

**Testimony of Robert Rice, Council Member, Mescalero Apache Tribe**  
**Before the House Natural Resources Committee – Subcommittee on Federal Lands:**  
**"Examining Opportunities to Enhance Tribal Forest Management"**

**December 5, 2023**

Good afternoon Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee. My name is Robert Rice. I serve as a Council Member of the Mescalero Apache Tribe ("Mescalero" or "Tribe"). Thank you for this opportunity to testify about opportunities to enhance tribal forest management practices.

**Background: the Mescalero Apache Tribe**

The Mescalero, Lipan and Chiricahua Apache, make up the Mescalero Apache Tribe. Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. We were protected by our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our lands, the Apaches entered into a treaty with the United States on July 1, 1852. The Treaty with the Apaches promised the Tribe a permanent homeland in our aboriginal territory. The Mescalero Apache Reservation ("Reservation"), located in the White and Sacramento Mountains of rural south-central New Mexico, was established through a succession of Executive Orders in the 1870's and 1880's. The Reservation spans approximately 720 square miles (460,405 acres). Our Reservation is home to 5,500 tribal citizens and approximately 200 non-Indian residents.

The original Reservation boundaries included lands that are currently held in federal ownership, such as Lincoln National Forest ("LNF") and Bureau of Land Management ("BLM") lands surrounding the Fort Stanton State Monument. These federal lands were carved out of our ancestral homelands. However, the Mescalero Apache people have maintained strong cultural ties to these lands. To this day, we continue to gather plants important to our traditions and conduct ceremonies on these federal lands. To strengthen our ties to these lands and to have input into their management, the Tribe has entered into Memoranda of Understanding ("MOUs") with federal agencies, including the U.S. military and LNF.

**Mescalero Apache Forest Management**

For centuries, we have managed our forests holistically, as a way of life, to promote the growth of food and medicinal plants, to manage the wildlife in these forests, and to protect our lands from invaders.

This tradition of forestry was put into formal practice when the Bureau of Indian Affairs ("BIA") Mescalero Agency opened its Branch of Forestry in 1910. Mescalero's first major commercial timber sale was in 1919. With the opening of the tribally owned Mescalero Forest Products' ("MFP") sawmill in 1987, the Tribe entered a new era of forest management. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

For more than a century, the BIA Mescalero Agency and the Tribe have worked to develop a premier forestry program on the Reservation. During the 1990's and early 2000's, the BIA Branch of Forestry employed 3 professional foresters and 2 forestry technicians in the Timber Sale section.

This small staff was responsible for preparing and offering for sale lumber at 16.8 million board feet annually and completing all sale planning, environmental compliance work, timber sale layout and administration. Due to the amount of timber harvested, the BIA identifies the Reservation as a Category 1-Major Forested Reservation. Additionally, the Fire Management and Fuels Management Programs are each rated as High Complexity. These ratings describe not only the complexity of addressing fire concerns across a large landscape but also the need for coordinated efforts among programs and agencies.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation, assisting the BIA in timber sales and performing fuels management projects. The strong working relationship with BIA Forestry and the implementation of contracts under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) helped the Tribe build a strong forest management system.

Before the Tribal sawmill, Mescalero Forest Products (“MFP”), closed in 2012, the Tribe treated one full rotation of the commercial forest, totaling 183,876 out of a total Reservation land base of 460,405 acres. All 183,876 acres were considered for logging. Areas that were not treated contained arch sites, threatened and endangered species, or homesites.

Despite the importance of this mission and a small budget, the Mescalero BIA Branch of Forestry experienced a 43% reduction in its staffing levels since 2016. As a result, in FY2022 the Tribal Council passed a Resolution to contract for and take over the BIA Branch of Forestry and Branch of Natural Resources activities through Public Law 93-638 Self-Determination contracts. This has allowed the Tribe to focus on prioritizing Tribal goals and objectives for managing our forest.

We view our forest as a dynamic living entity. It provides water, food, shelter and a means of providing jobs and revenue for Tribal members. When the Tribe first began commercially harvesting timber, many opposed the concept. This resistance to proactive forest management began to dissipate in 1996 when the Tribe experienced its first large fire in recent history, the Chino Well Fire. This fire began on a windy spring day in April. Within one day, the fire threatened 42 homes, forcing evacuations, and burning a seven-mile strip of forest of more than 8,000 acres. Due to the rapid-fire response of Tribal fire crews, no homes were damaged. Soon after the fire, homeowners wanted to learn how they could protect their homes from future wildfires.

