

## **TESTIMONY FOR THE RECORD**

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**Testimony 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. Also known as the “Save Oak Flat Act.”**

**Provided to the  
Subcommittee for Indigenous Peoples of the United States  
House of Representatives Natural Resources Committee  
1324 Longworth House Office Building  
Washington, D.C.**

**April 9, 2021**

On behalf of the Arizona Mining Reform Coalition, I appreciate the opportunity to express our views about the irreparable environmental and cultural impacts of the proposed Resolution Copper mining operation. We would like to include as part of our written testimony our January 26, 2021, official objections (<http://azminingreform.org/wp-content/uploads/2021/04/ITAA-et-al-Objections-Final-with-attachments-1-26-21.pdf>) and or February 26, 2021 Supplemental Objections (<http://azminingreform.org/wp-content/uploads/2021/04/ITAA-Supplemental-Objections-final-2-26-21.pdf>) to the Resolution Copper FEIS dated January 15, 2021 that was rescinded by the US Forest Service in March of 2021.

### **Summary**

Oak Flat is a priceless cultural, ecological and recreational treasure just east of Superior, Arizona. Resolution Copper, a foreign mining company, is proposing to destroy Oak Flat and a total of almost 15,000 acres of public, state, and private lands to build a huge underground copper mine that is sure to fail. The proposed mine will cause unacceptable losses to religious freedom, cultural heritage, and to our communities and the environment. The Tonto National Forest rushed through the environmental review under the impression that they are mandated to do so by Section 3003 of the 2015 NDAA, and released an incomplete and defective Final Environmental Impact Statement (FEIS) in January, 2021. This FEIS was rescinded in March, 2021, which has temporarily halted a 60-day clock for the Forest Service to trade away Oak Flat to Resolution Copper. The company will not commit to follow through with their plans until they

conduct a feasibility study to determine whether the proposed project is viable. Congress must overturn the Oak Flat land exchange because keeping Oak Flat public is overwhelmingly in the public interest. We are confident that a complete EIS including Resolution Copper's feasibility study will show that the project must be abandoned in favor of protecting Oak Flat and surrounding land.

The **Arizona Mining Reform Coalition** works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. AMRC works to hold mining operations to the highest environmental and social standards to provide for the long term environmental, cultural, and economic health of Arizona. The Coalition expects the mining industry to clean up after itself, comply fully with the spirit of safeguards in place to protect Arizona, and to interact in a transparent and open manner with Arizona citizens.

While the Arizona Mining Reform Coalition is not anti-mining, we do oppose the Resolution Copper project. First and foremost because it would destroy Oak Flat, which is not only sacred, but an ecological and recreational haven, and therefore priceless and worth far more than the minerals under its surface. Secondly, the risk to Arizona's increasingly diminishing water supply, to our air, and to the plants and animals found at Oak Flat is unacceptable. Finally, it is increasingly apparent that this project is unworkable from a technical standpoint. There is no mine anywhere in the world that is similar to what Resolution Copper is proposing. The closest approximation to the project is a mine Rio Tinto is building in Mongolia (Oyu Tolgoi) which is 2,500 feet shallower. Rio Tinto is currently having great difficulty building this mine and it is far over budget. It is bad enough that Resolution Copper could gain ownership of Oak Flat and its priceless natural and cultural heritage, but it is even worse that their proposed mine will fail if allowed to continue. This is a failed experiment that must be stopped before it is too late.

The Arizona Mining Reform Coalition has a long involvement with this proposal. We have opposed every one of the 12 versions of the Oak Flat Land Exchange, including the 13<sup>th</sup> version that became law as a rider on the National Defense Authorization Act of 2015 in December of 2014. Our Director has testified several times at hearings like this in both the House and the Senate. We have submitted voluminous comments at all stages of the permitting process including 6,436 pages of comments on behalf of the Coalition and 15 other groups representing millions of Americans on the DEIS. We supplemented our DEIS comments in October of 2020. We filed official objections to the January 2021 FEIS on January 26, 2021, and supplemented those objections on February 26, 2021.

## **The Proposal**

The proposed Resolution Copper Mine would be east of Superior, Arizona and would affect land that is currently part of the Tonto National Forest. The mine would destroy Oak Flat, including

the campground and thousands of additional acres of public land. The project includes an underground block cave mine that would create a crater roughly two miles wide and 1,000 feet deep at Oak Flat due to subsidence of the land. The mine would also dump nearly 1.4 billion tons of toxic mining waste into an unlined tailings dump--the preferred alternative tailings site will ultimately cover six square miles with a dam 490 feet high and would permanently disturb approximately 14,950 acres. This mine would use vast amounts of water – enough to supply the City of Tempe, Arizona, for 40 years -- at a time when climate change is intensifying our droughts and contributing to less water flowing in our rivers and streams.

