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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Phoenix Division

Apache Stronghold,)
a 501(c)(3) nonprofit organization,)

Plaintiff,)

v.)

United States of America,)

Sonny Perdue, Secretary, U.S.)
Department of Agriculture (USDA),)

Vicki Christensen, Chief, Forest Service,)
USDA,)

Neil Bosworth, Supervisor, Tonto)
National Forest, USDA,)

And)

Tom Torres, Acting Supervisor, Tonto)
National Forest, USDA,)

Defendants.)

No. 2:21-cv-00050-CDB

**DECLARATION OF
WENDSLER NOSIE, SR., Ph.D.**

I, Wendsler Nosie, Sr., under the penalties of perjury and in accordance with the laws of the United States of America, hereby declare:

1. Chi'Chil Bildagoteel ("Oak Flat") is Apache sacred land and a Western Apache traditional cultural property and religious ground where my religious beliefs are seated and are freely exercised, as it has been for Western Apaches since time immemorial. It is still Western Apache land by the 1852 Treaty of Santa Fe and belongs to all Western Apaches. Oak Flat does not belong to the United States of America and so the United States has no authority to sell it, exchange it, or otherwise convey it or give it away.

2. Even though the United States has tried to steal Oak Flat away from us, we have never given up or sold that Treaty land. Our traditional Apache religion does not even allow us to do such a bad thing as that. Oak Flat is ours and always has been since time immemorial, long before the United States of America ever existed.



Wendsler Nosie, Sr. standing alongside an Apache ceremonial sweat lodge frame at Chi'Chil Bildagoteel ("Oak Flat") (Photo by Eli Imadali, Arizona Republic).

3. I was born in July 1959, on the San Carlos Apache Reservation. I was raised in a traditional Apache way of life. I graduated from the Globe High School in May 1978 and attended Merritt College in Oakland, California, attended Phoenix College in Phoenix, Arizona, and completed the State of Arizona Banking Academy. On February 26, 2016, I received my title as AUSN Professor in the Practice of indigenous Knowledge from the American University of Sovereign Nations and on June 13, 2018 received my PhD, a Doctorate in Bioethics, Sustainability and Global Public Health from the American University of Sovereign Nations.

4. I am the son of the late Elvera Ward Nosie and the late Paul Nosie Sr. My mother, Elvera Nosie was born in Old San Carlos as a Prisoner of war. Her father was

George Ward and her mother Maria Galvan. My grandfather George Ward, the son on Hiram Ward and Altisa were among the first Yavapai prisoners at Old San Carlos, driven from the Pinal Mountains and Oak Flat area, and Camp Verde areas to Old San Carlos. My father Paul Nosie Sr. was the son of William Nosie and April Logan, the descendants of Chief John Nosie of the Chiricahuas. April Logan was the Daughter of Walter and Ella Mary Logan, the family of Abraham Logan, the keeper of the Holy Ground in Seven Mile, San Carlos.AZ My clan is Stiniye and I am a descendent of the Bedonkohe band of Apaches, the band of Geronimo.

5. Naelyn Pike is my granddaughter. I have read her Declaration in this case and I adopt it and incorporate her words here into my Declaration, too. We have come a long way together through this struggle to protect our ancestral homelands, and I am thankful for her never-ending support and courage, especially during the most difficult times. Her powerful voice and determination to help protect the things we hold dear are a constant reminder that we must do so for future generations as Apache people.

6. I have been elected and served in the government of the San Carlos Apache Tribe as a Councilman (1989-92; 2004-2006; 2010-2012; 2012- 2016) and as Chairman (2006-2010).

7. I am the co-founder and spokesperson of Apache Stronghold, a 501(c)(3) not-for-profit organization registered in Arizona, and headquartered in the town of San Carlos in the San Carlos Apache Tribe's reservation land, bordered by the White Mountain Apache Tribe, the Navajo Tribe, the State of Arizona, and some federally-managed lands of the United States.

8. For over a decade our Tribe fought to stop the Southeast Arizona Land Exchange (“Land Exchange”), a proposal to transfer approximately 2,422 acres of our ancestral homelands in the Tonto National Forest (“TNF”) to foreign mining conglomerates, Rio Tinto and BHP, to dig a questionable and vast copper mine beneath lands we hold as sacred. Thanks to the vocal opposition of more than 400 Native Nations and tribal organizations the House of Representatives pulled the Land Exchange from floor consideration twice during the 113th Congress (January 3, 2013, to January 3, 2015) due to lack of support.