With the advent of the National Fire Plan in the late 1990's, the BIA Branch of Forestry worked with the Tribe to develop strategic ridgetop fuel breaks and implement wildland urban interface treatments around residential and recreational areas across the Reservation. Through this program, the Tribe has treated an additional 63,968 acres through hazardous fuels reduction projects. These projects were coordinated with harvest operations, recognizing that understory thinning alone would not reduce the potential for destructive crown fires. As a result of implementing wildfire mitigation measures to reduce fire danger, the Tribe earned Firewise Communities/USA recognition in 2003 and was the first tribe in New Mexico to earn such recognition.

National forestry policy has always been important to the Mescalero Apache Tribe. Mescalero leadership and forestry staff provided congressional testimony and advised the government in developing the Healthy Forest Restoration Act of 2003 and the Tribal Forest Protection Act of 2004 (“TFPA”). The TFPA, in particular, helped pave the way for the Tribe to work with LNF to develop the first Tribal stewardship contract called the 16 Springs Stewardship contract in 2006 to implement hazardous fuel reduction projects on adjacent U.S. National Forest lands. Under the 16 Springs Stewardship contract the Tribe was able to complete approximately \$6,000,000 of fuels

treatments along the Tribe's southern boundary. The TFPA continues to be a useful tool to help the Tribe expand the implementation of our healthy forest management practices to nearby lands. However, as noted below, the Act needs to be expanded and updated.

Hazardous fuel reduction projects are vital to our forest management practices. Forests are living organisms. With reductions in density, trees and ground cover are better able to thrive. Southwestern forests grow with very little precipitation. On the Reservation and in LNF, 26 inches of annual precipitation is considered a "wet" year. By reducing tree densities to ensure the crowns are not touching, we greatly enhance the available water, light and nutrients each individual tree receives. With open forest conditions, pine seedlings have a better environment to germinate, resulting in increased forest regeneration.

In addition to its hazardous fuels management program, the Tribe used to operate the MFP sawmill. However, the decline in the lumber market, combined with process inefficiencies and a lack of by-product markets, resulted in the closure of MFP twice, once in December 2008 and again in July 2012. The closure of the sawmill resulted in the loss of 55 jobs for mill workers and close to 150 supporting staff (including marking, harvesting, hauling, and administrative staff). The Tribe was also forced to close a second mill that it owned in Alamogordo, which employed 82 workers.

The Mescalero Forest Product sawmill was a vital first-line forest management tool that enabled the Tribe to treat the larger trees of the forest overstory through selective harvests that were followed up with hazardous fuels reduction projects in the smaller size classes. Closure of these sawmills has significantly limited our ability to effectively manage our forest and assist in the management of LNF.

Since the closing of Mescalero Forest Products in 2012, we are already experiencing significant increases in forest densities and associated declines in forest health. We are not able to effectively treat forest overstories to remove dwarf mistletoe and bark beetles, which does not allow the young understory trees to grow to their full potential. In the future, this will greatly affect the overall health of our forest. Furthermore, the ground water table levels are dropping, causing the Tribe to redrill many range water wells and some domestic wells. If something is not done to reinstate the sawmill or find a suitable alternative, Tribal and BIA Foresters have estimated that in 20 to 25 years, Reservation Forest conditions will be the same as those in LNF.

In addition, congressional funding cuts, implemented over the past two decades, have further strained our ability to continue our forestry practices. Prior to these cuts, the Tribe was able to manage our forest better than the LNF on a fraction of the federal agency's budget. Failure to restore this modest funding will ensure the demise of a hugely successful program.

### **Concerns with Federal Forest Health: Lessons Learned from the Little Bear Fire**

While the Tribe has worked hard to maintain a healthy forest on our Reservation, Tribal leadership has longstanding concerns about the very dense forest conditions in LNF, which borders our Reservation on three sides. Due to the overly dense and unhealthy condition of the LNF, we have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS forest lands die around us.

It is not too late to remedy this situation. A case in point is the successful stewardship contract that the Tribe entered into with the USFS pursuant to the TFPA. Through the 16 Springs Stewardship contract with LNF, the Tribe treated more than 6,300 acres of LNF lands mostly located along the shared boundary between our Reservation and LNF. Due to the Tribe's efforts, these USFS lands

are much healthier than they were. However, there are many thousands of additional acres of dense forest within LNF that remain untreated and continue to threaten the lives and property of Tribal members and the public.