Oak Flat is sacred to Indigenous people, including the Apache, and is on the National Register of Historic Places (NRHP) as a traditional cultural property (TCP), the Chí'chil Biłdagoteel historic district. It is a world class recreational area, attracting climbers from all over, not to mention a place of biological diversity. Several endangered species will be harmed by the mine, including the Arizona hedgehog cactus, yellow-billed cuckoo, and the Gila Chub.

The Oak Flat Campground was recognized by the Eisenhower Administration as an important recreational resource in 1955 under Public Land Order 1229, as amended, and 760 acres of Oak Flat were specifically placed off limits to future mining activity. This unique area is a world-class natural resource for birding, hunting, hiking, camping, rock climbing, bouldering, canyoneering, picnicking, responsible off-highway vehicle driving, and other recreational uses. Oak Flat receives tens of thousands of visitors each year who enjoy the peace and beauty of this landscape, while at the same time infusing needed tourist dollars into the surrounding area of Superior and Globe. Ga'an (known also as Devil's) Canyon and the waters of Queen Creek border the Oak Flat area. These important surface waters represent two of the crown jewels of Arizona's state trust lands, with some of the finest remaining riparian habitat in the state.

The Oak Flat Campground, Apache Leap, and the surrounding area are also very important for recreation. Shade from the large oak trees at Oak Flat and the fantastic scenery have long served as a respite to the citizens of the town of Superior and those who travel along nearby Highway 60. Many Superior residents oppose the project. Oak Flat, Apache Leap, Gaan Canyon, and the surrounding area are also important religious sites for Western Apaches and Yavapai, including the San Carlos Apache Tribe, the White Mountain Apache Tribe, and the Fort McDowell Yavapai Nation. The religious and traditional use of Oak Flat by Native Americans continues to this day.

## **The Problem**

There are two problems with the Resolution Copper proposal. The first is that the normal process for permitting mines located in whole or in part on US public lands was short-circuited. The second is that the project itself is a sure-to-fail experiment that places unacceptable risks on our social and environmental communities and structures.

### The Land Exchange:

- Is the first United States law that gives a Native American sacred site on public land to a foreign mining company.
- Is the largest loss of public land recreational climbing opportunities in US history.
- Benefits only two huge foreign mining companies at the expense of religious freedoms, Arizona's clean water, the environment, recreation, and economy.

The Resolution Copper proposal itself is a moving target. For the first 10 years Resolution Copper pushed the project, they refused to write and release a mine plan, forcing the public to guess about its impacts and to rely on Resolution Copper's characterization of the project and its effects on our communities. Many of us recall that Resolution Copper for years said that the toxic tailings generated by the project would be dumped in the Pinto Valley mine's open pit. We also recall that for years Resolution Copper swore on a stack of bibles that the mine would cause no subsidence whatsoever at Oak Flat.

When the first mine plan was finally released in November, 2013, it was incomplete. The mine plan was revised several times because the US Forest Service found it insufficient to begin the mine permitting process laid out in the National Environmental Policy Act (NEPA). The US Forest Service began the NEPA review of the project in 2016. To this day, we still do not know the full extent of the damage the proposed project would cause. When Congress passed the Oak Flat land exchange into law, it was based on incomplete and faulty knowledge.

In January of 2021, after more than 4 years of study of Resolution Copper's plan, the Tonto National Forest released a Final Environmental Impact Statement on the project. While it shows in horrifying detail some of the impacts the project would have, it too is incomplete.

Meanwhile, because of the Oak Flat land exchange law, the Forest Service rushed the publication of a Final Environmental Impact Statement (FEIS) that triggered the United States government giving Oak Flat to a foreign mining company while we still do not know the full extent of the damage the project would cause. The US Forest Service rescinded their defective FEIS in March of 2021, which interrupted any movement toward consummating the land exchange. In addition, as more and more information about the project trickles out, it is more and more apparent that this is an experiment that will fail with disastrous consequences.

### **What the FEIS Contained and What It Misses**

The rescinded FEIS was incomplete. We outlined in great detail problems with the proposed project in our November 7, 2019, comments to the Forest Service on the Resolution Copper

DEIS and in our Objections to the January 2021, FEIS. We urge you to read the comments and objections themselves, and will share just a few points from our Objections to the January 2021 rescinded FEIS to elucidate the dangers this project poses on Oak Flat and a wide swath of surrounding private and public land.

