this project have been designed to ward against the “boom/bust” economic cycles typically experienced by communities in this region for the past 150 years. From a historical perspective, the modern history of this region is intrinsically linked to copper mining. Mining is the historical context of the area, so the important non-Native resources of the region are all associated with mines, mining, and the communities that grew up and thrived around copper mines. To a large extent (nearly 30%), these communities are comprised of people of Hispanic heritage, stamping their culture on the region for generations since the earliest miners hailed from Mexico. This heritage should be respected equally with other cultural concerns. The PA seeks to recognize the importance of all these historic and cultural resources through a commitment to fund wide-ranging preservation efforts.

3. Everyone should have a voice in the Resolution Copper Project outcomes. This Community Working Group was formed in 2013 to provide constructive dialogue between Resolution Copper Company and the multiple stakeholder groups and community leaders in and around Superior. The purposes of our group are to learn independent analysis about the Resolution Copper Project, advise the company on community issues and concerns, and develop suggestions and programs for reducing negative impacts of the project and enhancing its potential benefits. The CWG provides two-way dialogue between Resolution and a broad range of individuals and groups and organizations that span multiple areas across three counties to balance the need for jobs and economic growth with environmental conservation and historical preservation. The CWG includes representatives of the many community groups, interests, and varying perspectives who have come together to preserve and enhance the values and resources of this region from the Phoenix East Valley to the Copper Triangle (Superior, Miami, Globe, Winkelman, Hayden, Kearny). The group has also included representatives of the San Carlos Apache community and multi-generational local families who hold varying historical interpretations of the cultural significance of Oak Flat to those presented to the ACHP by a few special interests.

4. The EIS and PA represent good-faith efforts conducted over several years that have increased public trust in the federal government and Resolution Copper Company. As mentioned above, there was much skepticism before the EIS began about its effectiveness and about the sincerity of those involved to thoroughly study and address impacts. As a result, members of this CWG—as a whole, and as representatives of important community organizations—have participated extensively and in good faith during the coordinated Forest Service’s NEPA and NHPA processes over many years. Members of this group have been instrumental in developing and supporting the array of agreements and mitigation measures included in the PA and in the EIS. These measures are critical to the future survival and prosperity of this region and, individually, to the local governments and civic organizations represented on the CWG. Although these measures may not be important to one group who did not participate in the NEPA/NHPA process, they are important to us and the voice of this group should matter.

The CWG and its members have devoted tens of thousands of volunteer hours over seven years to this effort. If the PA is not advanced and finalized, and if a final Record of Decision can’t be released, this good-faith work to consensus that has spanned years will have been in vain. More importantly, this would represent an extremely bad-faith effort on the part of the Advisory Council on Historic Preservation to change course at the last minute after extensive participation and time spent by the Forest Service, other state and federal agencies, the Town of Superior, the CWG, and all its member organizations who have participated for years along with Resolution Copper Company. The ACHP’s actions send a signal to the whole CWG that our extensive participation and the mitigation measures that are meaningful to us were worthless.

5. Copper is valuable, and Oak Flat will likely be disturbed in future with or without the PA and EIS. Regardless of whether the PA is approved and the EIS completed, the Secretary of Agriculture will grant title of the Oak Flat Federal Parcel to Resolution Copper no more than 60 days after the final EIS is published (January 15) as legislatively mandated in section 3003 of the National Defense Authorization Act for fiscal year 2015. Once in private hands, Rio Tinto or another mining company in future will be able to extract the copper resource without benefit of the regulatory and mitigation requirements inherent in the PA and EIS. Copper is increasingly one of the world’s most valuable resources, even to the point of representing a national security issue, and it’s entirely reasonable to assume that the Resolution claim will be mined by someone, some day.

6. The Promise to the Public: The ACHP website (www.achp.gov) states that it takes “*its responsibilities to the American public seriously*” and the ACHP mission is to “***ensure that historic preservation needs are balanced with Federal project requirements.***” The ACHP customer service standards state that the ACHP is “*committed to providing first-class service. When you conduct business with us, we will treat you with courtesy and respect.*”

Our request of the ACHP is that you remember that ALL views of the American public matter. We have had “*meaningful involvement*” and we believe that the Programmatic Agreement and associated measures outlined in the Record of Decision strikes that balance. We ask that you take the time to treat our comments and views, and this entire process and the time spent by many stakeholders, with courtesy and respect and as such move forward to sign the Programmatic Agreement.

We believe that the greater good should prevail here and that the ACHP should sign the PA to ensure vital environmental, social, and cultural mitigation as well as economic benefits that flow from it to this multicultural, historic, active mining region.

Thank you for your consideration,

MEMBERS OF THE SUPERIOR COMMUNITY WORKING GROUP:

Barbara Armitage,
Superior Historical Society

Lynne Nemeth,
Boyce Thompson Arboretum

Pam Bennett,
Queen Valley Homeowners

Lynn Martin,
JI & JF Ranches

Joanne Besich,
Optimist Club of Superior

Ricardo Provencio,
United Superiorites

Mila Besich,
Town of Superior

Todd Pryor,
Town of Superior

Jeffrey Bunkelmann,
Central Arizona College

James Schenck,
Rebuild Superior, Inc. & Legends of
Superior Trail

Rick Cartier,
Superior Chamber of Commerce

Fernando Shipley,
City of Globe & Cobre Valley
Regional Medical Center

Pamela Dalton-Rabago,
Superior Chamber of Commerce

Silvia Werre,
Top-of-the-World

Fred Gaudet,
Arizona Trail Association

Bruce Wittig,
Queen Valley Fire Department &
Queen Valley Water Improvement
District

Martina Burman,
Town of Kearny

Arlynn Godinez,
Superior Unified School District

Sylvia Kerlock,
Town of Winkelman

Supervisor Woody Cline,
Gila County

COPPER CORRIDOR ECONOMIC DEVELOPMENT COALITION
ORACLE, AZ

February 25, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

The Copper Corridor Economic Development Coalition (CCEDC) represents and supports the communities along the Copper Corridor in Arizona, including Superior, Kearny, Hayden, and Winkelman. Our mission is to attract, create, and retain quality jobs and businesses and to support community leadership; and we have engaged and supported the Resolution Copper project for over a decade, participating in good faith and providing comments along the way.

As President of the CCEDC, I write to you in support of the Resolution Copper Project, the Final Environmental Impact Statement, and most importantly, the Programmatic Agreement, all of which have been the subject of a rigorous review and engagement process for more than seven years. The CCEDC is incredibly disappointed to hear of the ACHP's actions to terminate the Programmatic Agreement at the last minute, after years of participation and after all other federal and state agencies have signed.

The CCEDC understands and appreciates that the Programmatic Agreement incorporates significant cultural heritage preservation measures created through nearly a decade worth of discussions with Native American Tribes and local communities in the Copper Triangle. Mining and ranching history has been a fabric in the communities that the CCEDC serves and the Programmatic Agreement and the NEPA process show how historic preservation and economic growth can be balanced.

The CCEDC supports the mitigation measures lined out in the Programmatic Agreement, including the construction of the Castleberry Campground and the cultural heritage fund to preserve historic and cultural character in the towns in the Copper Corridor. This is an innovative and impressive balance of historic preservation and local economic diversification.

This recent decision by the ACHP tells the CCEDC and other local organizations that our participation and voices do not matter. It is disheartening to see that ACHP has put a single focus and sole importance on one group of stakeholders; and not all who participated fully in this process.

The CCEDC urges you to reconsider ACHP's position on the Programmatic Agreement as quickly as possible, so all communities and stakeholders can benefit from the mitigations agreed upon for this project.

Thank you for the opportunity to comment on the Programmatic Agreement and the CCEDC looks forward to seeing this project move forward without further delay.

Thank you,

CELESTINO "TINO" FLORES,
President

EASTERN ARIZONA COUNTIES ORGANIZATION
SHOW LOW, AZ

February 22, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

The Eastern Arizona Counties Organization includes Gila County, Navajo County, Greenlee County, Graham County, Navajo County, Apache County, and Cochise County. Our primary mission is to plan and implement specific environmental programs impacting economic development in the Counties we serve. Such programs include forest restoration, watershed restoration, energy, water, recreation, threatened and endangered species, infrastructures, public lands and natural resources planning.

The Resolution Copper Project and associated Environmental Impact Statement are issues of significant interest to our organization, especially those member counties who will see direct benefit from the project. Copper mining is part of the fabric Arizona's history and this project will continue that tradition through its operations and through several cultural preservation measures outlined in the Programmatic Agreement.

Those measures are meaningful to many stakeholders, including local communities across the copper Triangle and Native American Tribes who participated extensively in consultation on the EIS and Section 106 progress that was coordinated by the United States Forest Service. The data recovery measures for historic properties associated with mining will further our knowledge of the history of the Copper Triangle region and specifically the Pioneer Mining District. Tribal communities will be participating in the data recovery through the tribal monitor program, providing jobs and job training as well as information and knowledge. For beneficiary communities, these measures and the economic benefits Resolution Copper can deliver will ensure our mining communities continue to prosper and live on while balancing historic preservation through the measures outlined in the Programmatic Agreement.

The recent action of ACHP related to the Resolution Copper Programmatic agreement is of significant concern from our perspective as it calls into question the integrity of the Advisory Council taking a political position at the very end of a process they have participated in for years. The USFS coordinated a thorough and rigorous NEPA process run in parallel with the Section 106 process which has spanned more than seven years and three administrations. The Programmatic Agreement was included in the Draft EIS for public comment and underwent almost a dozen versions, incorporating stakeholder feedback all along the way, including feedback from the Advisory Council.

We are keenly aware of the delicate balance required when considering public lands and natural resource planning. The established process of developing programmatic agreements is critical to addressing concerns of rural communities most directly impacted by projects as it provides a voice to those communities. Furthermore, this dangerous precedent could have far reaching consequences to economic development opportunities in rural Arizona and also the much-needed infrastructure improvements needed across our country associated with any and all federal decisions. It is for these reasons that adherence to the processes described in Programmatic Agreement and finalization of that document are critical and we support that direction.

Therefore, we ask that ACHP reconsider its position on the Resolution Copper Programmatic Agreement in alignment with your organization's previous statements that USFS has completed consultation in line with Section 106 and the agreement should be implemented as drafted.

