



SHAWNEE TRIBE

P.O. BOX 189 ♦ MIAMI, OK 74355
918-542-2441 ♦ FAX: 918-542-2922

RESOLUTION R-04-14-2021-A

RESOLUTION RE-AFFIRMING OPPOSITION TO SECTION 3003 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014; SUPPORTING OAK FLAT ACT

WHEREAS, the Shawnee Tribe is a federally recognized Tribe of Indians pursuant to the Shawnee Tribe Status Act of 2000, Public Law 106-568, Title VII, 25 U.S.C. §1041, et seq., which restored all of the Shawnee Tribe's jurisdiction and sovereignty, including civil and governmental jurisdiction over its lands; and

WHEREAS, the Shawnee Tribe is on the list of *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs* published at 83 Fed. Reg. 4235, 4238 (Jan. 30, 2018); and

WHEREAS, the Shawnee Tribe is governed under a Constitution duly ratified by the members of the Shawnee Tribe on September 15, 2001, as amended on September 20, 2003, September 16, 2006, September 17, 2011 and March 17, 2018; and

WHEREAS, the Constitution of the Shawnee Tribe confers governmental powers on the Shawnee Tribe Business Council, which is empowered to prescribe rules and regulations, to enact laws, and to transact all business on behalf of the Shawnee Tribe, in accordance with Articles IV, VI, and VII of the Constitution; and

WHEREAS, the Shawnee Tribe is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe's Business Council has the authority, among other things, to "represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to Shawnee Tribe Constitution; 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 have 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 of 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 Chi’chil Biłdagoteel, 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

WHEREAS, Oak Flat is a place filled with power – a place where Native people have, 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 and continues to play an essential role in Apache, Yavapai, Hopi, Zuni, and O’odham 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, the 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, 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, 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

WHEREAS, the National Congress of American Indians (“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.

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 Bįłdagoteel, 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 also 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 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, 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

WHEREAS, the Shawnee Tribe finds that the Land Exchange will result in Apaches, Yavapais, Hopis, Zunis, and O'odhams 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 Business Council of the Shawnee Tribe that:

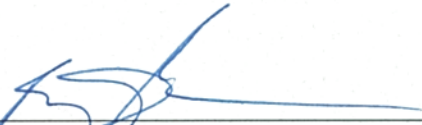
1. The Tribe hereby supports the Save the Oak Flat Act and the repeal of Section 3003 of the NDAA;
2. The Secretary of Agriculture is hereby requested to withdraw the FEIS from publication and to undertake a process to issue a supplemental draft environmental impact statement.

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 Council of the Shawnee Tribe that the Chief, or in his absence, the Second Chief, or designee, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

CERTIFICATION


The foregoing Resolution R-04-14-2021-A was duly adopted on April 14, 2021, by a vote of the Shawnee Tribe Business Council, resulting in a vote of 9 for, 1 against, 0 abstaining, and 0 absent.



Benjamin Barnes, Chief
Shawnee Tribe



Attest:



Roy Baldrige, Second Chief
Shawnee Tribe