



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

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

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

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- WHEREAS,** Oak Flat is a place filled with power – a place where Native people have gone, since time immemorial, and continue to go to for prayer, to conduct ceremonies such as Holy Ground and the Apache Puberty Rite Ceremony that some refer to as the Sunrise Dance, which celebrates a young woman’s coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing; and
- WHEREAS,** Oak Flat has played and continues to play an essential role in Apache religion, traditions, and culture for centuries and is a holy site and traditional cultural property with deep tribal religious, cultural, archaeological, historical and environmental significance; and
- WHEREAS,** On March 4, 2016, Oak Flat was listed on the National Park Service’s National Register of Historic Places as a Traditional Cultural Property; and
- WHEREAS,** The Land Exchange circumvents federal laws that mandate protection of Native American religion and culture and circumvents federal laws that mandate protection of the environment; and
- WHEREAS,** The Inter Tribal Association of Arizona (“ITAA”), an association of 21 tribal governments in Arizona, provides a forum for tribal governments to advocate for national, regional and specific tribal concerns and to join in united action to address these issues; and
- WHEREAS,** ITAA has passed resolutions opposing the Land Exchange and has joined hundreds of tribal nations, Native organizations and others in opposition to the Land Exchange, because the proposal will destroy the religious and cultural integrity of Oak Flat, and set dangerous precedent for all of Indian Country by conveying federal lands that encompass a known Native sacred area to a private company for mining activities; and
- WHEREAS,** By standing resolution #REN-13-019, the National Congress of American Indians (“NCAI”) has opposed the Land Exchange (H.R. 1904 and H.R. 687, and S. 339), the Southeast Land Exchange, and has joined hundreds of tribal nations, tribal organizations and others in opposition to the Land Exchange; and
- WHEREAS,** Over united opposition by NCAI, ITAA member tribes, and other tribal nations, and organizations across the country, the Southeast Arizona Land Exchange legislation was attached to the FY 2015 National Defense Authorization Act and enacted in December 2014; and
- WHEREAS,** Under Section 3003 of the FY 2015 National Defense Authorization Act, the United States Department of Agriculture (“USDA”) must begin implementation of the Land Exchange, which includes conducting an Environmental Impact Statement of the Land Exchange and conducting government-to-government consultation with impacted Indian tribes – but which also includes a mandatory transfer of Oak Flat to the foreign-owned mining corporation regardless of the findings of the Environmental Impact Statement and tribal government consultation; and
- WHEREAS,** The U.S. Forest Service, in carrying out the directives of Section 3003 published the Draft Environmental Impact Statement of the Land Exchange and mine project; and

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

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

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

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

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

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

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

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



Gwendena Lee-Gatewood, Chairwoman

4/8/21

Date



Doreen T. Numkena, Tribal Secretary

4-8-2021
Date