Sincerely,

Jason Whiting,
Eastern Arizona Counties
Organization Chair
Navajo County Supervisor

Nelson Davis,
Eastern Arizona Counties
Organization Director
Apache County Supervisor

Richard Lunt,
Eastern Arizona Counties
Organization vice-Chair
Greenlee County Supervisor

Peggy Judd,
Eastern Arizona Counties
Organization Director
Cochise County Supervisor

Steve Christensen,
Eastern Arizona Counties
Organization past Chair
Gila County Supervisor

Pascal Berlioux, PhD, MBA,
Eastern Arizona Counties
Organization
Executive Director

GILA COUNTY
BOARD OF SUPERVISORS
GLOBE, ARIZONA

February 22, 2021

Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Daniel:

I am a County Supervisor in Gila County, Arizona, and I appreciate the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) decision to terminate the Programmatic Agreement for the Resolution Copper Project in Arizona. This Programmatic Agreement (PA) was developed among Resolution Copper, the US Forest Service, Arizona State Historic Preservation Office, and Native American Tribes so the Environmental Impact Statement (EIS) can proceed to a Record of Decision. The process has taken many years to develop and has included many thousands of volunteer hours from local citizens who have a vested interest in this project.

The EIS that is dependent on approval of the PA contains agreements and mitigation measures negotiated through years of good faith collaboration between the affected communities and Resolution Copper, without which the effects of this project would be devastating to the environment and economies of this region. The results of these agreements is that the many communities and individuals that were initially concerned or opposed to the Resolution Copper Project are now supportive of the project ONLY because of these mitigation commitments.

The ACHP actions to terminate the PA at the last minute, after years of participation and after ALL other federal and state agencies have signed is unprecedented. The ACHP must consider that the Forest Service coordinated the NEPA process with Section 106 of the National Historic Preservation Act and provided multiple opportunities for public comment on the project, which has spanned many years. I urge, the Advisory Council on Historic Preservation to reconsider their decision.

If you have any questions regarding this letter, I would be more than happy to discuss any of these points with you.

Sincerely,

STEVE CHRISTENSEN,
Gila County Supervisor District I

GILA COUNTY
BOARD OF SUPERVISORS
GLOBE, ARIZONA

February 23, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Daniel:

I am a County Supervisor in Gila County, Arizona, and I appreciate the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) decision to terminate the Programmatic Agreement for the Resolution Copper Project in Arizona. Even though the mine is located in Pinal County, Arizona it will have a profound effect on Gila County residents.

This Programmatic Agreement (PA) was developed among Resolution Copper, the US Forest Service, Arizona State Historic Preservation Office, and Native American Tribes so the Environmental Impact Statement (EIS) can proceed to a Record of Decision. The process has taken many years to develop and has included many thousands of volunteer hours from local citizens who have a vested interest in this project.

The PA contains provisions that are vital to the historic preservation, cultural integrity, and economic prosperity for everyone in this region:

- Establishment of a Community Development Fund specifically aimed at addressing effects from the project on historic properties and other community infrastructure for everyone in the Copper Triangle region.
- Development of a new Castleberry Campground as mitigation for Oak Flat, to include cultural resources interpretive information.
- The agreement has been widely vetted with all of the affected residents and interests in the local area.

The ACHP actions to terminate the PA at the last minute, after years of participation and after ALL other federal and state agencies have signed is unprecedented. The ACHP placed a singular focus and sole importance on one group of stakeholders that has refused to participate in the process, and yet the ACHP only listened to them. I urge you to reconsider your decision.

If you have any questions regarding this letter, I would be more than happy to discuss any of these points with you.

Sincerely,

TIM R. HUMPHREY,
Gila County Supervisor District II

GILA COUNTY
BOARD OF SUPERVISORS
GLOBE, ARIZONA

February 22, 2021

Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Daniel:

I am a County Supervisor in Gila County, Arizona, and I appreciate the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) decision to terminate the Programmatic Agreement for the Resolution Copper Project in Arizona. Even though the mine is located in Pinal County, Arizona, it will have a profound impact on Gila County citizens as well.

This Programmatic Agreement was developed among Resolution Copper, the US Forest Service, Arizona State Historic Preservation Office, and Native American Tribes so the Environmental Impact Statement (EIS) can proceed to a Record of Decision. The process has taken many years to develop and has included many thousands of volunteer hours from local citizens who have a vested interest in this project.

A Community Working Group (CWG) was formed in 2013 in order to provide a conduit between Resolution Copper Company and the multiple stakeholder groups and community leaders in and around Superior. The CWG has included community members from nearby Gila County as well. I personally was invited to join the group in 2019 and during my participation I have learned a great deal about the project, and I have been impressed with Resolution Copper's willingness to listen and work with the local communities. The EIS that is dependent on approval of the PA contains agreements and mitigation measures negotiated through years of good-faith collaboration between the affected communities and Resolution Copper Company. The agreements and measures are unmatched in our communities that have relied on mining for more than 100 years. Mining and ranching history has been the fabric of the Copper Triangle for a century and the PA and the NEPA process run by the Forest Service shows how historic preservation and economic growth can be balanced.

The ACHP actions to terminate the PA at the last minute, after years of participation and after ALL other federal and state agencies have signed is unprecedented. I urge you to revisit your decision and take into consideration all of the hard work that has gone into this project not only by Resolution Copper, local and state government, but affected citizens as well.

If you have any questions regarding this letter, I would be more than happy to discuss any of these points with you.

Sincerely,

WOODY CLINE,
Gila County Supervisor District III

GILA COUNTY
GLOBE, ARIZONA

February 24, 2021

Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for ACHP and USFS Finalizing the Programmatic Agreement:
Resolution Copper Mining Project and Land Exchange

Dear Mr. Daniel:

I am the County Manager for Gila County, Arizona, and I appreciate the opportunity to provide comments on the Advisory Council on Historic Preservation's (ACHP) decision to terminate the Programmatic Agreement (PA) for Resolution Copper Mine Project and Land Exchange. Although not located within the geographic boundaries of Gila County, Resolution Copper has and continues to create an economic benefit to Gila County.

From a historical perspective, modern history of this region is intrinsically linked to copper mining and has been for over 100 years. Mining is the historical context of the area, so the important non-native resources of the region are all associated with mines, mining, and the communities that grew up and thrived around copper mines. The PA seeks to recognize the importance of all these historic and cultural resources through a commitment to fund wide-ranging preservation efforts. The PA was developed among Resolution Copper, the U.S. Forest Service, Arizona State Historic Preservation Office, and Native American Tribes so that the Environmental Impact Statement (EIS) can proceed to a Record of Decision.

The EIS that is dependent upon approval of the PA contains agreements and mitigation measures representing good-faith efforts between all affected communities and Resolution Copper Company. The ACHP's actions to terminate the PA at the last minute, after all other federal and state agencies have signed is unprecedented. The ACHP placed a singular focus and importance on one group of stakeholders that has refused to participate in the process, yet the ACHP only listened to them. I urge, the Advisory Council on Historic Preservation to reassess their decision and take into consideration all the hard work that has gone into this project.

Please feel free to contact me should you have any questions regarding this letter.

Respectfully submitted,

JAMES MENLOVE,
County Manager

GREATER PHOENIX LEADERSHIP
PHOENIX, ARIZONA

April 7, 2021

Hon. Tom Vilsack, Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Vilsack:

Greater Phoenix Leadership (GPL) has worked for over four decades to improve the quality of life and economic vibrancy for the greater Phoenix area and the State of Arizona. We represent over 100 Arizona CEO's and their nearly 300,000 employees across a diverse range of industries. We work to advance initiatives, public policies and projects that will build a stronger and better Arizona.

We have consistently supported the Resolution Copper project and the federal land exchange necessary to develop and operate the mine. This mine will have a significant and lasting impact on the economy of Arizona generating approximately \$61 billion in economic value to our state and creating thousands of good paying direct and indirect jobs. This will have a very positive impact on our state's priorities for education and infrastructure development.

While the economic impact of this project is important, so too are the environmental and stakeholder benefits. We have been very impressed with the conservation initiatives the company has embarked upon and the extensive consultation efforts to involve all key stakeholders in the process.

The parcels included in the Resolution Copper land exchange total 5,400 acres and have extensive conservation value. They include a parcel which spans over seven miles along the San Pedro River, one of the few remaining free flowing rivers in the Southwest. The San Pedro corridor is one of the most important riparian habitats in the Sonoran and Chihuahuan deserts. Other parcels transferring to federal ownership would be part of La Cienegas National Conservation Area. Parcels included in the exchange are home to dozens of threatened and endangered species, critical habitat, and riparian and aquatic ecosystems, which have long been recognized for their scarcity and overall contribution to wildlife diversity. Some of the properties contain river systems that are eligible for scenic designation under the Wild and Scenic Rivers Act with habitat for native fish as well as rainbow and brown trout.

The Resolution Copper project will also protect parcels which are home to numerous Native American archeological sites, including petroglyphs, structure ruins, and grinding sites. The Apache Leap parcel, an area of sheer cliff faces and hoodoos contains some of the most significant Western Apache archeological sites in the region. The land exchange requires that the Apache Leap area be incorporated into a Special Management Area for permanent cultural heritage protection and administration by the Tonto National Forest.

The Resolution Copper project is the only Congressionally mandated land exchange requiring a full Environmental Impact Statement (EIS) prior to exchange of title. The Tonto National Forest, several local communities in the Copper Triangle, stakeholders from three rural counties, nearly a dozen Tribes, multiple federal and state agencies all participated together to work with Resolution Copper during the comprehensive review under the National Environmental Policy Act (NEPA) for almost a decade. Not only would the Town of Superior have the ability to grow and develop with additional land as part of the land exchange, the EIS also contains important mitigation measures to expand recreation and the diversity of the local Copper Triangle economy. Very importantly, with the cooperation of consulting Native American Tribes, the first of its kind tribal monitor program was created employing dozens of Native American tribal members to ensure a transparent assessment and cataloging of sacred and culturally significant sites.

Tonto National Forest has worked tirelessly to produce a nearly 3,000-page Final Environmental Impact Statement (FEIS) with hundreds of independent analyses and a decade of meaningful collaborations and consultations with Native American Tribes. We applaud the outstanding work by the Tonto National Forest, and we urge you to encourage the Administration to republish the FEIS in the very near future and move this most important project forward.