9. Despite this nationwide opposition, the Land Exchange was buried on page 1,103 of a 1,700-page National Defense Authorization Act (“NDAA”) that was unveiled on December 13, 2014, just minutes prior to midnight, the evening before votes.¹ This despicable action is the antithesis of democracy and has threatened to forever destroy our way of worship and life, yet the United States and its Forest Service leaders persist, now rushing this week to publish a Final Environmental Impact Statement (“FEIS”) so it can trigger the provision in Section 3003 of the NDAA that allows the Forest Service to immediately do the Land Exchange to transfer ownership to Resolution Copper.

¹ “Senate passes spending bill, ends government shutdown threat,” By David Lawder and Amanda Becker, Reuters (December 13, 2014) <https://www.reuters.com/article/us-usa-congress-budget/senate-passes-spending-bill-ends-government-shutdown-threat-idUSKBN0JR0I820141214>. See also, “Crowd protests copper mine on sacred lands,” Apache Messenger/Indianz.com (December 22, 2014) <https://www.indianz.com/News/2014/015978.asp>.

10. This past week, as we suddenly learned without any prior official notice—even though we have been actively involved in the process directly with the U.S. Forest Service and the other federal agencies working with the Forest Service on the proposed Oak Flat Land Exchange, such as the President’s Advisory Council on Historic Preservation (“ACHP”)—that as the Forest Service publicly stated to a news reporter² that they will publish the FEIS this Friday, January 15, 2021, setting up the stage for the Land Exchange of Oak Flat—which could then happen the very same day as the publication of the FEIS.

11. There is nothing mandating that the Forest Service must publish the FEIS on January 15, 2021, or even any day this month or next. In fact, there is no FEIS publication date mandated in the NDAA at all.

12. If the Land Exchange is permitted to move forward through finalization of a flawed Draft Environmental Impact Statement (“DEIS”) process, the mining corporation and TNF, both acknowledge that the mine will cause a vast subsidence in the earth, destroying our Sacred Oak Flat, our religion, and with that, destroying our ability to have and preserve our traditional Apache way of prayers, our religious beliefs and ceremonies, and our religious Apache way of life.

² “Trump To Approve Land Swap For Rio Tinto's Resolution Copper Project,” Ernest Scheyder, Reuters (January 4, 2021) (“The U.S. Forest Service will publish a final environmental impact statement for the mine on Jan. 15, a necessary step to complete the land exchange, said Tom Torres, acting supervisor of the Tonto National Forest, where the mine would be built.”). Accessed on January 10, 2021 via <https://www.msn.com/en-gb/news/world/trump-to-approve-land-swap-for-rio-tintos-resolution-copper-project/ar-BB1ct2gu>

13. We said for years, Resolution Copper's mining operations will have devastating impacts on our history, our culture, our religious practices, and the natural resources and environment of this area, especially the region's water supply. For years, proponents of Resolution Copper ignored these harsh realities and insisted that the benefits of jobs, which were greatly exaggerated and fluctuated frequently, were worth the toll to the environment and life of the surrounding communities. Yet, the DEIS confirmed in large part the permanent damage and losses we already knew would occur to the broader physical environment, and our places of religious worship and cultural reverence should the project be allowed to proceed.

14. The proposed mine would directly, adversely and permanently affect and destroy numerous cultural artifacts, sacred seeps and springs, traditional ceremonial areas, resource gathering localities, burial locations, and other places of high spiritual value to tribal members.

15. The analysis of the Tribal Values and Concerns focuses the impacts of the proposed Land Exchange and Resolution Copper Mine on the past without recognizing the current presence of religious and cultural practices that have endured at Oak Flat for centuries. This erasure of Native Americans in contemporary terms perpetuates the genocidal history of America.³

³ See, e.g., "Earth, Wind and Fire: Pinal Apaches, Miners, and Genocide in Central Arizona, 1859-1874," Welch, John R., Sage Open Journal, vol.7, no.4 (October-

16. What was once gunpowder and disease is now replaced with bureaucratic negligence and mythologized past that treats us, as Native people, as something invisible or gone. We are not. We are still a vibrant and vital part of our Nation's fabric despite repeated attempts to relegate our cultures as artifacts in museums or blubs in history books. However, the permanent damage that will be caused by the Resolution Copper Mine is something that will contribute to this genocidal narrative continuing now and well into the future.

December 2017). Available online at
<https://journals.sagepub.com/doi/full/10.1177/2158244017747016>.



Ga'an Mountain Spirit Dancer, Western Apache Sunrise Religious Ceremony at Oak Flat (May 19, 2012) Photograph with family permission.
© Robin Silver Photography.

17. It is important to understand that we have never lost our relationship to Chi'Chil Bildagoteel. Despite the violent history of the U.S. Government's exile, forced march and imprisonment of Native people on reservations, and the efforts by the U.S. Government to discourage, impede, or fully disallow us from coming to this holy area, we have our own legacy of persistence and never letting go of this place.

