

No. 21-15295

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APACHE STRONGHOLD,
Plaintiff/Appellant,

v.

UNITED STATES OF AMERICA, et al.,
Defendants/Appellees.

Appeal from the United States District Court for the District of Arizona
No. CV-21-00050-PHX-SPL (Hon. Steven P. Logan)

**FEDERAL DEFENDANTS' OPPOSITION TO
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

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Federal Exhibit 2	Resolution Copper Project and Land Exchange Draft Record of Decision (January 2021) (excerpts)
Federal Exhibit 3	Declaration of Victoria Peacey (February 2021)*
Federal Exhibit 4	Declaration of Andrew Lye (February 2021)*
Federal Exhibit 5	Access and Management Plan Oak Flat Campground (November 2020) (excerpts)
Federal Exhibit 6	Memorandum from USDA to USFS directing it to rescind Final Environmental Impact Statement and Record of Decision and to withdraw Notice of Availability (March 1, 2021)
Federal Exhibit 7	USFS Letter to EPA requesting withdrawal of Notice of Availability for Resolution Copper Final Environmental Impact Statement (March 1, 2021)

* Exhibits 3 and 4 are declarations prepared by Resolution Copper employees to recount facts critical to the allegations of irreparable harm set forth in Plaintiff's filing. These facts are also supported by citations to the FEIS and ROD. Resolution Copper is not a party to this litigation.

GLOSSARY

FEIS	Final Environmental Impact Statement
RFRA	Religious Freedom Restoration Act of 1993
ROD	Record of Decision
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service

INTRODUCTION

More than six years after Congress directed the land exchange at issue, Plaintiff seeks the extraordinary relief of an emergency injunction pending appeal. Such a request mandates a showing that there is a significant threat of irreparable injury *during the pendency of the appeal*, and the facts do not establish one here.

On March 1, 2021, the U.S. Department of Agriculture directed the Forest Service to rescind the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Resolution Copper Project in order to reinitiate consultation with Tribes and ensure impacts have been fully analyzed. In light of the withdrawal of the FEIS, the land exchange is likely to be delayed. At this time, the United States cannot estimate how long the consultation process will take. But in any event, as explained *herein*, there is no imminent harm to Plaintiff.

When the land exchange occurs, Plaintiff will continue to have guaranteed access to Oak Flat for years, including for traditional and ceremonial purposes. No irreversible, surface-impacting mining activity will occur for at least two years. And if this Court were to determine, on the merits, that Congress' directive to transfer the land was unlawful either under the Religious Freedom Restoration Act (RFRA) or the constitution, this Court retains the power to reverse the transfer. In sum, the harms alleged by Plaintiff were never imminent, and they are even less so now. Nothing warrants this extraordinary relief.

Plaintiff also fails to show likelihood of success on the merits. The government's disposition of its own property cannot create a substantial burden on Appellant's members' religious exercise. And as there is no trust obligation concerning the land, there can be no breach. While Defendants do not question the sincerity of Plaintiff's connection to the lands at issue, Congress has decided this land exchange should go forward.

Absent immediate, irrevocable harm, this emergency motion for injunction pending appeal should be denied.

BACKGROUND

A. Oak Flat

In the Treaty of Guadalupe Hidalgo, signed on February 2, 1848, Mexico ceded land in the present-day state of Arizona—including the Oak Flat area—to the United States. 9 Stat. 922 (1848); *United States v. California*, 436 U.S. 32, 34 n. 3 (1978). In 1852, the United States signed a treaty with the Western Apache, which agreed that unspecified territorial boundaries would be designated at a later date. Treaty with the Apache, July 1, 1852, 10 Stat. 979. The United States has never alienated title to the lands at issue in this suit.

B. The Land Exchange

Land exchanges are “quite common in the West.” *Salazar v. Buono*, 559 U.S. 700, 727 (2010). In December 2014, President Obama signed the Southeast

Arizona Land Exchange and Conservation Act (the Act) into law. 16 U.S.C. § 539p. This Act of Congress directs USFS to convey title to 2,422 acres of the Tonto National Forest to Resolution Copper in exchange for 5,459 acres of conservation lands. *Id.* § 539p(b)(2), (d)(1).

The Act requires, *inter alia*, that USFS: (1) engage in “consultation with affected Indian tribes,” *id.* § 539p(c)(3); (2) obtain appraisals of the land to be exchanged, *id.* § 539p(c)(4); (3) issue special permits to Resolution Copper; (4) prepare a final environmental impact statement (FEIS) to inform future agency decision making associated with the exchange, *id.* § 539p(c)(9); and (5) convey title to the exchanged land “[n]ot later than 60 days after the date of publication of the [FEIS]” *Id.* § 539p(c)(10). In passing the Act, Congress clearly imposed on USFS a non-discretionary duty to convey Resolution title to the land after the FEIS.

After the passage of the Act, the *Chi’chil Bildagoteel*/Oak Flat area was listed on the National Register of Historic Places; the listing imposes no restrictions on the use of private property.

The initial target date set by USFS for the publication of the FEIS was July 2020. It was published on January 15, 2021, and, as detailed below, rescinded on March 1, 2021.

C. District court proceedings

On January 12, more than 6 years after the Act, Plaintiff sought to stop the land transfer. It alleged that the land is held in trust by the United States and that the mine operation will desecrate Oak Flat in violation of Plaintiff's religious liberties. On January 14, Plaintiff moved for a Temporary Restraining Order (TRO) and Preliminary Injunction seeking to prevent the issuance of the FEIS, which was set for publication the next day.

On January 14, the district court denied the emergency TRO because Plaintiff could not show immediate and irreparable injury. The FEIS was published on January 15. The district court held a hearing on the Preliminary Injunction on February 3.