Sincerely,

NEIL GIULIANO,
President and CEO

Mr. Christopher Daniel
 Advisory Council on Historic Preservation
 401 F Street NW, Suite 308
 Washington, DC 20001

Re: Resolution Copper Mining Project and Land Exchange; Tonto National Forest,
 Pinal County, Arizona ACHP Project Number: 012344; Response to Termination
 of Consultation

Dear Mr. Daniel:

Please accept these comments in response to the press release issued by the Advisory Council on Historic Preservation (ACHP) on February 11, 2021 announcing that it had terminated consultation on the Resolution Copper Mining Project and Land Exchange and inviting public comment on that decision. I am very concerned by this decision. It is my position as an attorney familiar with the Resolution Copper Project, the National Historic Preservation Act (NHPA), and the regulations governing the ACHP that this decision is based on an incorrect interpretation of the law and a distorted version of the facts related to the impacts of the Resolution Copper Project and the development of the Programmatic Agreement. The ACHP should reverse that decision and sign the Programmatic Agreement. If ACHP proceeds with this course of action, then the Forest Service should approve the project and implement the measures described in the Programmatic Agreement to resolve adverse effects to historic properties.

I have more than 42 years of experience in the natural resources industries as a policy and legal expert. I have a BSBA and JD from the University of Missouri. For 23 years I served as the Executive Director of the Northwest Mining Association/American Exploration & Mining Association (AEMA), retiring in March 2019. I continue to provide consulting services to the minerals industry as a policy and legal expert. During my tenure at AEMA, the Association established itself as the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands.

I also served as a Trustee of the Rocky Mountain Mineral Law Foundation for approximately 20 years and worked closely with the most respected mining, public land and environmental attorneys in the country. I gained in-depth knowledge of the General Mining Laws, the environmental and public land laws and the proper interpretation of those laws. As executive director of AEMA, I worked closely with members on NHPA issues and compliance with ACHP regulations, particularly implementation of and compliance with the Section 106 consulting process. I continue to consult to the industry on Mining Law issues.

I also am very familiar with the Resolution Copper Project and the Land Exchange authorized and mandated by the FY 2015 NDAA. Resolution Copper joined AEMA during my tenure as executive director and representatives of Resolution Copper served on the Association's Board of Trustees. I toured the Resolution Copper Project site, including Oak Flat in February 2017 and received a complete briefing on the project. I authored March 2016 comments on behalf of AEMA opposing the nomination of Oak Flat Historic District Traditional Cultural Property to the National Register of Historic Places, and July 2016 comments on the Resolution Copper Project and Land Exchange Environmental Impact Statement. It is with this experience, background and knowledge that I submit these comments for your consideration.

The ACHP actions to terminate the Section 106 consulting process after years of Tribal and public participation, and refusal to sign the Programmatic Agreement at the last minute, after all other state and federal agencies had signed the agreement, is unprecedented and inappropriate. It appears the ACHP's February 11, 2021 decision was driven by political interests that favor the interests of one Tribe and a small group of vocal project opponents over the fair administration of the ACHP's duties under the NHPA. The fact that the February 11, 2021 termination letter was, within days, featured as the most prominent exhibit in the San Carlos Apache Tribe's motion for a preliminary injunction in its lawsuit against the Forest Service seeking to block the project is troubling.

As both the FEIS and the Programmatic Agreement (an appendix to the FEIS) document, it is overwhelmingly clear that the Forest Service has conducted extensive consultation with affected tribes and other interested parties. The final version of the Programmatic Agreement includes significant, substantive measures to resolve adverse effects and, where impacts cannot be mitigated, to respond directly to the requests of local tribes and communities to offset the adverse effects.

Impacts to Oak Flat were recognized from the beginning and acknowledged in the Programmatic Agreement in words that came directly from the affected tribes. Given the geologic fact mineral deposits cannot be moved and must be developed where they are found, impacts to Oak Flat are unavoidable because a world class copper resource lies under Oak Flat. The NEPA and NHPA processes were rigorous and took many years. The Forest Service, working with many federal and state co-operating and consulting agencies, and based on numerous Tribal and public comments has approved a plan with numerous limitations, stipulations and mitigation, that allows development of an important world class copper resource while limiting impacts to surface resources where possible and offsetting those impacts where they are unavoidable. The ACHP's recognition that the project would be a significant impact to Oak Flat is not an appropriate justification for terminating consultation or rejecting the Programmatic Agreement that was negotiated in good faith among the parties and signed by all other signatories.

Importantly, the Programmatic Agreement adopts specific mitigation programs that were requested by Consulting Tribes, local communities, the State of Arizona and developed in consultation among all of the consulting parties. The ACHP has acknowledged that the consultation process complies with Section 106 requirements. Thus, all statutory and regulatory requirements have been addressed and satisfied. There is no legal or other appropriate reason for not signing the Programmatic Agreement and the ACHP should have signed it and thanked the Forest Service and the other consulting parties for their hard work.

I respectfully request that the ACHP sign the programmatic agreement so that the endowments and programs to consulting tribes and local communities contained in the Programmatic Agreement are not lost. Without the implementation of the Programmatic Agreement, Consulting Tribes and the public will essentially receive nothing in return for the Congressional authorized and mandated land exchange. If the ACHP does not reverse course and sign the Programmatic Agreement, then I recommend strongly that the Forest Service approve the project and include the measures described and agreed to in the Programmatic Agreement to mitigate and resolve adverse effects to historic properties when it issues a record of decision.

Thank you for considering these comments.

Sincerely,

LAURA E. SKAER,
Natural Resources Policy Advisor
Attorney at Law—Columbia, MO

Statement for the Record

Mila Besich

Mayor of Superior, Arizona
and

Executive Director, Copper Corridor Economic Development Coalition

MY TURN: RESOLUTION COPPER NEEDS TO MOVE FORWARD—WITH PERMITS IN PLACE

Superior is my hometown where my family has lived for generations. As its name implies, it is one of the most superior and scenic places in Arizona. From the surrounding mountains and canyons to trails and rock climbing to waterfalls, the magic of Superior's way of life can be felt. Superior is also a historic mining town where many critical mining engineering feats took place and where some of the world's largest copper deposits have been found. Revolutionary designs in mining like the first air conditioned mine and the longest and deepest single-lift mining shaft were constructed here. We are proud of our mining heritage, and as a community, we have a healthy respect and clear understanding for the challenges that the boom and bust cycles of mining have created for our community and our region.

Arizona's Copper Corridor is the equivalent of Yukon gold. Some of the richest and most accessible copper ore deposits are found here in eastern Pinal and southern Gila counties. Two of the three copper smelters left in the United States operate in our region. Mining belongs in this part of Arizona and it can be done responsibly while protecting the environment and the beautiful landscape that we love and cherish.

When the Resolution Copper project was introduced to Superior, it brought a glimmer of hope and opportunity to our small, close-knit community. Its predecessor, the Magma Mine, was shuttered in 1996 and opportunities were scarce for Superior to provide employment and business prospects for our diminishing population.

If the Resolution Copper projects comes to fruition, it will employ some of the most technologically advanced and modern mining techniques ever. It will have passed the most thorough and exhaustive environmental permitting ever and it will boast new jobs focused on robotics and other innovations that will make this the most sophisticated, advanced and environmentally sensitive mine in the United States.

This opportunity was critically important to the Town but not at the cost of the long-term sustainability of our community and protection of our precious environmental resources that makes us Superior. Our community goal has always been to be a town with a mine—not a mining town. This project helps us achieve this.

From the day this project was proposed, Superior chose to actively participate in the Resolution Copper Environmental Impact Statement. We chose to work with our Congressional delegation to bring to light areas that needed mitigation. We proactively engaged with officials at the Tonto National Forest and Environmental Protection Agency. We chose to stay at the table and negotiate with Resolution Copper to ensure that we had mitigation agreements in place to protect Superior's environment and socio-economic impact now and for generations to come.

Most importantly, the leadership of Superior understands that this ore body is not going to magically disappear; it will be mined and it should only be mined with the full permitting requirements of the environmental impact statements. Our active participation in the process affords me the confidence to unequivocally state that this mine must move forward for the betterment of Superior and our surrounding communities and to protect the precious environment that we revere.

Recent political maneuvers, fostered by opposition groups to reject the EIS, have created yet another roadblock to the progress of this mine and, ultimately, the future of Superior. If these opposition groups are successful, they will have opened up "Pandora's box", as the lands at Oak Flats will still be officially exchanged in March and the ore body will still be there.

With Resolution Copper in full ownership of the lands currently held by the federal government, they could still mine the property. However, their ownership of these lands will mean that they won't be required to do the extensive environmental permitting they were required to do under the parameters of the Southeast Arizona Land Exchange and Conservation Act.

For years, the Town of Superior, and the people who reside here, have actively participated in this transparent process as supporters and, in some cases, in opposition to this project. Oak Flats is important to our community: it has been a place of recreation, family reunions, union picnics and cultural celebrations, but it is also the place that many have gone to work. They have toiled and labored to provide for their families. The work is sacred to them and their families. It is part of our community fabric.

Mining will always be part of our economic DNA and will forever be critical to Arizona's economy and to our national defense. Copper powers everything from our televisions to our smart phones to our laptops and smart cars. Demand for copper will only increase as we become more technologically advanced.

The mine has been approved by the federal government. It is time for us to move forward with the permitting process. Further delay will be counterproductive to the goals of those who oppose this mine. When the land exchange takes effect next month, it could potentially create more opportunity for this mine to open without the proper permitting, environmental and socio-economic mitigations that are needed to ensure that the project is a net positive for Superior and the State of Arizona. This would be a travesty.

A wise person once told me: if you are not at the table, then they will eat your lunch. It is time for the opposition groups to come to the table and help develop solutions. This ore body will be mined, and it must be mined with the proper protections in place. We have been fighting for these protections since this legislation became law in 2014. Let's not let them eat our lunch.

