

**TESTIMONY FOR THE RECORD  
BY THE  
INTER TRIBAL ASSOCIATION OF ARIZONA**

**Mr. Shan Lewis, President  
Vice-Chairman, Fort Mojave Indian Tribe**

**Provided to the  
Subcommittee on Indigenous Peoples of the United States  
1324 Longworth House Office Building  
Washington, D.C., 20515**

**Legislative Hearing on H.R. 1884 (Rep. Raúl Grijalva) (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).**

**April 13, 2021**

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Chairman Grijalva, Chairperson Fernández, Representative Gallego, and members of the Subcommittee, thank you for the opportunity to testify today. My name is Shan Lewis, Vice Chairman of the Fort Mojave Indian Tribe, and President of the Inter Tribal Association of Arizona (“Inter Tribal Association” or “ITAA”). My Tribe is a member of the Inter Tribal Association of Arizona.

On behalf of our 21 Member Tribes, we appreciate the opportunity to speak today in support of the Save Oak Flat Act (H.R. 1884). The future existence of Oak Flat is at a critical moment. This important bill would repeal the land exchange legislation and save Oak Flat from being lost forever. This bill would permanently protect Oak Flat, located in the Tonto National Forest in eastern Arizona, from destruction by mining. Oak Flat, also known traditionally as *Chi’chil Bildagoteel*, is a place of profound religious, cultural, and historic significance to certain Western Apache and Yavapai people, as well as other Tribal cultures across the region. Given its profound importance to Tribal people, Oak Flat is listed as a Traditional Cultural Property (TCP) on the National Register of Historic Places.

For the Western Apache including the San Carlos Apache Tribe, Oak Flat is a place for prayer, for coming-of-age (Sunrise) and other ceremonies, for collecting water and gathering medicinal plants for ceremonies, for gathering acorns and other foods, and honoring the departed who are buried there. The Yavapai also have a long history and traditional historical relationship with Oak Flat, and have used its free-flowing waters, plants and materials grown there for food as well as for ceremonial and cultural purposes. Indeed, in work supervised by the Tonto National Forest, anthropologists Maren P. Hopkins and T.J. Ferguson conducted extensive fieldwork and ethnographic interviews

with elders from multiple tribes regarding their relationship with Oak Flat to develop a report in 2015 entitled “Ethnographic and Ethnohistoric Study of the Superior Area, Arizona”. This exhaustive report noted that Oak Flat is an important cultural site for nine tribes in Arizona. It is our understanding that Dr. Ferguson has submitted prepared testimony for today’s subcommittee hearing. While different Tribal peoples may regard and use Oak Flat in different ways, the underlying traditional and historical relationships of the many various Tribal cultures to the ancestral lands here has existed since time immemorial. **This absolutely must be respected.**

If the land exchange legislation is not repealed, approximately 2,400 acres of public land, including the Oak Flat, will be transferred into private ownership and control of two foreign mining companies, Rio Tinto and BHP Billiton, that operate in Arizona under the name Resolution Copper. Once transferred, Resolution Copper will have the authority to forever prevent current and future generations of Tribal people and other users from entering Oak Flat to perform prayers, engage in ceremony, and to gather acorns and other important plants that have sustained Tribal people for countless generations. And, of course, the goal of the transfer is to facilitate the development of a massive copper mine that will destroy Oak Flat, leaving a crater almost 2 miles wide, and a thousand feet deep at its heart. The mine will also deplete billions of gallons of water, destroy sacred springs, and leave the natural world irreparably harmed, along with the religious freedoms and practices of those Tribal people who have relied upon the existence and health of Oak Flat for generations upon generations.

These actions would violate the religious freedoms of current and future generations of Tribal people and directly contradict the protections provided by the First Amendment to the United States Constitution, the American Indian Religious Freedom Act (42 U.S.C. § 1996), and the Religious Freedom Restoration Act (42 U.S.C. § 2000bb-2000bb-4), among other laws.