On February 12, the district court denied a preliminary injunction, concluding that Plaintiff had failed to satisfy the factors necessary to obtain a preliminary injunction. Plaintiff filed a notice of appeal (February 18), and an emergency motion for an injunction pending appeal (February 19), which the district court denied (February 22). Plaintiff now renews its motion for an injunction pending appeal in this Court and requests expedited review.

D. Withdrawal of the FEIS and ROD

On March 1, the U.S. Department of Agriculture (USDA) directed USFS to rescind the FEIS and ROD. Ex. 6. USFS promptly complied and requested the

Environmental Protection Agency to withdraw the Notice of Availability for the FEIS. Ex. 7. USDA's decision was made because "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." Ex. 6. While USFS "cannot give a precise length of time for completing the re-initiation of consultation," "consultations such as this generally take several months."¹ Resolution EIS Project Update, <https://www.resolutionmineeis.us/> (March 1, 2021). As stated above, the Act tags the date on which the land exchange must take place to the date that a final EIS is published. *See* 16 U.S.C. § 539p(c)(1).

ARGUMENT

Injunction pending appeal is "an extraordinary and drastic remedy" that should be granted in only exceptional circumstances. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). Plaintiff must establish (1) that it is likely to succeed on the merits of its appeal; (2) that it is likely to suffer irreparable harm absent

¹ Counsel had previously orally represented in two other cases active in district court challenging the FEIS and land exchange that the transfer would not occur before March 15. *San Carlos Apache Tribe v. U.S. Forest Service*, No. 2:21-cv-68-DWL (filed Jan. 14, 2021); *Arizona Mining Reform Coal. v. U.S. Forest Service*, No. 2:21-cv-122-DLR (filed Jan. 22, 2021). The United States has moved to consolidate those cases (both seeking preliminary injunctions) with this litigation.

injunctive relief; (3) “that the balance of equities tips in [its] favor”; and (4) “that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The core issue in any request for injunctive relief is that a “plaintiff must demonstrate that there exists a significant threat of irreparable injury.” *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985). This is because preliminary relief is “a device for preserving the status quo and preventing the irreparable loss of rights before judgment.” *Textile Unlimited, Inc. v. A. BMH and Co.*, 240 F.3d 781, 786 (9th Cir. 2001). The harm alleged must occur—not sometime in the future—but during the pendency of the appeal itself. *Doe #1 v. Trump*, 957 F.3d 1050, 1070 (9th Cir. 2020) (“The preliminary injunction preserves the status quo *during the pendency of this appeal*.” (emphasis added)).

And the Supreme Court has “held that plaintiffs must demonstrate that harm is likely, not just possible.” *Cascadia Wildlands v. Scott Timber Co.*, 715 F. App'x 621, 623 (9th Cir. 2017) (citing *Winter*, 555 U.S. at 22). This is so even where environmental damage is alleged, *see Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 544-45 (1987). So too, with alleged harms to religious interests. *See, e.g., Tenacre Found. v. I.N.S.*, 892 F. Supp. 289, 294 (D.D.C. 1995), *aff'd*, 78 F.3d 693 (D.C. Cir. 1996); *Singh v. Carter*, 185 F. Supp. 3d 11, 22 (D.D.C. 2016).

Because an injunction is “never awarded as of right,” 555 U.S. at 24, the moving party must make a “clear showing” that it has met all four requirements of

the standard, *id.* at 22. Failure to establish any one of the required elements precludes preliminary relief. *Id.* at 24. As elaborated below, Plaintiff cannot make the required showing.

I. Plaintiff has not demonstrated a likelihood of immediate, irreparable harm from the land transfer while this appeal is pending.

Plaintiff has failed to establish that it will suffer immediate and irreversible injury. USFS's March 1 withdrawal of the FEIS and ROD means transfer of title is likely not imminent. Even if the exchange were to occur, moreover, it would not cause either immediate or irreparable harm. "There must be a 'sufficient causal connection' between the alleged irreparable harm and the activity to be enjoined" to justify injunctive relief. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 819 (9th Cir. 2018). The harm that Plaintiff alleges is an inability to access Oak Flat to participate in its core religious practices. Mot. at 1. But access to the land will continue; no subsidence-causing activities will occur for at least two years after any transfer, and if the Act is ultimately held to violate the Constitution or RFRA, the transfer can later be reversed.

A. Plaintiff will continue to have access to the land after the land transfer, and no subsidence-causing mining activities will occur for at least two years.

Plaintiff wrongly asserts that the land transfer will lead to "immediate," "permanent" harm, and its motion misstates the facts. Even setting aside that the

land transfer itself is likely to be delayed by the withdrawal of the EIS, any subsidence-causing mining activities are still years in the future, and public access to Oak Flat *will continue* until safety risks preclude it. Neither issuance of the FEIS nor the land exchange, if it occurs at some point in the future, prevents Plaintiff's use of Oak Flat. No irreparable harm justifies this emergency injunctive relief.

First, Plaintiff, along with the public, would continue to have access to Oak Flat after the land exchange (whenever that land exchange occurs). Ex. 1 at J-27; Ex. 2 at 31; Ex. 3 ¶ 33-49; Ex. 5 at 1. Open access would continue to the maximum extent practicable until the operation of the mine precludes public access for safety reasons. Ex. 2 at 31; Ex. 3 ¶ 46; Ex. 5 at 8. Resolution's management of the campground would match current USFS management, and Resolution would also accommodate requests to periodically close the campground to the public so it can be used exclusively for traditional and ceremonial purposes. Ex. 1 at J-27; Ex. 2 at 31; Ex. 3 ¶ 46; Ex. 5 at 8. This would include harvesting of the Emory oak groves. Ex. 3 ¶ 38. Access would also continue for recreational climbing, off-highway vehicle use, and travel through the property to reach other hunting areas. Ex. 3 ¶ 33, 43-45.