Statement for the Record

Oddonetto Construction

Oddonetto Construction supports Resolution Copper Mine

Oddonetto Construction is a local contractor working at the Resolution Copper mine. We are thrilled to be a partner with a company so heavily invested in the local communities within and surrounding the Copper Triangle. Resolution Copper's commitment to employing from within the local communities has allowed us to supply over two hundred employees over the course of the past five years. Approximately 90% of the employees have come from within the Copper Triangle communities including many members of the San Carlos Apache Tribe.

We are excited to see Resolution Copper's continued investments in the community we call home. Resolution Copper has, by far, gone above and beyond with their commitment to their employees, communities, safety, and environmental and historical and cultural preservation. We continue to strongly support the Resolution Copper project and the land exchange, including the measures as outlined in the Resolution Copper Programmatic Agreement which balance historical and cultural preservation with jobs and economic growth. **Our community believes in Resolution Copper, a sustainable copper mine for our future generations.**

We applaud the work of the United States Forest Service for publication of the Final EIS for the Resolution Copper project after years of stakeholder feedback. It is time for this much needed project to move forward. The foundation of the NEPA and NHPA process is that all voices and opinions should be considered equally. One paid voice does not speak for an entire community.

February 22, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Mr. Nelson:

I have been a part of the meetings with Resolution Copper in this journey since 2003 or 2004. This is mining and ranching country and is our roots. I am a resident of Superior, a member of the Superior Chamber of Commerce, a member of Rebuild Superior Inc, and a member of the Community Working Group and have been working to look at practices and mitigation efforts and comment on the EIS regarding Resolution Copper to have a transparent and balanced reopening of the mine that will be instrumental to help our region's economy. The USFS has conducted an open, transparent, and complete process giving all of us a voice in the process. I support Resolution Copper and the mitigations put in place so that EIS can go through.

The development of the Resolution Copper Programmatic Agreement has not been rushed and ACHP has been involved in its development for several years. The USFS coordinated the NEPA process with Section 106 of the National Historic process and provided multiple opportunities for all public and group comment for all phases and over many years. I participated in the process in good faith however one group though invited chose not to participate, (However there were members of the tribe that did participate on their own), in this process proscribed by the NEPA process and yet the ACHP only is listening to that group now not all of us. I request and support the mitigation measures in the PA and the PA and Final EIS should be supported.

It contains provisions that are vital to the historic preservation, cultural integrity, and economic prosperity for everyone in this region:

- Establishment of a Community Development Fund specifically at addressing effects from the project on historic properties and other community infrastructures for everyone in the Copper Triangle.
- Development of a new Castleberry Campground as mitigation for the Oak Flats, to include cultural resources interpretive information. Development of the Trail system worked on by the RUG group and FS.

- The agreement has been widely vetted with all the affected residents and interests in this area.
- Also has provisions for the Tribe: The Emory Oak Collaborative Tribal Restoration Initiative, Foundation for Tribal Program Funding, Tribal Cultural Fund, Tribal Education Fund, Archeological Database Funds.

The ACHP actions to terminate the PA at the last minute, after years of participation and after all Federal and State agencies have signed is unprecedented. The ACHP actions tell me that my and other's years of involvement in the work, participation and requested mitigation measures are worthless. The ACHP ignored all the work, ignored all our input and I/we do not understand why the ACHP walked away from this effort that we all spent years developing. What do these actions tell me and the country about how this process works. Did we waste our time and should have taken a political approach instead? We used the process as we believe we should have.

This is so important to this region, the potential for jobs, the mitigations worked out for all towns and groups are needed and will be beneficial to the whole. Hopefully you will reconsider and think about all of us who followed the prescribed process and contributed to this work and find a way to move this forward and make it happen for all.

Sincerely,

PAMELA DALTON-RABAGO,
Resident

PINAL COUNTY
BOARD OF SUPERVISORS
FLORENCE, ARIZONA

March 24, 2021

President Joe Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

The Pinal County Board of Supervisors, wish to express our ongoing support for the Resolution Copper project and land exchange, which will provide critical economic growth and opportunity, and support the culture and heritage of future generations. We have been active participants in the decade-long consultation process that produced meaningful changes in the scope of the project as requested by communities and stakeholders and resulted in our support for the publication of the Final Environmental Impact Statement (FEIS) for the Resolution Copper Mine in the Federal Register on January 15, 2021. We are writing to you now to express our concern about the last-minute decision to rescind the FEIS for the Resolution Copper Mine.

Mining is an important part of the heritage of Pinal County. Resolution Copper has demonstrated that it will support preservation of this heritage and rural economic development with measures such as the Copper Triangle Cultural Heritage Preservation Fund and the Copper Triangle Community Development Fund. Both measures will help provide the tools necessary for our rural communities to prosper beyond mining and well into the future. The Castleberry Campground and many other recreational trails and new access to climbing will support a continued tradition of world class outdoor recreation while also expanding economic diversification opportunities for local communities. Resolution Copper has also agreed to restore the landscape by spending \$75 million on reclaiming the historic footprint of the Magma Copper Mine, all while using and building the capacity of our local community contractors.

We commend the United States Forest Service, Tonto National Forest for their thorough, thoughtful, and transparent process in which they listened to all stakeholders and made many changes to the project scope in response to those voices. Local communities, Native American Tribes, and other stakeholders actively participated with local, federal, and state cooperating agencies to provide meaningful input throughout the process. Comment time frames have been generous and extended

several times at the request of interested parties. The FEIS is nearly 3000 pages and Appendix S of the Final EIS contains hundreds of consultations spanning more than a decade. We urge you to review the FEIS and all the components of the project record and proceed with the FEIS and land exchange so that transparency, fairness, and public confidence in the regulatory process can be maintained, and that the many benefits of the project for our residents and the County can be realized.

Sincerely,

PINAL COUNTY BOARD OF SUPERVISORS

Stephen Q. Miller,
Chairman, District 3

Jeffrey McClure,
Supervisor, District 4

Mike Goodman,
Vice-Chairman, District 2

Jeff Serdy,
Supervisor, District 5

Kevin Cavanaugh,
Supervisor, District 1

PINAL COUNTY
BOARD OF SUPERVISORS
FLORENCE, ARIZONA

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

As Vice Chairman of the Pinal County Board of Supervisors, I write to you in support of the Resolution Copper Project, associated Environmental Impact Statement, and the Programmatic Agreement which have been the subject of rigorous review for more than seven years. Making it this far has been no small feat, as it has required the cooperation of numerous governmental bodies, Native American Tribes and communities, local Copper Triangle communities and other stakeholders and interested parties. Several years' worth of consultation and feedback, representing nearly a dozen versions of the document has resulted in the Programmatic Agreement—a comprehensive document spelling out measures addressing cultural heritage measures and mitigations such that the Resolution Copper project would benefit all parties. The ultimate fruition of this project is crucial for the success of Pinal County and its residents.

I am fortunate to represent the fastest growing part of Pinal County, and have spent the greater part of the last decade intimately involved in supporting its economic development. I am actively involved with my constituents who come from all backgrounds, and with confidence I can state they are in support of this project. The USFS has conducted this process with full transparency, allowing all interested parties the opportunity to comment on its outcome. It is unfortunate that the ACHP would now take a position against signing the Programmatic Agreement after years of development and careful planning. I urge you to reconsider the ACHP's position and join the numerous organizations and local communities that favor it. I look forward to the project becoming operational as planned, and the great amount of jobs it will bring for our residents who truly need them.

Thank you,

MIKE GOODMAN,
Vice-Chairman, Pinal County Supervisor, District 2

PINAL COUNTY
BOARD OF SUPERVISORS
FLORENCE, ARIZONA

February 19, 2021

Reid Nelson, Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

As Supervisor of District 5 in Pinal County, Arizona, I write to you with my constituents in mind. Before I became Supervisor, I served as Mayor of the city of Apache Junction for two terms. My years of public service have allowed me to take action in the face of opportunity, particularly when that opportunity would improve the lives of those residing in Pinal County. The Resolution Copper mine is one such opportunity. This copper mine is crucial for the continued success of the County and has been an important factor in planning for the future of the County for over a decade. I urge you to reconsider ACHP's position on this project, which will benefit all involved parties so greatly, as soon as possible.

The Resolution Copper mine is supported by a bi-partisan group of constituents around the County and presents a unique opportunity to benefit all groups and individuals involved. The residents who would benefit from the copper mine are many, as its development would create new jobs while increasing economic activity in rural Pinal County. The COVID-19 pandemic has only compounded the difficulties already felt by families that feel like they've been left behind in our changing economy. The copper mine is an opportunity for continued economic growth in an industry that is familiar to the state of Arizona. Copper mining is engrained in our state's heritage, so much so that it's depicted on the state seal. It is undoubtedly woven in the fabric of Arizona's history, and the Programmatic Agreement was designed to ensure that tradition would continue with a number of cultural preservation measures in place.

This project is nearly a decade in the making and has already been through a significant amount of scrutiny. The USFS has processed the Programmatic Agreement through rigorous review while accepting feedback from all those involved and interested in its outcome. It has been developed to include measures supporting the interests of Native American Tribes, the environment, Pinal County and the state of Arizona, and should not now fail at the finish line. As I mentioned previously the copper mine has bi-partisan support, and I firmly believe its development is in the best interest of all those involved. I strongly urge you to reconsider the ACHP's position and support the project's progression, and the future of Pinal County.

Sincerely,

JEFF SERDY,
Pinal County Supervisor, District 5

Statement for the Record

John Keedy
Chair, Queen Creek Coalition
Peoria, Arizona

H.R. 1884, “Save Oak Flat Act”

April 13, 2021

Chairwoman Leger Fernández, Ranking Member Don Young, full committee Chairman Grijalva and all of the distinguished committee members with a thank you for the opportunity to submit testimony on this matter.

Queen Creek Coalition is a 501(c)(3) tax exempt entity that has been involved in saving rock climbing and related recreational resources that could be impacted by the Land Exchange and Mine proposed by Resolution Copper near Superior, Arizona.

It holds the Recreational Use License that allows recreation on Resolution’s private property and works with Resolution to manage that recreation. As part of negotiations that were begun around 2006 and continued forward through the Environmental Impact Study conducted by the United States Forest Service, QCC has been a central stakeholder seeking to maximize rock climbing and other recreation in the area. In the early years of 2006 to 2008 representatives of Queen Creek Coalition marched alongside members of the Native American community and sought an equitable solution for all.