18. Chi'chil Bildagoteel's religious value to our prayers, our ceremonies, and in our family histories cannot be overstated. Native religion was the first religion practiced in this area.

19. We have established an encampment to protect the Holy Ground at Chi'chil Bildagoteel with its four crosses, which represent the entire surrounding Holy and Sacred area, including its water, animals, oak trees, and other plants central to our Western Apache tribal identity.

20. It is important to note that Chi'chil Bildagoteel is listed in the National Park Service's National Register of Historical Places ("NRHP") as a Historic District and Traditional Cultural Property ("TCP").⁴ Emory oak groves at Oak Flat used by tribal members for acorn collecting are among the many living resources that will be lost along with more than a dozen other traditional plant medicine and food sources. Other unspecified mineral and plant collecting locations and culturally important landscapes will also be affected.

21. Development of the Resolution Copper Mine would directly and permanently damage Chi'chil Bildagoteel, our sacred holy ground that is vital to us, which is why we strongly oppose this operation. The impacts that will occur to Oak Flat will undeniably prohibit the Apache people from practicing our ceremonies at our Holy site. Construction

⁴ U.S. Department of Agriculture Tonto National Forest (2015) National Register nomination for the Chi'chil Bildagoteel National Historic District, Pinal County, Arizona (U.S. National Park Service, National Register of Historic Places, approved March 4, 2016). Retrieved from <http://bloximages.chicago2.vip.townnews.com/tucson.com/content/tncms/assets/v3/editorial/8/b1/8b10c3b0-77ed-560b-bd5f-bc0552df7e7c/56e363c6b87ba.pdf.pdf>

of the mine would cut off access and once the mine has been completed, the destruction will create a permanent barrier preventing Apache ceremonies from taking place.

22. Our connections to the Oak Flat area are central to who we are as Apache people. Numerous people speak of buried family members. Most of them include childhood memories. Everyone speaks to the deep spiritual and religious connection that Apaches have to the land, water, plants and animals at Oak Flat that would be permanently destroyed by this proposed action.

23. The destruction to our lands and our sacred sites has occurred consistently over the past century in direct violation of treaty promises and the trust obligation owed to Indian tribes.

24. Please keep in mind that the Land Exchange was achieved through a backroom agreement, literally at midnight the evening before attaching it to the NDAA. We would not be in this position today had the Land Exchange gone through regular order and been subject to meaningful and honest debate.

25. It always has been told and taught to us for generations by our parents, our elders, our traditional Apache religious leaders—and it is embedded in our way as passed down from our Apache ancestors—that this place, Oak Flat, is special and holy and sacred. This is a unique and special sacred place as we believe in the spiritual forces of God the Creator that he put there for us and for us to protect and honor in the humble exercise of our traditional Apache religious lives.

26. When our families gather at Oak Flat to celebrate our religious beliefs, we are no different

than our Christian brothers and sisters who gather at their respective churches on Sundays and other holy days. The only difference is our permanent place of prayer and worship is under attack and will be destroyed if the FEIS is published this Friday, January 15, and the transfer of possession of Oak Flat to Resolution Copper takes place.

27. This case is for the survival and protection of our Apache religion, and the Forest Service must be stopped from publishing that FEIS this Friday, January 15, because there is no compelling reason for them to do that so suddenly and right now.

28. The publication of the FEIS on January 15, 2021, would violate our Due Process rights under the Fifth Amendment to the U.S. Constitution which guarantees us the right to have adequate and effective notice of government acts that will affect our legal rights. Ten (10) days' notice is utterly inadequate for such a momentous decision having such catastrophic adverse effects on our First Amendment Rights to our religious beliefs and the free exercise of our Apache religion, and prejudices and harms our First Amendment Rights to Petition the Government for Redress of Grievances and the corresponding Right to Remedy included within the Petition Clause of the First Amendment.

29. Oak Flat is Apache land and we must be allowed to protect our land and our religious beliefs and religious freedom rights before the harms increase and accelerate with the Forest Service's publication of the FEIS this coming Friday, just four (4) days from now.

30. Neither Apache Stronghold, nor myself or any Apache officials received direct or adequate notice that the Forest Service has suddenly decided to make the

publication of the FEIS on January 15, 2021 until it was revealed to us only by us seeing that online news report by Reuters the other day. This FEIS publication is also a precursor genocidal act and this Court must not allow it.



Wendsler Nosie, Sr., at Chi'Chil Bildagoteel ("Oak Flat") (Photo by Adriana Zehbrauskas for The New York Times)

Respectfully presented,

/s/ Wendsler Nosie
Wendsler Nosie, Sr., Ph.D.

Date: January 11, 2021