Tribal religious and cultural practices must be respected and treated by the United States government on par with the religious freedoms of other citizens of this country. Doing anything less undermines the very foundation of who we **all** are as Americans.

For these reasons, ITAA strongly supports the Save Oak Flat Act (H.R. 1884). This is the only way to achieve the long-term, permanent protection of Oak Flat. ITAA does not oppose all mines, however, some places just should not be mined. Oak Flat is one of these areas.

### **Background on the Inter Tribal Association of Arizona**

The Inter Tribal Association of Arizona, Inc. is a non-profit, inter tribal consortium of 21 federally recognized Indian Tribes, nations, and communities with lands located

across the State of Arizona, as well as in New Mexico, California, and Nevada.<sup>1</sup> ITAA's Member Tribes have worked together since 1952 to provide a united voice for Tribal governments located in the State of Arizona on matters of common interest and concern. The representatives of ITAA are the highest elected Tribal officials from each Tribe, including chairpersons, presidents, and governors.

### **ITAA's 21 Member Tribes are Unified in Opposition to the Transfer of Oak Flat to Foreign Mining Interests**

Since the current mining proposals at Oak Flat arose nearly two decades ago, ITAA and our sister organization, the Inter Tribal Council of Arizona, Inc. (ITCA), as well as numerous individual Member Tribes have passed multiple resolutions, written countless letters, submitted statements, and testified before Congress (including before this subcommittee) on multiple occasions, adamantly opposing the transfer of their ancestral lands at Oak Flat to foreign mining interests and raising specific, detailed concerns about the many likely and inevitable impacts of this mine.

The 21 Member Tribes of ITAA/ITCA, as well as many of our individual Member Tribes, have passed resolutions opposing the destruction of Oak Flat and/or supporting the legislation to repeal the exchange legislation. The Navajo Nation, Arizona's 22<sup>nd</sup> federally recognized tribe, has also passed a resolution in opposition to the Resolution Copper Mine and Land Exchange.

In 2008, I traveled to Washington to testify on behalf of our 21 Member Tribes before Congress on this issue. Again in 2009, President Norman Coeoyate of the Zuni Tribe traveled to Washington to testify for us. Throughout subsequent sessions of Congress, we have consistently and adamantly expressed **unified** Tribal opposition to the Resolution Copper Mine and Land Exchange on behalf of our 21 Member Tribes. Over the years, our tribal leaders including former San Carlos Apache Tribal Chairman Wendsler Nosie Sr. and current Chairman Terry Rambler, and leaders from the Fort McDowell Yavapai Nation, the Zuni Tribe, and the Hualapai Tribe, have testified before Congress or submitted testimony for the record in firm opposition to the Resolution Copper Mine and Land Exchange. In addition, countless letters have been sent to Congress opposing this mine and land exchange from ITAA, and from our individual Member Tribes.

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<sup>1</sup> The ITAA's Member Tribes are the Ak-Chin Indian Community, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Quechan Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and the Yavapai Prescott Indian Tribe.

ITAA and its Member Tribes have been joined in this opposition by many other tribes and inter tribal organizations across the United States including by the National Congress of American Indians (NCAI), who is testifying here today. NCAI has also voted on and passed resolutions opposing this mine and land exchange. Even indigenous organizations from as far away as Australia have expressed their concerns with the Rio Tinto's plans to develop a mine at Oak Flat following Rio Tinto's tragic destruction of the culturally and historically significant Juukan Gorge cave rockshelters in the Pilbara Region of Australia as part of a mining project in May 2020. Indigenous people warned of Rio Tinto's destructive plans and urged Rio Tinto not to destroy the rockshelters, but Rio Tinto blasted these structures anyway, destroying them forever. Despite Rio Tinto's promises made in the aftermath of this blatant destruction to never let this happen again, in fact, Rio Tinto plans to do the very same thing at Oak Flat. **But, in this case, Congress can take action and pass the Save Oak Flat Act and protect this sacred place and well-documented religious and culturally important landscape before it can be demolished to benefit the commercial interests of Rio Tinto.**