These are not empty platitudes—the Act authorizing the land exchange mandates such access, 16 U.S.C. § 539p, and Resolution has detailed these commitments within the FEIS, ROD, and site management plan. Ex. 1 at J-27; Ex.

2 at 31; Ex. 5 at 1, 8. In short, the “immediate” impact of the land exchange would *not* be loss of access to Oak Flat.

Second, Plaintiff’s alleged harms are linked not to the exchange itself, but to mining that may occur in the future. But before that mining can occur, Resolution must conduct additional feasibility study work and detailed study of the geologic characteristics and mineralization of the orebody, as well as environmental studies. Ex. 1 at ES-3; Ex. 4 ¶ 8. This information is required before much of the required underground infrastructure can be developed, and such development is “several years away, perhaps longer.” Ex. 4 ¶ 10-11. Additional regulatory hurdles also exist. Ex. 1 at 27-30. For example, Resolution must secure special use permits for roads through other federal lands to conduct its operations. Ex. 3 ¶ 31.

Active mining will not occur at the site for several years at the earliest (and subsidence at the site is not expected until a decade from now). Ex. 1 at ES-3; Ex. 2 at 2; Ex. 3 ¶ 49; Ex. 4 ¶ 11. Plaintiff repeatedly refers to future mining activity on the property, but tellingly, there is *no* explanation for how the mining project threatens an *imminent* harm. The only relatively near-term event—transfer of title— is itself now likely to be delayed, and in any event, it would not cause immediate harm and is reversible. Any action that would irrevocably alter the character of the land is not days or weeks but *years* in the future, leaving ample time for this Court’s review without injunction pending appeal.

B. Federal land exchanges can be reversed.

The transfer of title, whenever it occurs, cannot have an irrevocable impact because—if this Court determines that the land exchange violates the Constitution or RFRA—the transfer can be reversed.

This Court has reversed federal land exchanges after they have occurred. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1187 (9th Cir. 2000) (ordering that a land exchange be voided); *see Nat’l Parks & Conservation Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1063-64 (9th Cir. 2010) (explaining the district court’s decision to set aside an already-effected land exchange); *Nat’l Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1342-43 (9th Cir. 1995); *Nat’l Forest Pres. Grp. v. Butz*, 485 F.2d 408, 411 (9th Cir. 1973).

And, in *Youpee v. Babbitt*, 519 U.S. 234 (1997), the Supreme Court held that the Indian Land Consolidation Act’s escheat provision was an unconstitutional taking, even after partial distribution of property had been validated and decreed. The Supreme Court has applied a similar principle when a congressionally authorized land transfer conflicted with a treaty of the United States. *Jones v. Meehan*, 175 U.S. 1 (1899).

Here, as in *Desert Citizens Against Pollution v. Bisson*, this is not a case in which an exchange has been “completed substantially prior to the initial challenge before the district court,” or where a reversal of the exchange would “return federal

lands which have been irrevocably changed by private actions.” 231 F.3d at 1187; *see, e.g., Kettle Range Conservation Grp. v. Bureau of Land Mgmt.*, 150 F.3d 1083, 1085 (9th Cir. 1998) (denying injunctive relief where plaintiffs had made no effort to join private entities who had obtained title to the lands and begun ground-disturbing activities). No irreversible impacts like clear-cutting or blasting would occur immediately after transfer. *See, e.g., Sovereign Inupiat for a Living Arctic v. Bureau of Land Mgmt.*, 2021 WL 454280, at *4 (D. Alaska 2021); *W. Land Exch. Project v. Dombeck*, 47 F. Supp. 2d 1216, 1218 (D. Or. 1999).

Thus, an injunction pending appeal is unnecessary because the mere transfer of title is not irreversible. Plaintiff cannot meet its burden of establishing that *imminent, irreparable* harm is likely. The Court should deny the motion on this basis alone. *Winter*, 555 U.S. at 22.

II. Plaintiff is not likely to succeed on the merits

Plaintiff also fails to meet the required showing for the requested injunction because Plaintiff has failed to demonstrate a likelihood of success the merits.

Winter, 555 U.S. at 22.

A. Plaintiff has not shown a substantial burden on their religious exercise under RFRA.

Congress enacted RFRA, 42 U.S.C. § 2000bb et seq., in response to the Supreme Court’s decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that neutral, generally applicable laws that incidentally burden religious

practice need not be justified by a compelling governmental interest. *Id.* at 882-890. RFRA sought to restore the compelling interest test as a matter of federal statutory right by providing that the federal government “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the government demonstrates that application of the burden “is in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1.

To establish a *prima facie* claim, a plaintiff must show that the government has substantially burdened its exercise of religion. If it does so, the burden shifts to the government to show that it has acted in the least restrictive means to further a compelling interest. *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058, 1068 (9th Cir. 2008) (en banc). RFRA does not define “substantial burden,” but it “expressly referred to and restored a body of Supreme Court case law that defines what constitutes a substantial burden on the exercise of religion.” *Id.* at 1074, citing 42 U.S.C. §§ 2000bb(a)(4)-(5); 2000bb(b)(1).

One particularly relevant pre-*Smith* case is *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439 (1988). In that case, plaintiffs claimed that a planned road on federal land would “virtually destroy [their] ability to practice their religion,” and thus violated the Free Exercise Clause. *Id.* at 451. The

Supreme Court rejected that claim, holding that a cognizable burden exists only when “the affected individuals [would] be coerced by the Government’s action into violating their religious beliefs” or when “governmental action penalize[s] religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.” *Id.* at 449. The “incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs,” do not require the government to demonstrate a compelling justification, the Court held, “[f]or the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.” *Id.* at 450-51. The government’s “right to use what is, after all, *its* land” is simply not subject to a “religious servitude” to enable or facilitate the religious needs of any citizen. *Id.* at 452-53 (emphasis in original).