The faulty FEIS, Draft Record of Decision, and Project review, hurried through to completion in the waning days of the Trump Administration, is deficient in numerous critical areas, and violates multiple federal laws. As just one example of its rush-to-complete, the agency completely changed its regulatory structure for reviewing the Project in late 2020 but never provided any public review of the regulatory switch, despite the critical public land issues the 11th-hour reversal raises.

Additional problems with the FEIS include its legally erroneous “purpose and need” that governed the Forest Service’s review of the Project; failure to provide for and analyze a full range of reasonable alternatives; failure to provide a full analysis of the impacts of those alternatives; failure to apply the full scope of federal laws applicable to the Project; improper regulation and review of the Project and infrastructure under erroneous interpretations of federal law; failure to include any information or opportunity to comment on the appraisals that Congress required to be completed (including the additional Non-Federal lands that may be conveyed to the United States based on the appraisals); failure to adequately analyze connected actions and the direct, indirect, and cumulative impacts from the Exchange and Project; and failure to take the required “hard look” under the National Environmental Policy Act.

The project would destroy the sacred lands of Oak Flat, and thousands of additional acres would become permanent unlined waste dumps, buried under nearly 1.4 billion tons of toxic waste covering six square miles behind a 490-foot-high dam. This toxic sludge would travel through 19 miles of pipeline, traversing desert canyons, including Ga’an Canyon, and washes to reach this permanent dump location that is upstream and upgradient of the Gila River southeast of the mining area. The Project would also include a new 22-mile pipeline to transport the copper ore concentrate west/southwest towards the town of Magma for further processing and shipment.

The Project would use massive amounts of water. The estimated total quantity of water needed for the life of the mine (construction through closure) ranges from up to 677,000 acre-feet (“AF”) as analyzed in the FEIS to as much as 786,626 AF predicted in Resolution’s mine plan. The water would be consumed from various sources, including from mine dewatering and groundwater pumping. Much of the water consumed by the Project would be pumped from the groundwater underlying the heart of the East Salt River Valley.

The Exchange and Project would perpetrate a systematic violation of Chich’il Bildagoteel (Oak Flat) through mining, drilling, groundwater pumping (resulting in severe impacts to water resources), grading, construction, road building and expansion, traffic, light and noise pollution, sediment and erosion, and other activities. These activities would result in the physical destruction of Oak Flat, forever changing the character of Oak Flat relative to its crucial role in Apache religion and culture, and the introduction of auditory, visual and atmospheric disturbances that would profoundly diminish the integrity of this special place (both as a

“Traditional Cultural Property” under the National Historic Preservation Act and as a sacred site) for Tribal members.

Arizona has been experiencing decades of drought, with the most intense period of drought experienced in December 2020, with over 70% of Arizona under an “exceptional drought” (the worst drought possible). Making matters worse, the Colorado River, which provides a primary source of water for Maricopa, Pinal, and Pima Counties through the CAP, is facing significant shortages due to a structural deficit, ongoing drought, and years of declining snowpack in the Colorado River Basin.

### **Water Quantity**

Water is the lifeblood of Arizona’s communities, the environment and our economy. This project threatens the water supply of much of central Arizona. Dr. Steven Emerman testified at a similar hearing in front of this Committee in March, 2020, that Resolution Copper’s estimate of water consumption for its proposed mine is radically low and not based on any solid evidence. Our 2019 DEIS comments showed that this proposed project would use as much or more water on an annual basis than the city of Tempe, Arizona. Dr. Jim Wells testified during the March, 2020, hearing that groundwater would be depleted over a 300 square mile area and that it would take 1,000 years for the water table to recover from this proposed project. It bears repeating the the Draft EIS written by the Tonto National Forest said that the amount of water the project would use “could be greater than the estimated amount of physically available groundwater.” The southwestern United States continues to suffer from an extended drought and as we all know, a critical water source for Arizona cities, agricultural, and industry is the Central Arizona Project (CAP), a federally funded canal that moves water from Lake Mead on the Colorado River through Phoenix to Tucson. Because of water laws, Arizona could start to see severe cutbacks in the amount of water available from the CAP project in 2022. This is an especially critical source of water for farmers in Pinal County. The other source of water for these farmers is groundwater from the very aquifer that Resolution Copper intends to pump dry if their mine proposal is permitted.

The FEIS showed that the towns of Superior, Queen Valley, and Top of the World would suffer drawdowns from the proposed mine project.