Nature provided us a preview of what will happen if the Mescalero forestry program is allowed to fail. The Little Bear Fire started in a modest way on Monday, June 4, 2012. The initial small fire was caused by lightning in the White Mountain wilderness in LNF. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only on day shifts, air tanker resources were not utilized, and helicopter water drops were minimal. On the fifth day, the fire jumped the fire line and high winds turned the fire into a devastating inferno. By that night, the fire had blazed through the Tribal ski area, Ski Apache Resort (“Ski Apache”), and crossed onto Tribal lands. Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded \$100 million.

The Little Bear Fire’s impacts provided a clear contrast between the healthier tribal forests and much less healthy LNF, demonstrating the need for continued funding of smart fuels management projects and increased funding for Tribal Forestry Management.

In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso and prevented complete devastation of the Village of Ruidoso and its source waters. The Little Bear Fire is proof positive that hazardous fuels reduction projects work.

Many members of the surrounding communities, including our Tribal community, felt that this fire should have been contained and controlled within the first few days after detection. The proximity of the fire to Tribal lands, Tribal infrastructure, the Village of Ruidoso and its location within a New Mexico State priority watershed should have triggered a more aggressive response to suppress the fire. Unreasonable restrictions placed on fire suppression actions within LNF wilderness areas contributed to the failure to immediately suppress the fire using all available resources. Had Mescalero not managed its forest through fuels management projects, the fire would have devastated the Village of Ruidoso.

### **Mescalero Apache Investments in Lincoln National Forest**

As noted above, much of LNF is carved out of the ancestral homelands of the Mescalero Apache. Evidence of our connection to LNF can be found throughout the forest, from rock art to mesquite pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers, who are holy beings that ensure our well-being.

Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is located on the northern border of the Reservation. The land is part of the Tribe's aboriginal homelands and is located within the Sierra Blanca Mountain Range, which is sacred to the Mescalero Apache people.

Over the past 60 years, the Tribe has made significant improvements to the Resort. In 2012, the Tribe invested \$15 million to triple the ski lift capacity at Ski Apache. In addition, the Tribe invested \$2.6 million for non-ski / year-round recreation at Ski Apache. Ski Apache employs 350 people during the ski season and contributes millions of dollars to the local economy.

To protect these investments and our sacred lands, the Tribe has a considerable interest in preventing future wildfires and resulting flooding that would devastate the Resort.

Under the current arrangement, the USFS administers these lands, and LNF has the legal responsibility to respond to emergencies, such as the June 2012 Little Bear Fire. However, it has been the Tribe that has acted as the primary first responder in emergency situations. If the Tribe had not taken the initiative, our assets at Ski Apache would have been lost in the Little Bear Fire.

Ski Apache incurred over \$1.5 million to tribal assets within the special use permit area due to the Little Bear Fire. Ski Apache is located at the highest point of the Little Bear Fire. Failure to address flooding at higher elevations would have made rehabilitation at lower elevations less effective. The Little Bear Fire crossed the Reservation line at a key topographic area. There are two major canyons, Upper Canyon and the Eagle Creek area, that start on the Reservation and then lead off the Reservation. Both areas are heavily populated off-Reservation. Because of the volume of trees that were burnt, there was a real danger that resulting flooding would have destroyed buildings, access roads, and existing ski runs. However, due to additional investments and hazardous fuels projects conducted by the Tribe, major flooding was avoided.

Even though the Tribe, as a permittee, is solely responsible for rehabilitation and all costs incurred from the Little Bear Fire, the Tribe first had to gain approval from LNF prior to taking action to begin rehabilitation efforts. However, it took LNF months to respond. While LNF committed to cleaning piles of burned trees, it took over 18 months for that action to occur.

The BIA has a Burned Area Emergency Response (“BAER”) team that tried to communicate with the USDA/LNF/BAER team to discuss rehab, especially in the area of these two canyons. However, USDA/LNF/BAER and BIA BAER teams lacked coordination to fight fires and flooding, leaving the Tribe and Ski Apache in the middle and out of the loop.

Little consideration was given to the importance of Ski Apache to the Tribe’s and our nearby community’s economies. Closure of Ski Apache for a single season would devastate the economies of both the Village of Ruidoso and the Tribe. Despite the importance of Ski Apache, LNF prioritized other areas for fire rehabilitation efforts instead of Ski Apache.