The same conclusion holds under RFRA, this Court held in *Navajo Nation*. In that case, the government approved a plan to use recycled wastewater for snowmaking and fire suppression on the San Francisco Peaks in Arizona. Several Tribes and individuals sued, claiming that the wastewater would desecrate a sacred site, substantially burdening their religious exercise in violation of RFRA. This Court, sitting en banc, rejected that claim: “We hold that the Plaintiffs have failed

to establish a RFRA violation. The presence of recycled wastewater on the Peaks does not coerce the Plaintiffs to act contrary to their religious beliefs under the threat of sanctions, nor does it condition a governmental benefit upon conduct that would violate their religious beliefs, as required to establish a ‘substantial burden’ on religious exercise under RFRA.” *Navajo Nation*, 535 F.3d at 1067. Like the Supreme Court in *Lyng*, 485 U.S. at 452-53, this Court noted that “no government—let alone a government that presides over a nation with as many religions as the United States of America—could function” under a contrary rule. *Navajo Nation*, 535 F.3d at 1064. “Were it otherwise, any action the federal government were to take, including action on its own land, would be subject to the personalized oversight of millions of citizens,” each holding “an individual veto.” *Id.* at 1063.

After a thorough, thoughtful discussion, the district court correctly concluded that plaintiff here “runs into the same problem as plaintiffs in both *Navajo Nation* and *Lyng*, each of which is still good law and binding upon this Court: Plaintiff has not been deprived a government benefit, nor has it been coerced into violating their religious beliefs” by the threat or imposition of penalties. “Accordingly,” the court held, “Plaintiffs’ RFRA and Free Exercise claims must fail.” ER-17-18.

Plaintiff attempts to distinguish *Lyng* and *Navajo Nation*, alleging that “neither . . . involved physical destruction of a sacred site; in fact, both cases acknowledged the outcome would have been different otherwise.” Mot. at 19. Plaintiff is twice wrong. The Supreme Court in *Lyng* observed that the road would cause “serious and irreparable damage to the sacred areas,” 485 U.S. at 442, yet found no substantial burden. Amici Religious Liberty Scholars argue that *Lyng* held that “a different set of constitutional questions” would arise if worshippers were prohibited from visiting a sacred site, but they take that language out of context and distort its meaning. Amicus Brief at 11, quoting *Lyng*, 485 U.S. at 453. The very same sentence makes clear that the *Lyng* court was talking about *discrimination* against religious uses. But here, as in *Lyng*, there is no discrimination; the land exchange statute treats all users of Oak Flat equally. As for *Navajo Nation*, the sacred sites were not physically destroyed, but the Court explicitly acknowledged that the outcome would *not* have been different otherwise: “Even were we to assume, as did the Supreme Court in *Lyng*, that the government action in this case will ‘virtually destroy the Indians’ ability to practice their religion,’ there is nothing to distinguish the roadbuilding project in *Lyng* from the use of recycled wastewater on the Peaks.” *Navajo Nation*, 535 F.3d at 1072. There is likewise nothing to distinguish the land exchange here.

Finally, Plaintiff argues that they have been threatened with penalties (for trespassing) and have been denied a benefit (using *Chi'chil Bildagoteel* for religious exercise). Mot. at 23. But RFRA does not compel the government to dispense particular benefits; it requires only that the government not make benefits *conditional* upon conduct that would violate Plaintiff's religious beliefs. *Navajo Nation*, 535 F.3d at 1063, 1067, 1070. The government has never made any benefit conditional on a violation of Plaintiff's religious beliefs, and the land transfer statute does not do so either. As for trespass, RFRA applies only to *government-imposed* penalties or threats thereof. The United States has never threatened Plaintiff with trespassing penalties for visiting Oak Flat, and Plaintiff does not allege otherwise.

B. Plaintiff is not likely to succeed on its Free Exercise Clause claim.

Plaintiff argues that the land transfer statute violates the Free Exercise Clause because it is, in their view, too narrow in scope to qualify as a “valid and neutral law of general applicability.” Mot. at 24, quoting *Smith*, 494 U.S. at 879. No Supreme Court or Circuit precedent supports that claim, but even if it were true, Plaintiff's Free Exercise claim would still fail under *Lyng*, a Free Exercise Clause case, for the reasons discussed above.

Plaintiff also alleges that the land transfer statute at issue was specifically targeted at their religious conduct, and is thus subject to strict scrutiny. Mot. at 24-

25, citing *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520 (1993). As the district court noted, however, Plaintiff “has provided no evidence of any discriminatory intent behind its passage,” and when asked about it, “Plaintiff’s counsel could not directly answer the question.” ER-19. On appeal, Plaintiff does not even attempt to show a discriminatory purpose, arguing instead that the intent is “immaterial.” That is not the law. To show that a law targeted religious practice, a plaintiff must prove that the law was enacted “because of, not merely in spite of, its adverse effects upon” plaintiffs’ religious practice. *Pers. Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979) (quotation marks omitted); accord *Church of the Lukumi Babalu Aye*, 508 U.S. at 540 (1993) (holding that equal protection cases guide neutrality inquiry under Free Exercise Clause, and relying on the previous quotation). This they have failed to do.

C. Plaintiff lacks standing to bring a breach-of-trust claim and cannot show an existing trust obligation.

Plaintiff also fails to show a likelihood of success on its breach of trust claim.