However, while many stakeholders who remained in opposition based on inflexible positions, Queen Creek Coalition took the path of many other conservation and recreation groups and sought a “win-win” through negotiations. QCC found Resolution Copper very willing to work with stakeholders who were not inflexible. As a result, QCC reached an agreement in 2012 to maintain the recreation on Resolution’s private property as well as to work with Resolution and surrounding land owners such as the USFS to achieve a recreational greenbelt around the Mine.

The Land Exchange that was approved in 2015 was in fact a fair representation of the outcome of many years of negotiation among the parties who were willing to negotiate. It was a good outcome and should not be over-turned after many years of negotiation and good faith efforts by those willing to work toward a mutually acceptable goal.

Therefore, Queen Creek Coalition opposes House Bill 1884 and encourages Congress to reject it.

**Final Environmental Impact Statement for Resolution Copper Project and
 Land Exchange, Volume 6**

APPENDIX S—CONSULTATION HISTORY

The link for the entire Final Environmental Impact Statement for Resolution Copper Project and Land Exchange Volume 6 is as follows:

<https://www.resolutionmineeis.us/sites/default/files/feis/resolution-final-eis-vol-6.pdf>

APPENDIX S. CONSULTATION HISTORY begins on page 409 of the document.

RESOLUTION COPPER

Final EIS Programmatic Agreement Summary: Process & Commitments

*Resolution Copper is making one of the most significant private investments in Arizona history, **developing one of the world's largest untapped copper deposits in Arizona's Copper Triangle.** Once in operation, the mine could supply up to **one-quarter of the nation's copper demand**, support roughly 3,700 jobs at full production and produce up to \$61 billion in economic value for Arizona over the 60-year life of the project.*

In brief:

- The publication of the Final Environmental Impact Statement (EIS) is a critical milestone for Resolution Copper and our community and tribal partners.
- The mitigations and Programmatic Agreement reflect significant commitments shaped through years of public consultation. These have had meaningful impacts on the project design and construction and will bring long-term benefits for our partners.
- The Final EIS will detail the commitments as part of the public record, and the funding will be agreed to with specific partners as the project proceeds over time.

Ongoing Community Engagement

Public engagement has shaped this project every step of the way. The Federal review process, led by the United States Forest Service (USFS), spent nearly a decade gathering insights from local leaders, Native American tribes, NGOs, community organizations and businesses to inform the publication of the Final EIS. USFS communicates with officials and stakeholders at the federal, state and local levels to ensure they understand the project. Simultaneously, Resolution Copper has participated in hundreds of other conversations and engagements, including numerous community working groups, to collect the input that continues to shape the project. That robust community dialogue will continue as we begin the process of allocating funding for mitigations included in the Final EIS.

Meaningful Mitigation

Resolution Copper expects to invest around \$100M in a range of important programs. While funding will proceed on a separate process with our partners, Resolution Copper has agreed to invest in programs that fall into the categories outlined below. We are in a long-term partnership with our key stakeholders and communities. We will continue to collaborate on program development and funding through the project's different phases and life.

Economic Development

- Cover net direct costs related to the use of Town of Superior emergency and municipal services.
- Fund land development consultation for Superior planning on additional residential and economic growth.
- Create and fund an endowment to develop sustainable regional economic development in the Copper Triangle Communities (Superior, Hayden, Winkelman and Kearny).
- Fund development of a new Entrepreneurship and Innovation Center in the Town of Superior.
- Fund the creation of Rebuild Superior to address blight in the community and preserve community character.

Environmental Mitigation

- Tailings facility relocated 30 miles away to Skunk Camp at the request of the Town of Superior.
- Invest significant resources into the Queen Creek Mitigation Site (1.8-mile reach) to restore natural vegetation and promote natural streamflow.

- Implement monitoring and mitigation measures for groundwater-dependent ecosystems and wells using EPA-approved methods.
- Invest in measures to reduce sky brightness and potential dark sky impacts.
- Work with ADOT and the Town of Superior to develop a traffic management plan for the construction period.

Recreation

- Fund construction, initial operation, and maintenance of a new Castleberry Campground to mitigate the loss of Oak Flat Campground—a historic property and an important local recreation facility.
- Fund the Inconceivable Road Access Plan to improve and guarantee safe access to popular recreational rock-climbing areas.
- Protection of the Queen Creek Climbing Area, including funding an endowment to support the continued use of the area for climbing and bouldering.
- Fund the construction and maintenance of a new multi-use trail network on the Tonto National Forest, in partnership with the Town of Superior and recreational groups.
- Fund improvements to US 60 Park in Superior.

Cultural Heritage Protection

- Establish a Copper Triangle Cultural Preservation Fund to address the project's impacts on historic properties and other community infrastructure.
- Add land for inclusion in the Apache Leap Special Management Area (SMA) to preserve the natural character of Apache Leap, allow for traditional uses of the area by tribes, and protect and conserve cultural and archaeological resources of the area.
- Establish a Tribal Cultural Fund to address: the physical and visual effects on the *Chi'chil Bildagoteel* Historic District and other historic properties significant to Tribes, Fund the Emory Oak Collaborative Tribal Restoration Initiative, and Tribal Youth Program.

Education, Community & Youth Program Support

- Fund the design, development and construction of a Multi-Generation Center, including a new gym, library, senior center and other venue spaces in the community.
- Agree to fund a four-year \$1.2 million program on STEM with the Superior Unified School District.
- Establish a robust training and apprenticeship program to prepare more local workers for employment at Resolution Copper.

Resolution Copper will bring long-term benefits that will play a vital role in the economic recovery of the region, Arizona and the United States.

SOUTHERN ARIZONA BUSINESS COALITION
TUCSON, ARIZONA

Mr. Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: Resolution Copper Mining Project and Land Exchange; Tonto National Forest,
Pinal County, Arizona ACHP Project Number: 012344; Response to Termination
of Consultation

Mr. Christopher Daniel:

On behalf of the over 5000 employees directly and indirectly impacted by the mining industry here in Southern Arizona, the Southern Arizona Business Coalition stands confidently in support of the Resolution Copper Project and the NEPA process that has taken place. This includes the consultation of the Advisory Council on Historic Preservation (ACHP). Our involvement spans over five years with the Resolution project.

Our organization was dismayed to hear that the ACHP had at the last minute terminated Section 106 consultation on the Resolution Copper Mining Project and Land Exchange and are now inviting public comment on their decision. Further we believe political pressure had been applied by certain federal legislators or their staff to motivate this withdrawal. Their action alienates the Programmatic Agreement and the time and energy invested by all signers to the agreement and the public at large. This action seems to be totally contrary to ACHP mission statement as an Independent Federal Agency established to provide non-partisan factual information to the President and Congress.

As our comments are brief they are not without genuine concern for a NHPA and NEPA processes that allows for honest and open opportunities to find resolve to important concerns expressed during these reviews and consultations. Unfortunately, the sudden withdrawal and current state of pandemic left us unable to thoroughly consult with counsel and more completely detail the legal consequences of the action taken by ACHP.

In closing, we respectfully request that the ACHP sign the programmatic agreement to ensure commitments made to the tribes and local communities contained in the Programmatic Agreement. If however, the ACHP does not revert back to its original position, stating the Section 106 requirements were complied with, we respectfully request the Forest Service move forward and approve the project. We would also ask that commitments noted in the Programmatic Agreement be upheld by the Forest Service.

Thank you for your attention to this most important process and our comments.

Sincerely,

Bill Assenmacher,
Co-Founder

Rick Grinnell,
Co-Founder, Managing Partner

February 24, 2021

Reid Nelson, Director
 Advisory Council on Historic Preservation
 401 F Street NW, Suite 308
 Washington, DC 20001

Re: Support for the Resolution Copper Programmatic Agreement

Dear Mr. Nelson:

Superior, Arizona and the nearby Copper Corridor are home to a mining and ranching legacy you can't find anywhere else. There is passion, respect, and appreciation for our history, culture, and heritage that continues to thrive with the progression of the Resolution Copper Project.

When Resolution Copper begins construction and production, it will employ some of the most technologically advanced and modern mining techniques in the world; with employment from the local area expected to exceed 1,500 during full production. It will have passed the most comprehensive permitting process any mining project has even seen, with an ore body that will support the region for decades to come.

As a local resident of Superior, Arizona, twenty-year business owner in Superior and longtime President of the Superior Chamber of Commerce, I have spent the last decade dedicated to the historic preservation of Superior and our mining heritage. I have been immersed in the engagement, consultation, and participatory process with Resolution Copper; and have been heavily involved in the creation and development of the Programmatic Agreement, as it pertains to cultural heritage and the historic preservation of the Copper Corridor.

In my current capacity as a local resident, local business owner and community leader, I write to you in support of the Resolution Copper Project, the Final Environmental Impact Statement, and most importantly, the Programmatic Agreement, all of which have been the subject of a rigorous review for more than seven years. I was incredibly disappointed to hear of the ACHP's actions to terminate the Programmatic Agreement, with this unprecedented decision, after years of participation. It is disheartening to know that the ACHP pulled their support, after all other federal and state agencies have signed.

I understand that the Programmatic Agreement incorporates significant cultural heritage preservation measures created through nearly a decade worth of discussions with Native American Tribes and all local communities in the Copper Corridor. The Programmatic Agreement and the NEPA process show how historic preservation and economic growth can be balanced.

I support the mitigation measures lined out in the Programmatic Agreement, including:

- Construction of the Castleberry Campground;
- Creation of the cultural heritage fund to preserve historic and cultural character in the towns in the Copper Corridor

This recent decision by the ACHP tells my Chamber members, my community and I that our participation and voices do not matter. I urge you to reconsider ACHP's position on the Programmatic Agreement as quickly as possible, so all communities and stakeholders can benefit from the mitigations agreed upon for this project.

I am confident that Resolution Copper will continue to actively engage and continue to progress this project in a manner that is socially, environmentally and culturally responsible.

