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Mr. Christopher Daniel
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Submit via email to resolutioncopper@achp.gov and rnelson@achp.gov

Resolution Copper Mining Project and Land Exchange; Tonto National Forest, Pinal County,
Arizona ACHP Project Number: 012344; Response to Termination of Consultation

Dear Mr. Daniel,

Please accept these comments in response to the press release issued by the Advisory Council on Historic Preservation (ACHP) on February 11, 2021 announcing that it had terminated consultation on the Resolution Copper Mining Project and Land Exchange and inviting public comment on that decision. I am very concerned by this decision. It is my position as an attorney familiar with the Resolution Copper Project, the National Historic Preservation Act (NHPA), and the regulations governing the ACHP that this decision is based on an incorrect interpretation of the law and a distorted version of the facts related to the impacts of the Resolution Copper Project and the development of the Programmatic Agreement. The ACHP should reverse that decision and sign the Programmatic Agreement. If ACHP proceeds with this course of action, then the Forest Service should approve the project and implement the measures described in the Programmatic Agreement to resolve adverse effects to historic properties.

I have more than 42 years of experience in the natural resources industries as a policy and legal expert. I have a BSBA and JD from the University of Missouri. For 23 years I served as the Executive Director of the Northwest Mining Association/American Exploration & Mining Association (AEMA), retiring in March 2019. I continue to provide consulting services to the minerals industry as a policy and legal expert. During my tenure at AEMA, the Association established itself as the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands.

I also served as a Trustee of the Rocky Mountain Mineral Law Foundation for approximately 20 years and worked closely with the most respected mining, public land and environmental attorneys in the country. I gained in-depth knowledge of the General Mining Laws, the environmental and public land laws and the proper interpretation of those laws. As executive director of AEMA, I worked closely with members on NHPA issues and compliance with ACHP regulations, particularly implementation of and compliance with the Section 106 consulting process. I continue to consult to the industry on Mining Law issues.

I also am very familiar with the Resolution Copper Project and the Land Exchange authorized and mandated by the FY 2015 NDAA. Resolution Copper joined AEMA during my tenure as executive director and representatives of Resolution Copper served on the Association's Board of Trustees. I toured the Resolution Copper Project site, including Oak Flat in February 2017 and received a complete briefing on the project. I authored March 2016 comments on behalf of AEMA opposing the nomination of Oak Flat Historic District Traditional Cultural Property to the National Register of Historic Places, and July 2016 comments on the Resolution Copper Project and Land Exchange Environmental Impact Statement. It is with this experience, background and knowledge that I submit these comments for your consideration.

The ACHP actions to terminate the Section 106 consulting process after years of Tribal and public participation, and refusal to sign the Programmatic Agreement at the last minute, after all other state and federal agencies had signed the agreement, is unprecedented and inappropriate. It appears the ACHP's February 11, 2021 decision was driven by political interests that favor the interests of one Tribe and a small group of vocal project opponents over the fair administration of the ACHP's duties under the NHPA. The fact that the February 11, 2021 termination letter was, within days, featured as the most prominent exhibit in the San Carlos Apache Tribe's motion for a preliminary injunction in its lawsuit against the Forest Service seeking to block the project is troubling.

As both the FEIS and the Programmatic Agreement (an appendix to the FEIS) document, it is overwhelmingly clear that the Forest Service has conducted extensive consultation with affected tribes and other interested parties. The final version of the Programmatic Agreement includes significant, substantive measures to resolve adverse effects and, where impacts cannot be mitigated, to respond directly to the requests of local tribes and communities to offset the adverse effects.

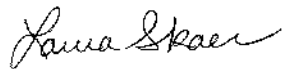
Impacts to Oak Flat were recognized from the beginning and acknowledged in the Programmatic Agreement in words that came directly from the affected tribes. Given the geologic fact mineral deposits cannot be moved and must be developed where they are found, impacts to Oak Flat are unavoidable because a world class copper resource lies under Oak Flat. The NEPA and NHPA processes were rigorous and took many years. The Forest Service, working with many federal and state cooperating and consulting agencies, and based on numerous Tribal and public comments has approved a plan with numerous limitations, stipulations and mitigation, that allows development of an important world class copper resource while limiting impacts to surface resources where possible and offsetting those impacts where they are unavoidable. The ACHP's recognition that the project would be a significant impact to Oak Flat is not an appropriate justification for terminating consultation or rejecting the Programmatic Agreement that was negotiated in good faith among the parties and signed by all other signatories.

Importantly, the Programmatic Agreement adopts specific mitigation programs that were requested by Consulting Tribes, local communities, the State of Arizona and developed in consultation among all of the consulting parties. The ACHP has acknowledged that the consultation process complies with Section 106 requirements. Thus, all statutory and regulatory requirements have been addressed and satisfied. There is no legal or other appropriate reason for

not signing the Programmatic Agreement and the ACHP should have signed it and thanked the Forest Service and the other consulting parties for their hard work.

I respectfully request that the ACHP sign the programmatic agreement so that the endowments and programs to consulting tribes and local communities contained in the Programmatic Agreement are not lost. Without the implementation of the Programmatic Agreement, Consulting Tribes and the public will essentially receive nothing in return for the Congressional authorized and mandated land exchange. If the ACHP does not reverse course and sign the Programmatic Agreement, then I recommend strongly that the Forest Service approve the project and include the measures described and agreed to in the Programmatic Agreement to mitigate and resolve adverse effects to historic properties when it issues a record of decision.

Thank you for considering these comments.



Laura Skaer

cc:

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