First, even if Plaintiff had identified a specific substantive source of trust obligations or property that was subject to those obligations (which, as discussed below, it has not), Plaintiff lacks standing to bring such a breach-of-trust claim. Plaintiff is a nonprofit organization that includes some Apache tribal members, but Plaintiff is not a Tribe, nor could it be the beneficiary of any trust created by the

1852 Treaty. To the extent that Treaty created any duties that could support the type of breach of trust claim Plaintiff asserts here (and it could not), such a claim must be brought by a federally-recognized Indian Tribe or Tribes. It is not enough that individual members of Plaintiff are members of such a Tribe. The injuries they allege—however individually experienced—are collective, and to the extent there were any trust duties owed for the Oak Flat area, those duties would have been to the Tribe or Tribes as a whole, not to individuals.²

Herrera v. Wyoming, 139 S. Ct. 1686 (2019), and *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), are not to the contrary. Neither case was, at heart, an individual asserting an alleged trust duty owed to a Tribe. Both involved individuals arguing that they were not subject to prosecution—in *Herrera*, for exercising a Treaty-protected hunting right, in *McGirt*, for charges stemming from activity in “Indian country” that had been brought in state court. Both cases involved resolution of the scope of tribal rights, but neither case addressed a circumstance like this case, in which a non-Tribe sought to assert the purported rights of an absent Tribe. Courts have routinely held that individual tribal members may not sue to enforce right or duties held by or owed to the Tribe as a whole. *See, e.g., Skokomish Indian Tribe v. United States*, 410 F.3d 506, 515 (9th Cir. 2005) (noting that individual members

² As Footnote 1 noted, the San Carlos Apache Tribe is pursuing relief against the land exchange but has not brought a breach of trust claim against the United States.

could not seek to vindicate communal rights); *Hackford v. Babbitt*, 14 F.3d 1457, 1466 (10th Cir. 1994) (member lacks standing to sue as to tribal asset); *James v. Watt*, 716 F.2d 71, 72 (1st Cir. 1983) (individual Indians lacked standing to assert tribal rights to land). This limitation follows naturally from the rule that, absent specific provisions providing for individual rights, treaties between sovereigns “do not create privately enforceable rights.” *Mora v. New York*, 524 F.3d 183, 201 & n.25 (2d Cir. 2008) (collecting cases).

Second, Plaintiff does not identify a discrete, enforceable trust duty that the government has violated. The only Treaty provision Plaintiff specifically identifies states that “the government of the United States” will “designate, settle, and adjust their territorial boundaries, and pass and execute” laws governing that territory “conducive to the prosperity and happiness of said Indians.” Mot. at 26 (citing ER-205). Plaintiff does not argue what specific duty this imposed on the United States with regard to Oak Flat. And while Plaintiff refers to a “trust” or “trust interest,” the land is not, in fact, held in trust for the Apache. The cited treaty language at most indicated a plan to adjust boundaries or establish trust lands in the future, *see Robinson v. Salazar*, 838 F. Supp. 2d 1006, 1022 (E.D. Cal. 2012); *Uintah Ute Indians v. United States*, 28 Fed. Cl. 768, 789 (1993) (parsing identical language in other treaties), but no such designation occurred to include Oak Flat. Plaintiff also does not argue that this language specifically required the United States to hold the

land in trust for the Western Apache Tribe, nor do they otherwise specify what, exactly, is the duty that the United States violated. And Plaintiff disclaims any title to the Oak Flat area. Mot. at 27.

The amorphous references to a “trust” and “trust responsibilities” are insufficient to establish that the United States has breached trust duties to the Apache Tribe. To succeed on breach of trust claim, a Tribe must “identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties.” *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003). The analysis of the government’s alleged failure to meet its duties as a trustee “must train on specific rights-creating or duty-imposing statutory or regulatory prescriptions.” *Id.* There may be a specific rights-creating trust duty when identifiable tribal assets are formally held in trust by the government, but this Court has held—consistent with the Supreme Court precedent—that the obligations to manage tribal assets held in trust does not extend to a more generalized duty to “regulate third-party use of non-Indian resources for the benefit of” Tribes. *Gros Ventre Tribe v. United States*, 469 F.3d 802, 812-13 (9th Cir. 2006); *see also Inter Tribal Council of Arizona, Inc. v. Babbitt*, 51 F.3d 199, 203 (9th Cir. 1995) (denying breach of trust claim where property at issue “is not properly the subject of a trust corpus. The off-reservation school was not part of Indian lands. . . . Tribes have no interest in the School

Property, which was owned and controlled by the United States government.”).

Plaintiff’s breach of trust claim cannot succeed absent identification of any specific trust duties established by specific rights-creating or duty-imposing statutory or regulatory prescriptions, and the absence of any allegedly mismanaged tribal asset that is held in trust.

Third, even if Congress created a distinct trust obligation with respect to Oak Flat in the 1852 Treaty, Congress extinguished that obligation when it passed the Act. Congress’s power to legislate in the realm of Indian affairs is “plenary and exclusive,” *United States v. Lara*, 541 U.S. 193, 200 (2004), and “not subject to be controlled by the judicial department of the government,” *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903). While the United States cannot terminate a treaty right by implication, the express purpose of the Act was to transfer Oak Flat to private companies for mining. That express purpose is in direct and obvious conflict with Plaintiff’s theory that the land is subject to any trust responsibility (although, as explained above, Plaintiff has not made clear what that trust duty is). This is not, as in *Herrera* and the precedent upon which it relies, a later act of Congress that arguably might implicitly subvert some interest held by a Tribe; it is an express abrogation of any trust duties related to Oak Flat. Any such abrogation is ultimately a political act, within Congress’s authority, and not the proper subject of a breach of trust claim.

Plaintiff has accordingly failed to establish a likelihood of success on its breach of trust claim.

III. While this Court need not reach them, the remaining factors favor the agencies.

This Court need not go further to consider the balance of equities and public interest, since Plaintiff's showing of entitlement to an injunction pending appeal has already failed. *See Nken v. Holder*, 556 U.S. 418, 435-36 (2009). But should the Court proceed to these factors, they favor denying the motion.