Thank you,

SUE ANDERSON,
*Superior Resident, local business owner &
 Superior Chamber of Commerce President*

TOWN OF SUPERIOR
SUPERIOR, ARIZONA

February 23, 2021

Mr. Christopher Daniel
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Re: ACHP Programmatic Agreement

Dear Mr. Daniel:

As you know, the Town of Superior has been working with Resolution Copper Mining to address the multiple impacts of its proposed mining operations on our community. These impacts include cultural heritage, socioeconomic, water, and environmental justice, and were analyzed through an extensive public engagement process and numerous technical studies. The Town, as well as many other agencies, has engaged in thousands of hours of meetings and negotiations in order to produce agreements to mitigate these impacts. In short, the NEPA process has done its job.

Now, as we are nearing the end of this difficult process, the White House Advisory Council on Historic Preservation's decision not to take action on the programmatic agreement has placed the Record of Decision memorializing these mitigations in jeopardy. We feel this action is misguided for the following reasons:

1. This will not block the transfer of the Land Exchange properties. The legislation is tied to the Final Environmental Impact Statement and will transfer with or without the ROD on March 15th of 2021. The legislation does not require the programmatic agreement to proceed with the exchange.
2. This will remove all of the environmental, socioeconomic, water and cultural mitigations from the table, but will not stop them from mining. As Oak Flat will now be private property, the next permitting cycle will be much less expansive, including only an EA for the proposed pipeline. An EIS or a 404 would no longer be required. All of the mitigations for the larger permit could be removed from discussion. This would be a disaster for the affected communities, the environment, and even the tribes.

Mr. Daniel, we are very appreciative of your consideration of the many impacts of the Resolution Copper Mine project. We look forward to continuing this productive dialogue with you and your staff.

Please contact our Town Manager, Todd Pryor at 520-689-5752 or manager@superioraz.gov, if you have questions or would like additional information.

Thank you for your attention to these matters of critical importance to the Town of Superior.

Sincerely,

MILA BESICH,
Mayor

U.A. LOCAL UNION 469
PHOENIX, ARIZONA

April 9, 2021

Hon. Representative Ruben Gallego
131 Longworth House Office Building
Washington, DC 20515

Dear Rep. Gallego:

I am writing to you on behalf of the UA Local 469 Plumbers & Pipefitters Union, which proudly represents more than 3,500 Arizona working families, many of whom call the 7th Congressional District their home.

On April 13th, the House Natural Resources Committee Subcommittee for Indigenous Peoples will hold a hearing on H.R. 1884, introduced by Chairman Grijalva to reverse the Congressionally approved land exchange between the U.S. and Resolution Copper. Since you are a member of the committee, I want to explain why we believe this short-sighted legislation would be a huge blow to Arizona's working families.

Copper is one of the most important metals needed to build our clean energy future, and Arizona is fortunate to have a plentiful supply. In order to make the Biden Administration's \$2 trillion infrastructure plan a reality, the country needs copper for manufacturing of electric vehicles, charging stations, wind turbines, solar panels, storage batteries, and even the transmission lines that connect renewable energy sources to the grid. We also need the rare earth critical minerals that are byproducts of copper.

Right now, there's a global copper crunch. In fact, The World Bank estimates that global copper demand could grow 200% over the next 30 years. There are only two smelters in the U.S. capable of producing copper today—one in Utah and one in Arizona. And China, in particular, is gaining fast.

That's why the Resolution Copper mine near Superior, Arizona, is a vital part of securing America's leadership in the global clean energy economy. Once fully operational, it has the potential to supply up to one-quarter of the nation's copper demand.

The mine will create thousands of good-paying jobs for Arizona workers. Resolution Copper has worked closely with the Arizona Building Trades to ensure union workers and apprentices will be a part of building this important project on a Project Labor Agreement (PLA). Resolution Copper will employ nearly 5,000 tradespersons during its 10-year construction and ramp-up phases, many of whom have tribal affiliations. Once completed, the mine could be in operation for sixty years, paying an estimated \$134 million in wages and benefits each year to 1,500 full time employees. In addition, the mine will create 2,200 indirect jobs in the surrounding communities, benefiting the families of many workers and tribes in the area and boosting the tax base to support schools and other local infrastructure projects.

Resolution Copper represents precisely the type of long-term investment in our economic future that Arizona so urgently needs. And we are proud it was informed by consultation with hundreds of local community stakeholders, like tribal leaders and the trade unions, in the seven-year federal planning and permitting process surrounding this project.

Chairman Grijalva's legislation threatens to stall this project indefinitely and slow our ability to address America's copper crunch. Passing this bill would deny much-needed job opportunities to our union members and also mean a huge step backward in our country's efforts to implement progressive energy policies and mitigate the impacts of climate change.

America, and the world, needs copper for a sustainable future. Arizona workers and their families need it for a prosperous future. We can have both with projects like this one. I urge you to not support this short-sighted legislation.

Please do not hesitate to reach out to me should you have any further questions about our position on this matter.

Sincerely,

AARON BUTLER,
Business Manager

UNITED STEELWORKERS
WASHINGTON, DC

April 13, 2021

Chairperson Fernandez
Ranking Member Young
Subcommittee for Indigenous Peoples of the United States
House Committee on Natural Resources
Washington, DC 20515

Dear Chairperson Fernandez and Ranking Member Young:

I write to you on behalf of the members of the United Steelworkers (USW) union regarding today's hearing on H.R. 1884, the Save Oak Flat Act. We ask that this letter be put into the record for the hearing.

USW is the largest industrial union in North America and is the largest mining union in the country. Steelworkers mine iron ore, copper, potash, salt, sand, silver, palladium, and much more. Like many stakeholders, we have a unique view of this mining project and want to share it with the committee.

Our union opposes the legislation under consideration today, the Save Oak Flat Act (H.R. 1884), introduced by Rep. Grijalva, to repeal the Congressionally-approved land exchange legislation that would enable the Resolution Copper mine to move forward. This land exchange was under consideration by Congress for some time prior to being finalized in the 2015 National Defense Authorization Act (NDAA). It should remain in place to allow this important mining project to move forward.

Overall, copper is an important material that will play a key role in technologies that will reduce greenhouse gas emissions and improve efficiency in ways that are necessary for a future that mitigates the worst impacts of climate change. With the potential to supply up to one-quarter of the nation's copper demand, Resolution Copper will play a critical role in securing America's leadership in the global clean energy economy while creating good-paying union jobs for generations to come.

The majority shareholder in the Resolution Copper project is Rio Tinto, which is a union-represented company. The company currently operates one of the two remaining copper smelters in the United States. Resolution Copper will supply that highly efficient smelter at Kennecott in Utah, which is operated by USW members.

Our union has a long history with Rio Tinto that has had its ups and downs, but we are pleased that through an ongoing dialogue, Rio Tinto has agreed to neutrality on union organizing at the Resolution Copper project. In other words, the company will not oppose or interfere with workers at the facility joining together to form a union and collectively bargain over working conditions at the site. Should those workers opt to join USW, our union is committed to ensuring that the more than 1500 jobs are safe, high quality jobs with family supporting wages and benefits that benefit the local community, like the jobs that our members have at Kennecott in Utah, and at other mining operations across the country.

Bearing in mind our nation's urgent need for copper, our union recognizes the importance of a circular economy and responsible mining in creating a low-carbon future. Responsible mining is the only viable future for the industry, and our union is actively working with environmental and industry partners to identify the qualities of a responsible mining project and a responsible mining company to ensure social responsibility, environmental responsibility, business integrity, and planning for positive legacies.

As we look at this project at Resolution Copper, we know that it will have national significance given its strategic ability to supply the United States with a critical mineral. Our union is eager to ensure that it is ultimately a responsible mining operation.

We have reviewed the draft Environmental Impact Statement from the U.S. Forest Service (USFS) and are closely following the Biden Administration's review of the Final Environmental Impact Statement (FEIS). Our union recognizes the importance of a thorough environmental impact analysis for this and any other proposed project. We were glad that USFS highlighted many important issues and described extensive engagement with stakeholders, including the tribes, across Arizona that resulted in design changes for the project. We encourage Rio Tinto to continue this ongoing stakeholder engagement throughout the development of the mine.

In our country, we seem to be deadlocked and conflicted around mining as an industry. These projects are often cast in binary terms—either you mine OR you protect the environment. But in order to protect the environment from climate change, we must mine and we must do so in a way that respects the environment, workers, communities, indigenous peoples, and other stakeholders.

We appreciate the opportunity to share our perspective with you.

Sincerely,

ROY HOUSEMAN JR.,
Legislative Director

WHITE MOUNTAIN APACHE TRIBE
WHITERIVER, ARIZONA

November 6, 2019

United States Forest Service
Tonto National Forest
PO Box 34468
Phoenix, AZ 85067-4468

Re: USFS Consultation Comments on Southeast Arizona Land Exchange and
Resolution Copper Project

Ms. Nez:

On behalf of White Mountain Apache Tribe and colleagues of the Tribal Council, I would like to thank the United States Forest Service for the consultation process on the Southeast Arizona Land Exchange and Resolution Copper Project, and ensuring inclusion of the tribal voice.

The White Mountain Apache Tribe is independent and sovereign, therefore not one (1) Tribe speaks on behalf of all Tribes, especially on behalf of Tribes like White Mountain Apache Tribe who has been partnering and participating in the consultation process.

If you have any questions, please contact my office directly at (928) 369-6479.

Sincerely,

JEROME KASEY,
Tribal Vice Chairman

Statement for the Record**Women's Mining Coalition****April 13, 2021**

The Women's Mining Coalition (WMC) wants to thank Chairwoman Leger Fernández, Ranking Member Don Young, full committee Chairman Grijalva and all of the distinguished committee members for the opportunity to submit testimony on this matter.

Since 1993, WMC has advocated for today's modern domestic mining industry, which is essential to our Nation. Our mission is even more important as the nation looks to rebuild our economy and lead the world toward a clean energy future. WMC's members represent many diverse sectors including metals, coal, iron ore, construction materials and industrial minerals companies; manufacturers and suppliers; trade associations; and consultants.

We believe H.R. 1884, otherwise known as the "Save Oak Flat Act," would cause irreparable harm to the economy of Arizona's Copper Corridor, erode trust in the federal permitting process and set a dangerous precedent that puts other critical mining projects in jeopardy. For these reasons, we urge you to reject this legislation.

The broader context of this debate is important.