A large new city, Superstition Vistas, that would be home to more than a million people is being planned directly in the drawdown zone of Resolution Copper’s proposed Desert Wellfield, from which it plans to pump most of the water that would be lost to the proposed mine project.

The Arizona State Land Department outlined substantial reservations about the Resolution Copper project in its comments to the 2019 DEIS. The Arizona State Land Department estimated it would lose more than \$500 million on the sale of land for the aforementioned Superstition Vistas development as a result of water drawdown and other impacts from the

Resolution Copper project. Revenues of state land sold are used for the education of Arizona children.

In short, Arizona doesn't have enough water to go around for cities, towns, agricultural, existing industry and mines, and the extravagant amount of water this proposed mine project would consume.

### **Water Quality**

Dr. Ann Maest, an aqueous geochemist and well recognized expert on mine water quality issues, provided a report for our 2019 DEIS comments which shows that 50% of the tailings (mine waste) generated by the proposed project would be acid generating. When tailings are acid generating, they leach the toxic substances found in the tailings into the air and water. The DEIS showed that the tailings would contain elevated levels of chromium, selenium, uranium, and cobalt, and have elevated levels (compared to US drinking water samples) of aluminum, iron, manganese, chloride, fluoride, and sulfate.

Reports provided in our 2019 DEIS comments by Dr. Maest and Dr. Bob Prucha, a water resources engineer/hydrogeologist with more than 30 years' experience, showed that a pit lake between 300 and 650 feet deep would form in the subsidence crater at Oak Flat. Both scientists conclude that this pit lake would contain highly toxic water.

In the defective January, 2021 FEIS the US Forest Service ignored virtually all of our detailed expert comments.

### **Dam safety and danger posed to communities**

In light of several major tailings dam failures in Canada, Brazil and other countries, tailings dam safety is on the minds of the mining industry, regulators, NGOs, and governments. We have seen legislation passed around the world to better regulate tailings dams. However, in the United States, not only have law-makers not strengthened laws and regulations governing the dumping of toxic tailings from the mining industry, regulations are backsliding. It is ironic and shameful that the US Forest Service and the state of Arizona would permit a tailings facility for the Resolution Copper project that would be illegal in Brazil, China, or Ecuador.

In light of the enormous size of the proposed tailings dumps, extreme caution needs to be exercised in approving any tailings dam. A dam collapse at the proposed Skunk Camp tailings location could reach Dripping Springs in 16 minutes. The Dripping Springs community is within a "self-rescue" zone as delineated in Brazilian law in which there is no time for external rescue and residents are left to get out the way of billions of pounds of toxic tailings that would bury their community.

The FEIS left out information critical to the safe siting of a tailings dump. The Skunk Camp proposed tailings location is upstream from Dripping Springs. Yet, inconceivably, the FEIS did not and has not completed a detailed analysis showing that the Skunk Camp location is even suitable, much less safe, for a giant tailing dump with a 490-foot-high dam holding in toxic waste just 16 minutes upstream from the community of Dripping Springs. It is worth noting that Resolution Copper made a serious error when it chose a location between the Towns of Superior and Queen Valley (dubbed the “Near West” location). When Resolution Copper finally did the required baseline testing of the Near West location, they found that the water table was much higher than they thought and that the ground was more fractured. They also found that the water table in Queen Valley is hydrologically connected to Superior. All of this came as a complete surprise to Resolution Copper.

The Forest Service has mapped a preferred route for a 19-mile pipeline corridor for huge pipelines that would carry tailings in a water slurry to the Skunk Camp tailings dump site. Much of this corridor is through some of the most rugged landscape in Arizona. The pipeline corridor has been studied by experts who concluded that it would be extremely difficult to route a tailings pipeline through the corridor and that spills would not only be likely, but highly disruptive to the environment.

### **Tailings Dam Safety Track Record**

It is instructive to look at the past track record of Resolution Copper's owners to see how safe tailings dams are at existing copper mines.

There are several tailings facilities associated with the Magma mine at Superior which was purchased by BHP (the minority owner of Resolution Copper) before the Resolution Copper subsidiary was created. Two tailings facilities are associated with the old Magma operation now owned by Resolution Copper – the Magma Number 3 and 4 tailings facilities (rated as a significant hazard) and the number 6 and 7 facilities (rated as a high hazard). These were examined by Rio Tinto (the majority owner of Resolution Copper) and rated for safety using the Canadian Dam Association rating system (from low to extreme hazard). The former facility was rated as significant, and the latter as high.