First, in passing the law that created the land exchange, Congress has determined that facilitating copper mining in Arizona and expanding the Tonto National Forest—a Forest which serves multiple public purposes including recreation opportunities and habitat conservation—is in the public interest. “Congress’s prerogative to balance opposing interests and its institutional competence to do so provide one of the principal reasons for deference to its policy determinations.” *Salazar v. Buono*, 559 U.S. at 717 (reversing injunction against land-transfer statute); *see also Am. Motorcyclist Ass’n v. Watt*, 714 F.2d 962, 967 (9th Cir. 1983). The equities thus favor the Federal Defendants under the principle that “a court sitting in equity cannot ignore the judgment of Congress.” *United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483, 497 (2001) (cleaned up). Where Congress has affirmatively spoken on a matter—here, the land

transfer—it is in accord with the public interest to not frustrate Congress’s intent.

Id. (citations omitted).

Second, the federal government has a long-recognized policy of “furthering Indian self-government.” *Morton v. Mancari*, 417 U.S. 535, 551 (1974). In analyzing whether injunctive relief advances the public interest, courts consider whether an injunction furthers this policy. *See Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1253 (10th Cir. 2001); *Seneca-Cayuga Tribe of Okla. v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1989). Here, allowing Plaintiff to pursue claims on behalf of federally-recognized Tribes that the Tribes themselves decline to pursue would not further Indian self-government. This policy consideration also suggests Plaintiff’s request for injunctive relief is not in the public interest.

CONCLUSION

For the foregoing reasons, Plaintiff’s emergency motion for an injunction pending appeal should be denied.

Respectfully submitted,

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Certificate of Compliance

The foregoing response complies with the length limits permitted by Ninth Circuit Rules 27-1 and 32-3, which together establish a word-limit of 5,600 words. This response is 5,469 words, and the type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

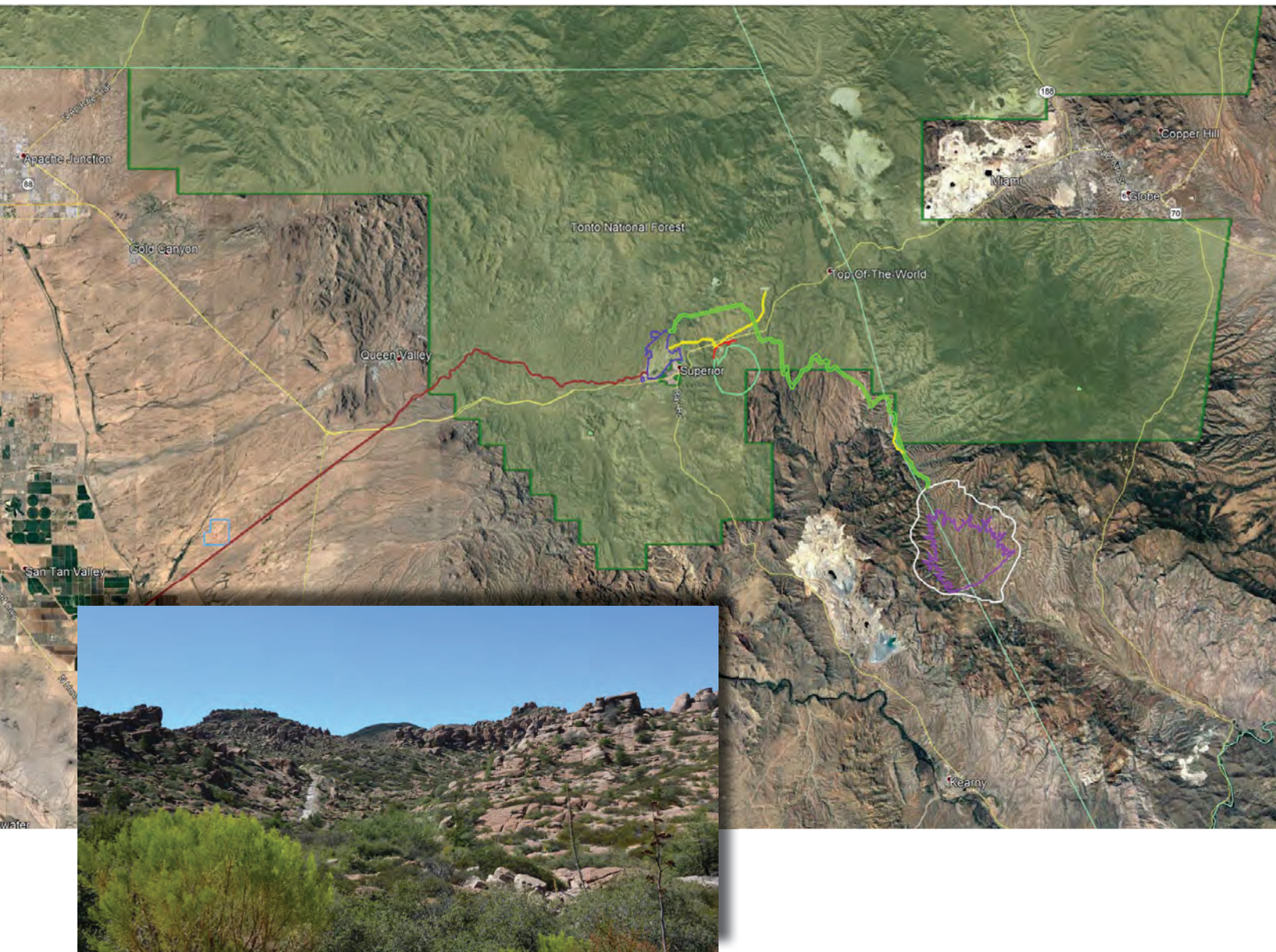
s/ Katelin Shugart-Schmidt
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EXHIBIT 1

United States Department of Agriculture

FINAL Environmental Impact Statement Resolution Copper Project and Land Exchange



Forest Service

Tonto National Forest

MB-R3-12-10

January 2021

Volume 1

Executive Summary

ES-1. Introduction

This executive summary provides an overview of the final environmental impact statement (FEIS) for the proposed Resolution Copper Project and Land Exchange (herein called the project). The FEIS describes the process undertaken by the U.S. Forest Service (Forest Service), a land management agency under the U.S. Department of Agriculture, to evaluate the predicted effects of and issues related to the submittal of a mining General Plan of Operations (GPO) by Resolution Copper Mining, LLC (Resolution Copper), along with a connected, legislatively mandated land exchange of Federal and private parcels in southeastern Arizona (figure ES-1).