The American public is finally starting to understand a truth long known to those in our industry: Our Nation cannot achieve its clean energy goals without copper. It is a key component in manufacturing wind turbines, solar panels, electric vehicles, storage batteries, and even the transmission lines that connect clean energy sources to the grid. Many of the critical minerals that are byproducts of copper are similarly important to manufacturing the advanced technologies that will power our economy for generations to come. Recognizing the importance of copper to a clean energy future as well as its antimicrobial properties, WMC researched and produced the attached Copper Fact Sheet which we submit for the record along with this testimony.

Globally, we are already experiencing a copper crunch. And it is expected to get worse as demand for clean energy grows. By 2050, the World Bank expects global copper demand to rise by 200%. In the U.S., there are only two active smelters capable of producing copper today—one in Utah and one in Arizona, plus one idled smelter in Arizona. And China and other countries are working overtime to bolster their supply, while this Congress considers policies like H.R. 1884 that would strangle our Nation's ability to compete.

Once fully operational, the Resolution Copper mine near Superior, Arizona has the potential to supply up to one-quarter of the nation's copper demand. That's absolutely vital to our ability to compete in the global clean energy economy.

Of course, the project will also create thousands of good-paying jobs for residents of the Copper Triangle—jobs that are desperately needed to spur economic recovery and growth in the region. Resolution Copper will employ 1,500 full-time workers over the 60-year life of the mine, paying an estimated \$134 million in wages and benefits each year. The mine also will spur the creation of 2,200 additional indirect jobs. And it has won strong support from local labor leaders, who see this as an enormous opportunity for union members and their families.

All told, Resolution Copper is expected to contribute up to \$61 billion in economic value for Arizona over the project's lifetime. It will boost state and local tax revenues by between \$88 million and \$113 million each year of operations, while the federal government could see an extra \$200 million in tax revenues per year.

These are real benefits to a community that desperately needs economic investment and opportunity.

That is part of the reason why so many local leaders have been strong advocates for the project. Another is because these same leaders—along with tribal leaders and many other community stakeholders—have been a critical part of the extensive, years-long federal review and permitting process.

It should be noted that the Resolution Copper project is the only Congressionally-mandated land exchange requiring a full Environmental Impact Statement (EIS) prior to exchange of title. For nearly a decade, the Tonto National Forest, several local communities in the Copper Triangle, stakeholders from three rural counties, nearly a dozen Native American Tribes, and multiple federal and state agencies have all worked together with Resolution Copper during the comprehensive National Environmental Policy Act (NEPA) review process.

As a result of these efforts, a number of significant changes were made to the project design and Resolution Copper committed to important mitigations to address environmental, socioeconomic and cultural concerns associated with the land exchange. These would enable the Town of Superior to grow and develop with additional land. They would expand recreation and help diversify and grow the local Copper Triangle economy. And notably, they would also ensure ongoing support for the first-of-its-kind tribal monitor program, which was created with consulting Native American Tribes, employing dozens of tribal members to ensure a transparent assessment and proper cataloging of sacred and culturally significant sites and artifacts on the property surrounding the mine.

To many in the mining community, the Resolution Copper project represents the model for what a sustainable, modern American mine can be. The permitting process, while long and arduous, was thorough and completely transparent to all stakeholders who willingly engaged in good faith. It was a process borne out of compromise to garner bipartisan support. And we know many of us believe that is something we could all use more of these days, especially in Congress.

To throw all of this hard work and progress away right now would cause irreparable harm, not only to the local community at the center of this project but to the future of mining across our great nation.

We note with great concern the addition of Section 4(b) which would go beyond the repeal of the congressionally mandated land exchange and withdraw from mineral entry the entire land exchange area consisting of 2,422 acres. This would more than triple the amount of land withdrawn from exploration and development, and expose the federal government to substantial takings liability given Resolution's ownership of valid existing rights in one of the largest undeveloped copper deposits in the world. The only purpose of this section is to permanently put these lands off limits to mining.

As stated in our Copper Fact Sheet, proposals to put lands off limits to mining or curtail mining on public lands are ill-considered policies that will increase our reliance on foreign minerals and disrupt domestic mineral supply chains. The United States can become a minerals supply chain powerhouse, but not if Congress withdraws lands from mineral entry and enacts policies putting lands off limits to mining. The withdrawal language in this legislation sets a horrible precedent and sends a strong antimining message from the federal government that will chill future investment in finding and developing domestic mineral resources. This language further exasperates our Nation's current dependency on foreign sources of critical minerals. In order for the United States to achieve its clean energy and new technology goals, public lands with mineral potential must remain open to mineral exploration and development.

The inescapable fact is America's clean energy and economic future are dependent on mining. We have to find a way to secure a domestic supply of the natural resources we have in abundant supply as safely and sustainably as possible. And in order to do that, we must find ways to balance economic development opportunities with environmental and tribal concerns.

As the National Research Council of the National Academy of Sciences recognized in a 1999 report, "Only a very small portion of the Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places where economically viable mineral deposits were formed and discovered." The Arizona Copper Triangle is one of those rare places. If we cannot mine in the historic Copper Triangle area of our country, then where can we?

Passing this legislation would effectively shut the door on a project that would benefit Arizona and then entire nation and send a signal to other companies that America is closed for business when it comes to mining, no matter how responsible the approach.

That would be a huge mistake.

We urge you to consider the full picture and broader impact as you make your decision on this matter. Accordingly, we strongly urge you to oppose H.R. 1884 and vote no.

Thank you for this opportunity to provide this testimony.

Respectfully submitted,

Sara Thorne,
2021 WMC President

Emily Arthun,
WMC Coordinator

YAVAPAI-APACHE NATION
CAMP VERDE, AZ

November 7, 2019

Nanebah Nez Lyndon
Tribal Relations Program Manager
Tonto National Forest, Supervisor's Office
2324 E McDowell Rd.
Phoenix, AZ 85006

Re: USFS Consultation Comments on Southeast Arizona Land Exchange and Resolution Copper Project

Dear Ms. Nez Lyndon:

On behalf of Yavapai-Apache Nation, I would like to thank the United States Forest Service for the consultation process on the Southeast Arizona Land Exchange and Resolution Copper Project, and ensuring inclusion of the tribal voice.

The Yavapai-Apache Nation submitted a pre-mitigation request letter in September 2019, to mitigate and off-set the impacts to the environment and cultural heritage of the Project.

It is important to note that each Tribe participating in consultation, represents itself, as we are each self-governing and sovereign governments. One Tribe does not speak to determine the position of all Tribes.

As the comment period concludes, it is important to note that the Nation is concerned about the location of the tailings. We know that mining tailings have lasting impacts on communities and environments. We do request that Tribes have the opportunity to continue to participate in the process of tailings location.

Sincerely,

JON HUEY,
Chairman

YAVAPAI-APACHE NATION
CAMP VERDE, AZ

September 17, 2020

Nonabah Nez
Tonto National Forest
United States Forest Service

Re: Consultation and Mitigation Process of the Southeast Arizona Land Exchange and Resolution Copper Project

Dear Ms. Nez:

On behalf of the Yavapai-Apache Nation, we want to thank you for your effort in the official tribal consultation process with the U.S. Forest Service regarding the Southeast Arizona Land Exchange and the Resolution Copper Project.

The Yavapai-Apache Nation, as many others Tribes, signed the Problematic Agreement and have been participating in the official consultation process with the USFS. This process is the official government-to- government consultation process for Tribes.

Due to the COVID-19 public health pandemic, we want to officially request that the U.S. Forest Service not delay the consultation process or the mitigation process of the Southeast Arizona Land Exchange and Resolution Copper Project.

As federally recognized Tribes, we each have the same opportunity to participate in the government-to- government consultation process, and it is not fair to delay the process at the request of any single Tribe.

We appreciate your consideration to this request. If you have any questions, please contact the Executive Office at (928) 567-1021.

Sincerely,

JON HUEY,
Chairman

YAVAPAI-APACHE NATION
CAMP VERDE, AZ

December 13, 2019

Neil Bosworth, Supervisor
Tonto National Forest Service
2324 E. McDowell Road
Phoenix, Arizona 86006

Re: Yavapai-Apache Nation Comments on the Resolution Copper Mine EIS

Dear Supervisor Bosworth:

On behalf of the Yavapai-Apache Nation, we share our concerns and recommendations regarding the Resolution Copper Mine.

Consultation:

The consultation with the Tonto National Forest Service and the Yavapai-Apache Nation has been fair and open. Your most recent effort was an inclusive event attended by concerned Tribes in late October 2019. The meeting was beneficial to discuss important issues and respond to them. The meeting was conducted with several Tribes who shared their perspectives; however the Nation prefers a government to government consultation as a face to face conversation between the Nation and the Tonto National Forest Service. We look forward to scheduling a consultation in the near future.

THE TRIBAL MONITORING PROGRAM

We support this effort as a step forward in the evolution of Cultural Resource Management (CRM). We have some concerns about how information gathered is being incorporated into the data set. We believe the monitoring program should be more fully integrated into the long-term CRM plan. This is a positive program and with further consultation with the Nation the concerns will sort out over time.

LOCATION OF THE MINE SPOILS/TAILINGS

Vincent Randall, the Nation's Apache Culture Director has been involved with the process of designating a tailing site since its inception, including visiting the proposed sites. The challenge has been to identify a location with minimal environmental and cultural heritage impact. Our preferred alternative is the Skunk Camp near Hayden.

CONTINUITY

Enclosed is the Nation's letter dated October 6, 2017 for your reference regarding Apache Leap and the Resolution Copper Mine. We are fully aware of the significant ongoing cultural and environmental impacts it will generate. It is our intention, working in conjunction with the Tonto National Forest Service, to mitigate the impacts to Shii Ke Yaa (the Apache Homeland) to the extent we can.

Thank you for your attention to this matter. Additionally, the Nation appreciates the work Nanebah Nez Lyndon has done to make the consultation process professional and comprehensive. The Nation submitted an official letter in October 2019 reflecting our participation in the process, as well as a letter requesting mitigation measures that we believe off-set the cultural and environmental impact of the project. It is our hope the process continues without interruption and in respect to those Tribes who have actively participated in the process.

Cordially,

JON HUEY,
Chairman

Ms. LEGER FERNÁNDEZ. The Chair will now recognize Representative Soto for 5 minutes.