### **Specific Recommendations to Enhance Tribal Forest Management**

The work of Tribal Forest managers nationwide has proven effective to protecting lives and property throughout Indian Country while maintaining the healthiest forests in the nation. In addition, Tribal Foresters, through activities taken on through the Tribal Forest Protection Act, our practices have worked to improve the health of nearby federal forests. To enhance the work of Tribal Forest Management, we make the following recommendations:

- The primary barrier to enhancing Tribal Forest Management is the lack of funding. Tribal forestry programs receive far less funding than our state and federal counterparts. The 2023 Report by the Indian Forest Management Assessment Team acknowledged that "Indian forests [receive] much less forest management funding per acre than adjacent forest landowners." BIA allocations to tribes average only \$3.11/acre, while National Forests receive \$8.57/acre and state forests in the western U.S. average an astounding \$20.46/acre. At one-third to one-tenth of the funding our state

and federal counterparts receive, tribes still accomplish vastly more reductions in hazardous fuels and have healthier, functioning forest ecosystems. In addition to greatly reducing wildfire hazard on reservations, tribal land managers have seen forest thinning treatments result in increased water yields despite the current extreme drought situation. However, this work is not sustainable.

**RECOMMENDATION 1:** We support the IFMAT IV recommendations to increase Tribal Forestry funding by \$96 million, increase fire preparedness by \$42 million, and establish a separate budget line for tribal forest roads to be funded at \$89 million/year. All of this would bring Indian forest funding closer to parity with federal forests.

- Tribal governments are among the largest owners of forest lands in the United States. Of the approximately 56 million acres of federal Indian trust land, more than 18 million acres are forest lands. The Forest Service shares approximately 4,000 miles of boundaries with Tribal lands, and much of the National Forest System and BLM lands were carved out of Indian Reservations and ancestral Tribal government homelands and include lands on which Tribal governments exercise legal treaty rights.

As noted above, it is not enough that tribal forest managers work to protect tribal homelands. Missteps and mismanagement of nearby federal lands can just as easily destroy thousands of acres of adjacent Indian lands. The TFPA is working to improve communication and Tribal government input in federal forestry decision-making, but it has fallen far short. Few federal land management agencies implement Tribal Forest management practices or incorporate Tribal forestry knowledge. In addition, while the TFPA is working to protect adjacent lands, dense and unhealthy forests exist throughout Forest Service and BLM lands – which continues to pose a risk to Indian lands and communities.

**RECOMMENDATION 2:** While the Biden Administration has attempted to enhance Tribal co-management of federal lands, these policies need congressional authorization to take real effect. Amend the TFPA to establish a Pilot Program to authorize Tribal Co-management of federal lands to incorporate Tribal Forest management practices *throughout* Forest Service and BLM lands to achieve landscape-scale management. TFPA Tribal work should extend beyond adjacent lands, and instead be authorized throughout certain federal Forest Service and BLM lands with which Tribes have proven connections. The contracting tools developed, such as PL 93-638, should facilitate the process of co-management. Legislative language to accomplish a portion of this goal was included in Section 302 of Chairman Westerman’s Emergency Wildfire and Forest Management Act of 2016, which passed the U.S. House of Representatives.

**RECOMMENDATION 3:** Make the 2018 Farm Bill’s 638 Tribal Forestry Demonstration Project permanent and dedicate funding to TFPA 638 contracts. Use of 638 authority provides a funding mechanism through the Forest Service to cover the cost of Tribal staff and resources (prior to the 2018 Farm Bill, those costs would have to be covered by the Tribal Nation in question). However, no funding for this purpose was allocated in the 2018 Farm Bill, which has limited implementation of the program.

**RECOMMENDATION 4:** Federal land management laws provide state and local governments and non-profits to administratively acquire federal lands but fail to permit similar transactions with Tribal governments. To achieve parity and respect for the governmental status of Indian Tribes, Congress should amend these laws to provide the Forest Service and BLM with legal authority to administratively transfer federally managed forest lands back to Tribal governments in situations where such lands are former reservations or encompass ancestral lands.

## **Conclusion**

The Reservation is our permanent homeland. Our lands serve as the groundwater recharge areas for much of south-central and southeastern New Mexico. We cannot allow a century of work to restore forest health and reduce the threat of wildfire to simply fall by the wayside. Congress must work with tribes to find large-scale long-term solutions to this problem to maintain the forestry infrastructure necessary to accomplish a fully integrated forest health treatment program that will help maintain our way of life, create jobs in Indian Country, and sustain the vital watershed for the Apache people and our neighbors.