Using the same rating system, several tailings dams owned by BHP have significant safety problems. In Miami, Arizona, the Canyon Tailing facility is rated as very high hazard and the Miami Avenue Tailings facility is rated as extreme hazard. At San Manuel, 5 tailings facilities (Number 1 and 2, Number 3 and 4, number 5, number 6, and number 10) are all rated as very high hazard.

BHP recently sold the Pinto Valley mine to another mining company (Capstone). The Pinto Valley mine has a history of tailings spills. In 1997, when BHP still owned the facility, a tailings



dam spill was caused by piling waste rock on top of an existing tailings facility, a serious error that any competent mine operator would have avoided. The number 3 and number 4 Tailings storage facilities still in use by the Pinto Valley mine are at extreme risk of failure according to Dr. Emerman. Both tailings dams are of upstream construction (the most dangerous kind).

With a track record like this, how can we trust Resolution Copper to build and operate a safe tailings facility of unprecedented size in Arizona?

### **Rio Tinto and BHP Track Record Internationally**

Resolution Copper goes to great length to appear as a good corporate citizen. They would have you believe that they have the best interests of Superior and the local area at heart. However, how they actually act is substantially different from this public facade.

Resolution Copper has a history of successfully implementing recall campaigns against Town of Superior council-people and town leadership should they express even the slightest concerns about the Resolution Copper project.

In 2019, the Arizona Mining Reform Coalition, the Concerned Citizens and Retired Miners Coalition, and Save Tonto National Forest filed a lawsuit against the Arizona Water Quality Appeals Board over a decision to uphold an Arizona Department of Environmental Quality's decision to renew a permit to allow Resolution Copper to dump polluted water into Queen Creek. (Queen Creek runs through the communities of Superior and Queen Valley before it empties into the Gila River.) Resolution Copper, who was not named in the lawsuit, intervened in the proceedings. In January of 2020, Resolution Copper wrote a letter to the groups threatening to ask the judge in the case to award well over \$100,000 in legal fees to Resolution Copper should the lawsuit be unsuccessful. Resolution Copper promised to not only go after the groups themselves for money, but members and officers of the organizations. This highly unusual and threatening letter runs afoul of Arizona's anti-SLAPP lawsuits law, and shows just how far Resolution Copper is willing to go to bully its opposition.

This is mild compared to how Rio Tinto and BHP have treated communities around the world. In February, 2020, the London Mining Network published a report called *Cut and Run: How Britain's top two mining companies have wrecked ecosystems without being held to account*. The report can be found at: <https://londonminingnetwork.org/wp-content/uploads/2020/02/EMBARGOED-Cut-and-run.-How-Britains-top-two-mining-companies-have-wrecked-ecosystems.pdf>.

The report concludes and recommends that:

“Even ‘respectable’, ‘responsible’, enormously wealthy mining companies, can do and have done enormous environmental damage, and seem to be able to avoid being held

legally accountable for their actions. London Mining Network believes that they are nonetheless morally accountable for their actions, and that ways must be found to hold companies as legal persons, as well as decision-makers within them, legally accountable in cases where they have ‘cut and run’.

It is not sufficient for the companies concerned to say that they would not get involved in such projects now – they must pay for the entire clean-up of the damage they have already done. They must not be allowed to give or sell their responsibilities to others.

There is a pressing need for much stricter regulation of transnational mining companies. We fully support international efforts to establish a United Nations Binding Treaty on Transnational Corporations, with an independent international body which would be able to investigate and judge cases of environmental destruction and human rights abuse and to impose sanctions.”

There is no guarantee that the US Forest Service will substantially correct fatal errors in the rescinded January, 2021, FEIS when it releases a new one. The US Forest Service has had many chances to follow US laws and regulations in its application of the NEPA process and there is little reason to believe that that will happen in the new FEIS whenever it is released.

## **Conclusion**

It is clear from the testimony that will be received at this hearing that the proposed Resolution Copper mine is an unacceptable risk to Arizona and to the United States and that Section 3003 of the 2015 NDAA must be repealed.

Notwithstanding whether their perception is accurate or not, because of Section 3003 of the 2015 NDAA, the US Forest Service feels compelled to move at an overly expeditious pace to turn over Oak Flat to foreign mining companies and to approve their mine proposal.

We urge the US Congress to overturn the Oak Flat land exchange by enacting the Save Oak Flat Act or by other means and to require that the US Forest Service finally writes a new Environmental Impact Statement that fully and fairly examines all the many problems with Resolution Copper’s failed experiment.

Thank you for your time and consideration.