The ITAA stands **firmly** with all of our Member Tribes who have fought for many years to protect the historic properties, religious places, and sacred sites found within the Oak Flat area including *Chi'chil Bildagoteel* from being exchanged to and ultimately destroyed by foreign mining interests. The Tribal Leaders of ITAA will **always** stand shoulder-to-shoulder when it comes to protecting our ancestral lands, and the integrity of historic properties, religious places, and sacred sites located within those lands.

### **Irreparable Impacts of the Proposed Resolution Copper Mine**

Last year on March 12, 2020, this subcommittee held a hearing to discuss the numerous impacts of the proposed Resolution Copper mine (titled *The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation*). Our prior prepared statement submitted for that hearing record detailing these numerous harms is incorporated here by reference.

If the Save Oak Flat Act is not passed, upon the completion of a legally-compliant and final environmental impact analysis, approximately 2,400 acres of Tribal ancestral land will be exchanged, so that Resolution Copper can construct and operate a block-cave mining operation to blast and remove 1.4 billion tons of rock from beneath Oak Flat. This would leave a subsidence crater at almost 2 miles wide and over 1,000 feet deep, collapsing the Oak Flat area including the NRHP-listed *Chi'chil Bildagoteel* (Oak Flat) Historic District and the archaeological, cultural, historic, and sacred sites within the area including burial sites and petroglyphs. Among the impacts are:

- The Forest Service estimates that over the life of the mine, this mine will deplete at least 87,000 acre-feet of water from the Oak Flat area (1 acre-foot is 325,851 gallons of water). Dewatering and destroying riparian seeps,

springs, and streams in and around Oak Flat that support ecosystems and habitats for a wide variety of species including the endangered Sonoran ocelot, black bear, mountain lion, bobcat, coatimundi, javelina, ring-tailed cat, all four native Arizona species of skunk. Oak Flat is also a critical area for resident and migrating bird species including Bald and Golden Eagles (which have religious and cultural significance to ITAA Member Tribes).

- The Forest Service also estimates that over the life of the mine, this mine will deplete at least 550,000 acre-feet of water from the east Salt River Valley just outside of Phoenix. Extensive dewatering of ground and surface water supplies would also add more strain on the desperately-needed and already thin water supplies of Arizona residents.
- More than **half a million** acre-feet of groundwater would be pumped for this mine from central Arizona, an area which has already seen subsidence and fissures in the earth from over-pumping. The Pinal AMA in this region alone already faces an 8.1 million acre-foot shortfall between available supplies and demand over the next century. Moreover, it is anticipated that the agricultural users in this same region will be hit hardest by additional predicted substantial cuts in Colorado River water supplies, forcing them to deepen their wells and compete with the mine for scarce water resources.
- The Forest Service also estimates that approximately 1.37 billion tons of toxic mine waste (tailings) would be deposited from this mine. This would be left forever only a few short miles from the Gila River. This presents threats of water and environmental contamination, spillage, and human health concerns that have not been adequately addressed by the Forest Service or the mine. In fact, none of the short-term **or** long-term environmental threats posed by this sprawling mine, including from its tailings slurry, concentrate slurry, toxic pit lake in the subsidence crater, and other facets of the mine have ever been fully addressed.
- The construction of many additional miles of infrastructure, pipelines, power lines, roads, wells, railways will also have innumerable and widespread environmental impacts. For example, pipelines transporting slurried toxic mine waste to the tailings site would be placed underneath Mineral Creek (critical habitat to the endangered Gila Chub, and proposed critical habitat for the Yellow-Billed Cuckoo). Transmission lines and pipeline corridors will be bladed or blasted through miles and miles of Forest lands, including through the nearby King's Crown Peak mountain.