This Executive Summary does not provide all details contained in the FEIS. Please refer to the FEIS, its appendices, or referenced reports for more information. The FEIS and supporting documents are available on the project website at <https://www.ResolutionMineEIS.us/>.

ES-1.1 Background

Resolution Copper proposes developing an underground copper mine on unpatented mining claims on National Forest System (NFS) land near the town of Superior in Pinal County, Arizona, approximately 60 miles east of Phoenix. Resolution Copper is a limited liability company that is owned by Rio Tinto (55 percent) and BHP Copper, Inc. (45 percent). Rio Tinto is the managing member.

Resolution Copper has ties to the century-old Magma Mine located in Superior, Arizona. The Magma Mine began production in 1910. In addition to constructing substantial surface facilities in Superior, the Magma Mine created approximately 42 miles of underground workings.

In 1995, the Magma Copper Company discovered a copper deposit about 1.2 miles south of the Magma Mine through exploration of those underground workings. The ore deposit lies between 4,500 and 7,000 feet below the surface.

In 1996, BHP Copper, Inc., acquired the Magma Copper Company, along with the Resolution Copper Mine deposit. Later that year, BHP closed operations at the Magma Mine, but exploration of the copper deposit continued.

In 2001, Kennecott Exploration, a subsidiary of Rio Tinto, signed an earn-in agreement with BHP, and initiated a drilling program to further explore the deposit. Based on drilling data, officials believe the Resolution Copper Mine deposit to be one of the largest undeveloped copper deposits in the world, with an estimated copper resource of 1,970 billion metric tonnes at an average grade of 1.54 percent copper.

The portion of the Resolution Copper Mine deposit explored to date is located primarily on the Tonto National Forest and open to mineral entry under the General Mining Law of 1872. The copper deposit likely extends underneath an adjacent 760-acre section of NFS land known as the “Oak Flat Withdrawal Area.” The 760-acre Oak Flat Withdrawal Area was withdrawn from mineral entry in 1955 by Public Land Order 1229, which prevented Resolution Copper from conducting mineral exploration or other mining-related activities. Resolution Copper pursued a land exchange for more than 10 years to acquire lands northeast of the copper deposit.

In December 2014, Congress authorized a land exchange pending completion of the environmental impact statement (EIS), as outlined in Section 3003 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (which is referred to as Public Law [PL] 113-291). The exchange parcel to be conveyed to Resolution Copper includes not only the Oak Flat Withdrawal Area but also the NFS lands above the location of the copper deposit. This collective 2,422-acre tract of land is known as the “Oak Flat Federal Parcel.”

The draft EIS (DEIS) was published for public review and comment in August 2019. The FEIS contains corrections, modifications, and additional analysis in direct response to public comments submitted on the DEIS. Appendix R of the FEIS contains written responses to all public comments received.

ES-1.2 Project Overview

Resolution Copper is proposing to develop an underground copper mine at a site in Pinal County, about 60 miles east of Phoenix near Superior, Arizona. Project components include the mine site, associated infrastructure, a transportation corridor, and a tailings storage facility.

The project would progress through three distinct phases: construction (mine years 1 to 9), operations, also referred to as the production phase (mine years 6 to 46), and reclamation (mine years 46 to 51–56). At the end of operations, facilities would be closed and reclaimed in compliance with permit conditions.

Operational projections are removal of 1.4 billion tons of ore and production of 40 billion pounds of copper using a mining technique known as panel caving. Using this process, a network of shafts and tunnels is constructed below the ore body. Access to the infrastructure associated with the panel caving would be from vertical shafts in an area known as the East Plant Site, which would be developed adjacent to the Oak Flat Federal Parcel. This area would include mine shafts and a variety of surface facilities to support mining operations. This area currently contains two operating mine shafts, a mine administration building, and other mining infrastructure. Portions of the East Plant Site would be located on NFS lands and would be subject to Forest Service regulatory jurisdiction. Ore processing would take place at the old Magma Mine site in Superior.

Construction of a tailings storage facility would house the waste material left over after processing. The facility disturbance footprint would occupy from 2,300 to 5,900 acres, depending on the location and embankment design. Pipelines would be constructed to transport the tailings waste from the ore processing facility to the tailings storage facility.

The estimated total quantity of external water needed for the life of the mine (construction through closure and reclamation) is substantial and varies by alternative (180,000 to 590,000 acre-feet). Resolution Copper proposes to use water either directly from the Central Arizona Project (CAP) canal and/or groundwater pumped from the East Salt River valley. Over the past decade, Resolution Copper has obtained banked water credits for recharging aquifers in central Arizona; the groundwater pumped would be recovery of those banked water credits, or groundwater use authorized by the State of Arizona under a mineral extraction withdrawal permit.

While all mining would be conducted underground, removing the ore would cause the ground surface to collapse, creating a subsidence area at the Oak Flat Federal Parcel. The crater would start to appear in year 6 of active mining. The crater ultimately would be between 800 and 1,115 feet deep and roughly 1.8 miles across. The Forest Service assessed alternative mining techniques in an effort to prevent subsidence, but alternative methods were considered unreasonable.

