

Statement Submitted to the Subcommittee for Indigenous Peoples of the United States, U.S. House of Representatives Natural Resources Committee, re: H.R. 1884, the Save Oak Flat Act

Submitted by Randy Serraglio, Southwest Conservation Advocate, Center for Biological Diversity, April 13, 2021

Thank you for holding a hearing on H.R. 1884, the Save Oak Flat Act, and for the opportunity to provide input in support of this critically important and urgent bill. The spiritual, cultural and natural heritage of the Apache people and the ecological integrity of a priceless piece of public land hang in the balance.

Oak Flat is a very popular campground in the Tonto National Forest in central Arizona, offering spectacular scenery, diverse wildlife and world-class rock-climbing opportunities. It's also the location of the best set of Western Apache cultural artifacts in existence, according to tribal historic preservation experts, evidence of the centuries over which Oak Flat has been central to Western Apache culture by providing habitation, sustenance, and a sacred place for religious ceremony and spiritual fulfillment. Unfortunately, it also sits above a potentially lucrative ore body that Resolution Copper (a subsidiary of international mining behemoths Rio Tinto and BHP) wants to exploit for a massive copper mine that would destroy Oak Flat.

In 1955, President Eisenhower recognized the public values of Oak Flat and formally withdrew it from mineral entry in order to preserve it in perpetuity. The mining companies are seeking to circumvent this mineral withdrawal by executing a land trade with the U.S. government and obtaining private control of Oak Flat.

Over many years, more than a dozen efforts to pass federal legislation authorizing such a land exchange failed, despite intensive lobbying by the mining companies, as Congress correctly recognized the value of Oak Flat and decided that trading it away to be destroyed for profit by international mining companies would not be in the public interest.

In December 2014, the proposed land exchange became the subject of a rider attached to the National Defense Authorization Act, an unrelated, must-pass spending bill. The rider, which became Section 3003 of the Act, was introduced literally minutes before a midnight deadline and included in the final bill with virtually no scrutiny or debate, an obvious and unfortunately successful effort to subvert the will of Congress in favor of the interests of international mining corporations.

Fast forward to January 2021, when a Final Environmental Impact Statement (FEIS) mandated by Sec. 3003 was rushed to publication a year ahead of schedule by the Trump administration in a blatant attempt to once again prioritize the interests of international mining companies over those of the American public. Although the FEIS described a horror story of damage and destruction that would result from this mining proposal, it failed to fully comprehend the extent of the catastrophe, ignoring important issues, tribal concerns, public comment and crucial information in its analysis.

Nevertheless, the publication of this fatally flawed document started a 60-day clock, a time frame mandated by Sec. 3003 as the maximum allowable before the U.S. Dept. Of Agriculture was legally obligated to hand over more than 2,400 acres of U.S. Forest Service land at Oak Flat to Resolution Copper and its majority owner Rio Tinto. Multiple lawsuits have been filed to attack the fatally flawed FEIS and stop the land exchange, but Sec. 3003 mandates that the land must be traded away no matter what the FEIS concludes, thus subverting the National Environmental Policy Act and creating a legal morass of conflicting laws.

Thankfully, the new Biden administration recognized the flawed and highly controversial nature of the FEIS and rescinded the document, which stopped the 60-day clock and interrupted the imminent transfer of the land just days before the deadline. The administration promised to take a closer look at the FEIS and the issues on the table and committed to more robust consultation with tribal interests. However, in its public statement on the withdrawal of the FEIS, the administration communicated clearly that it would only pause the process temporarily, and that a legislative fix is needed to permanently secure Oak Flat and its priceless value to the American people.

H.R. 1884, the Save Oak Flat Act, would repeal Sec. 3003 and undo the mandate to trade away the sacred land at Oak Flat. The Center for Biological Diversity has fought to protect Oak Flat and its surroundings from the Resolution Copper proposal for many years, due in part to its important habitat for wildlife, including several endangered species, and the devastating damage the proposed mine would do Arizona's water supply. According to the mining company's own projections, the proposed Resolution Mine would use as much water annually as the entire city of Tempe, AZ (pop. 180,000), and perhaps several times that according to independent experts. This spring Arizona has been hit with the news that a formal shortage of Colorado River water as delivered through the Central Arizona Project is likely to be declared by 2022. Now more than ever, Arizona's groundwater is critically important to the future of Arizona's people and wildlife, and we simply cannot sustain the Resolution Mine's level of incredibly wasteful consumption of such a precious resource.

Environmental considerations are important, and they are not separate from the cultural issues surrounding Oak Flat. The Center stands in solidarity with the San Carlos Apache Tribe and

other Native peoples who hold Oak Flat in their hearts as sacred ground. As the FEIS lays out, if the Resolution Mine proceeds and is completed, Oak Flat would collapse into a crater two miles wide and 1,000 feet deep, utterly ruining its ecological integrity and rendering it unsafe for human visitation in perpetuity. According to mining experts, the crater would likely partially fill with contaminated water, creating a toxic lake that would be a perpetual hazard to humans and wildlife alike.

The dramatic destruction proposed at Oak Flat is akin to detonating a nuclear blast at Mt. Sinai just because some copper was discovered there. For Native people, the value of Oak Flat is inherently vested in its ecological integrity and in their ability to visit the place for spiritual nourishment and ceremonies that are still conducted there to this day. Destroying this place would be a devastating blow to the Apache people, their culture, and their religion. It would be an act of cultural genocide that returns us to the 19th century when Apaches were ethnically cleansed from the land and put into prison camps to pave the way for mining and other extractive exploitation by European settlers. There is absolutely no moral justification for repeating such crimes against humanity in the 21st century by trading away Oak Flat for destruction by international mining companies.

The Center also stands in solidarity with the long list of tribes who have reached consensus that Oak Flat and other such sacred sites must be protected. It is long past time to recognize that Native people have been unfairly shut out of decision-making authority over sacred sites that are not contained within reservations and take steps to remedy this injustice. The Center urges this committee and this Congress to take a first step toward a more rational and equitable framework for treatment of such sacred sites by passing H.R. 1884, the Save Oak Flat Act, as soon as possible. Thank you for your consideration.