

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT   MYRON LIZER | VICE PRESIDENT



April 12, 2021

The Honorable Kyrsten Sinema  
United States Senate  
317 Hart Senate Building  
Washington, DC 20510

The Honorable Mark Kelly  
United States Senate  
Dirksen Senate Building, Ste. B40B  
Washington, DC 20510

## **RE: Request to Co-Sponsor S. 915, the Save Oak Flat Act**

Dear Senator Sinema and Senator Kelly,

We write to you to respectfully request your consideration to support and co-sponsor S. 915 – the Save Oak Flat Act.

Chi'chil Biłdagoteel, known as Oak Flat, is a Traditional Cultural Property listed on the National Register of Historic Places located in the Tonto National Forest (TNF) in southeastern Arizona. The Oak Flat area plays a vital role in tribal religion, tradition, and culture. Since time immemorial, Native American people have set foot at Oak Flat to conduct ceremonies, to offer prayers, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing.

Tribal leaders and allies have been working for over 18 years to protect the Oak Flat area from foreign mining conglomerates – Rio Tinto and BHP Billiton – who, through their joint venture Resolution Copper Mining, LLC, seek to develop the largest and deepest copper mine in North America. As part of a closed-door deal during the last days of a lame-duck Congress in December 2014, the Southeast Arizona Land Exchange (land exchange) was included as Section 3003 of the FY15 NDAA, P.L. 113-291. The land exchange transfers 2,422 acres of TNF land, including the sacred Oak Flat area, to Resolution Copper in exchange for Resolution Copper-owned parcels that will go to the Department of the Interior and the U.S. Forest Service.

As part of the legislation, the land exchange is subject to NEPA (Sec. 3003 (c)(9)) as well as appraisals of the lands to be exchanged and public review of the appraisals (Sec. 3003(c)(4)). However, TNF failed to comply with NEPA and other applicable federal laws, and they failed to complete the required appraisals of the lands to be exchanged. Instead, TNF rushed to publish the Final EIS on Jan. 15, 2021, to artificially start a 60-day clock under Section 3003(c)(10) to give away sacred Oak Flat to Resolution Copper to pave the way for its mine that will destroy Oak Flat, large swaths of TNF, and other surrounding areas with no simultaneous commensurate conveyances of Resolution Copper-owned land to the federal government. On February 11, the Advisory Council on Historic Preservation (ACHP) declined to sign the Programmatic Agreement under the National Historic Preservation Act (NHPA) Section 106 process preventing its execution, stating “[i]t is clear

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that the proposed undertaking would destroy significant historic properties, including the highly significant Oak Flat, and the measures in the PA are not sufficient to adequately resolve those adverse effects.”

On March 1, 2021, USDA directed the Forest Service to withdraw the Notice of Availability and rescind the FEIS and draft Record of Decision. USDA noted that rescinding the FEIS will ensure the Forest Service complies with “the environmental, cultural, and archaeological analyses required” and concluded that “additional time is necessary to fully understand concerns raised by Tribes and the public and the project’s impacts to these important resources and ensure the agency’s compliance with federal law.” Importantly, USDA noted that because the land exchange was directed under the FY15 NDAA that “long term protection of the site will likely require an act of Congress.”

Although flawed, the withdrawn FEIS acknowledged that Resolution Copper’s proposed mining activities will directly, adversely, and permanently affect numerous sacred springs, traditional areas, burial locations, and other cultural places and experiences of high spiritual and cultural value. The massive mine will also cause irreversible destruction to thousands of acres of public lands and contaminate already scarce water sources. The block-cave mining technique will create a 1.8-mile-wide crater (from the Capitol to the Lincoln Memorial) over a thousand feet deep. The mine will consume more than 637,000 acre-feet of water and require over 40 miles of pipeline through large parts of the TNF to slurry out toxic waste and ore concentrate. It will also require the construction of massive utility and road corridors that could potentially span 500 feet in width. This mine will deplete and contaminate precious water resources in the region and result in a toxic waste dump that will be taller than the Washington Monument and potentially span over 15,000 acres.

The Save Oak Flat Act will repeal Section 3003 and withdraw the Oak Flat area from mining laws to permanently protect this sacred area. We respectfully request that you cosponsor the Save Oak Flat Act. Protecting tribal sacred areas and cultural resources is essential to upholding the federal trust responsibility.

We appreciate your consideration to co-sponsor S. 915. We stand with the San Carlos Apache Tribe and many others who support the long-term protection of Oak Flat. Should you require additional information or need to contact our office, please reach out to Santee Lewis, Executive Director, Navajo Nation Washington Office, [slewis@nnwo.org](mailto:slewis@nnwo.org) or (202) 981-4331. Thank you.

Respectfully,

  
Jonathan Nez, *President*  
**THE NAVAJO NATION**

  
Myron Lizer, *Vice President*  
**THE NAVAJO NATION**