Mr. SOTO. Thank you, Madam Chair.

I just wanted to express my appreciation to both you and to the Committee on working on the Oak Flat issue. It was something I was proud to co-sponsor. Just this past week, I read an amazing article in *The Washington Post* talking about the rights of passage for young women coming of age through the Oak Flat ceremonies. There is clearly a long ceremonial history for this sacred land, seeing whether it was in Bears Ears with destruction that comes about when we don't protect these sacred lands to now with Oak Flat. We need to continue to play an active role.

So, I wanted to make sure to just express my support here today, and if there are any other questions that you, Madam Chair, wanted to ask, I would defer some time to you to give you more time to be able to do that since I just got into the meeting about 5 minutes ago.

Ms. LEGER FERNÁNDEZ. Thank you very much, Representative Soto. I think I am fine. I do appreciate the offer.

Mr. SOTO. In that case, I support your efforts, and I yield back.

Ms. LEGER FERNÁNDEZ. Thank you.

So, this concludes the time that we have set aside for the Members to ask their questions. I truly want to thank the Members. There was great conversation today about the competing interests, and I express my deep appreciation to our expert witnesses for their insightful answers to those questions, as well as their testimonies.

As I stated before, the members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing. Committee Rule 3(o) asks that members of the Committee must submit witness questions within 3 business days following the hearing, and the hearing record will be held open for 10 business days for these responses.

If there is no further business—

Ms. MCCOLLUM. Madam Chair?

Ms. LEGER FERNÁNDEZ. Yes.

Ms. MCCOLLUM. I don't have a question for the witnesses, but I would like to redirect a mis-statement that was made about how this piece of legislation came to be in a conference committee report.

Do I submit that to the staff?

Ms. LEGER FERNÁNDEZ. Yes. Please submit that, and we will make that part of the record, so that it responds to the testimony.

Ms. MCCOLLUM. Thank you, Madam Chair.

Ms. LEGER FERNÁNDEZ. If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 2:39 p.m., the Subcommittee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE
COMMITTEE'S OFFICIAL FILES]

Access Fund: Testimony for the Record on H.R. 1884 dated 03.29.21.

Ak-Chin Indian Community:

- Letter to Sen. Sinema to Request to Co-Sponsor H.R. 1884/
S. 915, the Save Oak Flat Act dated 04.12.21.
- Letter to Rep. O'Halleran to Request to Co-Sponsor H.R. 1884/
S. 915, the Save Oak Flat Act dated 04.12.21.
- Letter to Sen. Kelly to Request to Co-Sponsor H.R. 1884/
S. 915, the Save Oak Flat Act dated 04.12.21.

Anthropological Research, LLC: Testimony for the Record on
H.R. 1884 dated 04.13.21.

Apache Stronghold:

- Complaint as Filed in the U.S. District Court dated 01.12.21.
- Declaration of Cranston Hoffman, Jr. dated 01.14.21.
- Declaration of John R. Welch, PhD dated 01.20.21.
- Declaration of Naelyn Pike dated 01.14.21.
- Declaration of Wendsler Nosie, Sr., PhD dated 01.14.21.
- Opening Brief of Plaintiff-Appellant Apache Stronghold, Case
No. 21-15295 dated 03.18.21.
- Wendsler Nosie, Sr.—Testimony for the Record on H.R. 1884
dated 04.22.21.

Arizona Mining Reform Coalition: Testimony for the Record on
H.R. 1884 dated 04.09.21.

Center For Biological Diversity:

- Statement for the Record on H.R. 1884, the Save Oak Flat Act
dated 04.13.21.
- Article titled, "Kearny Mayor signs letter to President in
support of Resolution Copper without City of Kearny's
approval" dated 04.28.21.
- Letter to Rep. Grijalva in Support of H.R. 1884/S. 915 dated
04.19.21.
- London Mining Network Letter to Rep. Grijalva in Support of
H.R. 1884/S. 915 dated 04.16.21.

Cocopah Tribe: Resolution No. CT-2021-07 dated 04.09.2021.

Concerned Citizens and Retired Miners Coalition: Testimony for
the Record on H.R. 1884 dated 04.13.21.

Danyell Dahn:

- Article titled, “Safety concerns for Indigenous women in resource development: MMIWG inquiry” dated 06.06.2019.
- Article titled, “San Carlos Lake’s dry-up is earliest ever as water levels plummet” dated 04.20.21.
- Article titled, “Southwest braces for water cutbacks as drought deepens along the Colorado River” dated 04.06.21.
- Arizona State Land Department Letter to Tonto National Forest RE Resolution Copper Draft EIS Comments dated 11.07.2019.
- Statement for the Record on Oak Flat.

Earthworks: Testimony for the Record on H.R. 1884 dated 04.19.21.

First Nations Heritage Protection Alliance: Testimony for the Record on H.R. 1884 dated 04.20.21.

Fort McDowell Yavapai Nation:

- Letter to Arizona Senators to Request to Co-Sponsor S. 915 dated 04.12.21.
- Letter to Representatives to Request to Co-Sponsor H.R. 1884 dated 04.12.21.
- Resolution No. Ft. McD. 2021-35 dated 04.20.21.

Havasupai Tribe:

- Letter to Representatives and Senators to Request to Co-Sponsor H.R. 1884/S. 915, the Save Oak Flat Act dated 04.13.21.
- Resolution No. 26-21 dated 04.13.21.

Hopi Tribe: Letter to Arizona Senators to Request to Co-Sponsor H.R. 1884/S. 915, the Save Oak Flat Act dated 04.12.21.

Hualapai Tribe:

- Letter to Rep. Grijalva to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.12.21.
- Letter to Sen. Sanders to Request to Co-Sponsor S. 915, the Save Oak Flat Act dated 04.12.21.
- Resolution No. 19-2021—Supporting Oak Flat Act dated 04.09.21.

La Posta Band of Mission Indians: Resolution No. 212104A.

Muscogee (Creek) Nation: Testimony for the Record by the Hickory Ground Tribal Town of the Muscogee (Creek) Nation dated 04.21.21.

National Wildlife Federation: Letter to Reps. Grijalva and Westerman to Request Support for H.R. 1884, the Save Oak Flat Act dated 04.12.21.

Navajo Nation: Letter to Arizona Senators to Request to Co-Sponsor S. 915, the Save Oak Flat Act dated 04.12.21.

Oglala Sioux Tribe: Letter to Leader Schumer, Sen. Manchin, Speaker Pelosi, and Rep. Grijalva to Request Support and to Co-Sponsor H.R. 1884/S. 915 dated 04.26.21.

Oneida Nation:

- Letter to Rep. Fitzgerald to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Gallagher to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Grothman to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Kind to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Moore to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Pocan to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Steil to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Rep. Tiffany to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.13.21.
- Letter to Sen. Baldwin to Request to Co-Sponsor S. 915, the Save Oak Flat Act dated 04.13.21.
- Letter to Sen. Johnson to Request to Co-Sponsor S. 915, the Save Oak Flat Act dated 04.13.21.

Outdoor Alliance: Letter to Chair Leger Fernández and Ranking Member Young in Support of H.R. 1884 dated 04.20.21.

Pascua Yaqui Tribe: Letter to Arizona Senators to Request to Co-Sponsor S. 915, the Save Oak Flat Act dated 03.24.21.

Patagonia: Testimony for the Record on H.R. 1884 dated 04.16.21.

Poarch Band of Creek Indians: Letter to Rep. Carl to Request to Support and Co-Sponsor H.R. 1884 dated 04.21.21.

Pueblo of Tesuque: Letter to Rep. Leger Fernández in Support of H.R. 1884/S. 915 dated 04.20.21.

Red Cliff Band of Lake Superior Chippewa Indians: Resolution No. 4/20/21D dated 04.20.21.

Representative Grijalva: Op. Ed. Article titled, “Don’t trust this mining company to protect Oak Flat. Look what it did in Australia” dated 11.16.20.

Salt River Pima-Maricopa: Resolution No. SR-3863-2021 in Support of H.R. 1884 dated 04.07.21.

Samish Indian Nation: Letter to Rep. Larsen, Senators Murray and Cantwell to Request to Co-Sponsor H.R. 1884/S. 915 dated 04.12.21.

San Carlos Apache Tribe:

- Press Release dated 04.13.21.
- Resolution No. NV-19-183 Supporting the Protection of Oak Flat and Other Native American Sacred Spaces From Harm dated 11.22.19.

San Pasqual Band of Mission Indians:

- Letter to Sen. Feinstein to Request to Co-Sponsor H.R. 1884/S. 915 dated 04.20.21.
- Resolution No. SP 042021-15 dated 04.20.21.

Save Oak Flat Act of 2021—Map dated 03.15.21.

Shawnee Tribe:

- Letter to Rep. Mullin to Request to Co-Sponsor H.R. 1884/S. 915 dated 04.16.21.
- Letter to Sen. Lankford to Request to Co-Sponsor H.R. 1884/S. 915 dated 04.16.21.
- Resolution R-04-14-2021-A dated 04.14.21.

Shoshone-Bannock Tribes: Letter to Sen. Crapo, Sen. Risch, and Rep. Simpson to Request Support and to Co-Sponsor H.R. 1884/S. 915 dated 04.20.21.

Terry Rambler, Chairman of the San Carlos Apache Tribe: Article from *The Hill* titled, “Congress can protect sacred Oak Flat in Arizona from mining project” dated 04.13.21.

Tohono O’odham Nation: Letter to Rep. Grijalva to Request to Co-Sponsor H.R. 1884, the Save Oak Flat Act dated 04.12.21.

Tommy Caldwell, Global Sports Activist for Patagonia: Testimony for the Record on H.R. 1884 dated 04.09.21.

Tonto Apache Tribe: Resolution No. 21-08 dated 04.07.21.

Tribal Organizations: Letter to Leader Schumer, Sen. Manchin, Speaker Pelosi, and Rep. Grijalva to Request Support for H.R. 1884/S. 915 dated 04.27.21.

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada: Letter to Rep. Grijalva opposing H.R. 1884 dated 04.09.21.

White Mountain Apache Tribe: Resolution No. 04-2021-68 dated 04.08.21.

Women’s Mining Coalition: Copper Fact Sheet.

