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**Terry Rambler, Chairman, San Carlos Apache Tribe  
Written Testimony for the House Natural Resources Committee  
Subcommittee for Indigenous Peoples of the United States  
Legislative Hearing 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 1800’s. 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

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exist. In its place will be a 1,000-foot deep by 1.8-mile-wide crater.<sup>1</sup> 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. 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.<sup>2</sup>

The most recent version of the bill, H.R. 687, was pulled from the House floor twice in the 113<sup>th</sup> 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*.<sup>3</sup> 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

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<sup>1</sup> Final Environmental Impact Statement (“FEIS”) for Resolution Copper Project and Land Exchange, p. ES-3 (Rescinded on March 1, 2021).

<sup>2</sup> In 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.

<sup>3</sup> Section 3003(c)(10).

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

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

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<sup>4</sup> Letter 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>).

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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;<sup>5</sup> (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,<sup>6</sup> 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.<sup>7</sup>

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:

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<sup>5</sup> FEIS at 824.

<sup>6</sup> FEIS, Appendix H, Table H-3.

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

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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*.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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 *goiil'* (home) of our *diyí'n* (sacred power), visited by our

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<sup>8</sup> FEIS at 856.

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

<sup>10</sup> 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.

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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 of 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 of 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 of 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.

The Advisory Council on Historic Preservation, in its NHPA Section 106 comments to Secretary Vilsack, confirmed these facts.<sup>11</sup> 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.

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

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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...”<sup>12</sup> 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.<sup>13</sup> 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.”<sup>14</sup>

In addition, even under Resolution Copper’s optimistic estimate (fully accepted by TNF), the mine will use 775,000-acre feet of water.<sup>15</sup> 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 sourced from Superstition Vistas Planning Area far outweighs the estimated financial benefits to the Trust

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<sup>12</sup> House Committee on Natural Resources Hearing, 112-40, p. 47.

<sup>13</sup> Draft Environmental Impact Statement (DEIS), at 312.

<sup>14</sup> FEIS at 156.

<sup>15</sup> FEIS, Appendix H, Table H-3.

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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.”<sup>16</sup>

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.

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



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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."<sup>17</sup> 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 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.<sup>18</sup> 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

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<sup>17</sup> Congressional Record, H5853 (September 26, 2013).

<sup>18</sup> FEIS at ES-25.

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serve the Project's tunnels, shafts, and underground infrastructure.<sup>19</sup> 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."<sup>20</sup> 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.<sup>21</sup> 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

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<sup>19</sup> FEIS at 405.

<sup>20</sup> FEIS at 969.

<sup>21</sup> FEIS at 422.

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noted that the provision, later included as Section 3003, will “trade away a multi-billion asset for a few thousand acres of recreation land.”<sup>22</sup>

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 FY15NDAA 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.

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<sup>22</sup> Congressional Record, H5851 (September 26, 2013).