The COVID-19 pandemic has placed a magnifying glass on the fundamental need to protect and preserve healthy water supplies. Yet, the egregious amount of water required by the mine and its threat to water quality and the environment is a matter of serious concern to ITAA's Member Tribes. Dr. James Wells, Ph.D. of L. Everett & Associates is also here presenting testimony today to this Subcommittee in greater detail on the specific and profound water impacts of this project. The severe and ongoing drought which has stricken the southwestern United States and the State of Arizona for many decades would be made much worse by the staggering amounts of water this mine would consume. Water is necessary to sustain life. It is therefore important for our survival to understand and think about what the long-term impacts on water this project will have 10, 20, and even 100 years from now.

In sum, the destructive legacy of this project would be staggering and forever leave a stain on eastern Arizona. **It would also leave a stain on who we are as Americans, since we would be exchanging the religious freedoms of Tribal people for a promise of jobs and profit offered by foreign mining interests.** The exchange would also create an unacceptable precedent – that is, the exchange of a well-documented Traditional Cultural Property recognized under the National Historic Preservation Act to two foreign mining interests to facilitate its destruction. And, all of Arizona's residents including tribal members of ITAA's Member Tribes would suffer the cultural, social, environmental and other consequences for years to come.

### **Permanent Protection of Oak Flat (“Save Oak Flat Act”) Is Still Needed**

In December 2014, despite our strong protests, and despite failing for many years to pass as a standalone bill on its own merits, the highly controversial Resolution Copper Mine and Land Exchange was included in the 2015 National Defense Authorization Act and enacted into law. Among other things, this provision required a full and legally compliant Final Environmental Impact Statement (FEIS) on the project. Publication of an FEIS triggers a 60-day clock, by the end of which Oak Flat lands would be exchanged to Resolution Copper for eventual destruction.

The Forest Service had originally anticipated publishing the FEIS in December 2021. But in the waning days of the prior administration, the Forest Service hurriedly published an incomplete, fatally flawed FEIS for the Resolution Copper Mine Project and Land Exchange on January 15, 2021, just five days before the presidential inauguration. The document was glaringly incomplete and fell far short of a full NEPA analysis, failing in countless instances to consider direct, indirect and cumulative project impacts and mitigation measures.

On March 1, 2021, USDA directed the Forest Service to rescind the FEIS and Draft Record of Decision, citing the need for more time to more fully understand Tribal and public concerns in accordance with the recent Presidential Memorandum on Tribal

Consultation (dated January 26, 2021), as well as project impacts and to “ensure the agency’s compliance with federal law.”

Rescission of the FEIS and Draft Record of Decision was welcome news as it halted the 60-day clock, temporarily saving Oak Flat. Nevertheless, the USDA and Forest Service are still estimating that another final EIS will be published at some point in the future, perhaps even later this year. If the land exchange legislation is not repealed, then upon publication of another FEIS, the 60-day clock would restart, and Oak Flat will be transferred from the Tonto National Forest into the private hands of Resolution Copper no later than 60 days after that FEIS is published. This outcome is not acceptable to ITAA. And should not be acceptable to Congress.

Long-term and permanent protections for Oak Flat are critically needed. Passage of H.R. 1884, the Save Oak Flat Act, would undo the original land exchange legislation and provide this protection.

### **Conclusion**

We welcome the recently-signed Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships signed by President Biden on January 26, 2021, making regular, meaningful and robust consultation with Tribal Nations one of the priorities of his administration. ITAA urges Congress to live up to these values as well, and consider the united Tribal concerns opposing this land exchange and mine which have been consistent, united, and unwavering since the beginning. To do this, we urge you to pass the Save Oak Flat Act to provide long-term, permanent protection to Oak Flat.

Thank you for providing an opportunity on the part of the Inter Tribal Association of Arizona and our 21 Member Tribes to submit this testimony.