It should be noted that the proposed action is one of several alternatives considered in the EIS. The proposed action should not be confused with the preferred alternative. The preferred alternative is identified in the executive summary and chapter 2 and is the agency's preference for implementation based on the alternatives evaluated and the current analysis.

1.4.1 General Plan of Operations

The following is a brief summary of the mining proposal components. A detailed description of the GPO can be found in section 2.2.2.2. The complete GPO is available on the project website, www.ResolutionMineEIS.us.

Resolution Copper proposes to conduct underground mining of a copper-molybdenum deposit located 4,500 to 7,000 feet below the ground surface within the exchange parcel. Resolution Copper estimates that the mine would take approximately 10 years to construct, would have an operational life of approximately 41 years, and would be followed by 5 to 10 years of reclamation activities.

The mining operation would include the following facilities and activities analyzed in the EIS, which would be conducted on a mixture of NFS, private, and State lands:

- The mining itself would take place under the Oak Flat Federal Parcel, which is to be transferred to Resolution Copper pursuant to Section 3003 of PL 113-291. Mining would use an underground mining technique known as panel caving. Resolution Copper would use this process to construct a network of shafts and tunnels below the ore body. They would access the tunnels from vertical shafts in an area known as the East Plant Site. The panel caving technique fractures ore with explosives; gravity moves the ore downward, and then Resolution Copper removes it from below the ore deposit. As the ore moves downward and is removed, the land surface above the ore body also moves downward or "subsides." Analysts expect a "subsidence" zone to develop near the East Plant Site; there is potential for downward movement to a depth between 800 and 1,115 feet. Resolution Copper projects the subsidence area to be up to 1.8 miles wide at the surface.
- An area known as the East Plant Site would be developed adjacent to the Oak Flat Federal Parcel. The East Plant Site is the location of the Magma Mine #9 Shaft and #10 Shaft and associated surface mining support facilities. This area would include mine shafts and a variety of surface facilities to support mining operations. This area currently contains two operating mine shafts, a mine administration building, and other mining infrastructure. Existing roads would provide access to the mine. Magma Mine Road would eventually be relocated as a result of the expected subsidence.⁶
- Resolution Copper would crush the mined ore underground and then transport it underground approximately 2.5 miles west to an area known as the West Plant Site. There, operations would process the ore to produce copper and molybdenum concentrates. The West Plant Site is the location of the old Magma Mine processing and smelter facilities in Superior. Portions of the West Plant Site would be located on NFS lands and would be subject to Forest Service regulatory jurisdiction. A flotation process would process the ore; no heap leach processing is proposed.
- The molybdenum concentrate would then be dried, bagged, and transported to market from the West Plant Site.

⁶ A full description of subsidence can be found in section 2.2.2.2.

Forest Service process under Special Use Regulations

As described in chapter 2, the Forest Supervisor has identified Alternative 6 – Skunk Camp as the preferred alternative. This alternative is unique in that the tailings storage facility would be located on private lands (after eventual acquisition of Arizona State Trust land). If the land exchange occurs, then the mine, all processing facilities, and the tailings storage facility would be located off of NFS lands. The remaining portions of the project on NFS land would be roads, pipelines, and utilities. Any associated uses of NFS land such as roads, pipelines, and utilities are considered special uses and regulated under 36 CFR 251.50.

Rather than submittal of a GPO, authorization for a special use or occupancy of NFS lands requires submittal of a special use application (SF-299). This application process is designed to ensure that authorizations to use and occupy NFS lands are in the public interest (36 CFR 251, Subpart B). Once submitted, this application is subject to initial screening, in accordance with Forest Service Handbook [FSH] 2709.11.12.21 (U.S. Forest Service 2020b), to determine consistency with law, regulation, and policy, consistency with the forest plan, and consistency with other policies for use of NFS land. After completion of the initial screening, a secondary screening is undertaken, as detailed in FSH 2709.11.12.32 (U.S. Forest Service 2020b), to determine appropriateness of the special use and financial and technical capability. After processing and ensuring that appropriate processes are met, such as NEPA compliance, the Forest Supervisor would proceed to either approve or deny the application. The special use authorization would include terms and conditions (36 CFR 251.56), including minimizing damage to the environment, protecting the public interest, and requiring compliance with water and air quality standards.

Under the likelihood that the land exchange would occur and Alternative 6 would be selected, Resolution Copper submitted an SF-299 Special Use Permit application for the tailings pipeline uses on September 7, 2020. Tonto National Forest staff carried out initial and secondary screenings and accepted the application on September 28, 2020 (U.S. Forest Service 2020d). Similarly, SRP submitted an SF-299 Special Use Permit application for the transmission line uses on November 11, 2020. Tonto National Forest staff carried out initial and secondary screenings and accepted the application on November 18, 2020 (U.S. Forest Service 2020c). These applications are included as appendix Q of the FEIS.

1.5.1.2 Land Exchange

There are two types of land exchanges the Forest Service may undertake: administrative and legislative. The Forest Service is authorized to conduct land exchanges under the Federal Land Policy and Management Act (FLPMA) of 1976, and that act governs how these land exchanges—known as administrative exchanges—will occur. An administrative exchange is a discretionary decision on the part of the Forest Supervisor and would occur only after appropriate NEPA analysis and issuance of a final ROD.

Congress also can direct the Forest Service to exchange lands, which is known as a legislative land exchange. Section 3003 of PL 113-291 directs the Forest Service to undertake a legislative land exchange. With regard to the legislative land exchange, the Tonto National Forest Supervisor has no decision authority due to the constraints imposed by PL 113-291. The Forest Supervisor does have a responsibility to (1) address concerns of affected Indian Tribes and see mutually acceptable resolution of concerns with Resolution Copper; (2) ensure that title to the non-Federal lands offered in the exchange is acceptable in accordance with Section 3003(c)(2)(A) of PL 113-291; and (3) accept additional non-Federal land or a cash payment from Resolution Copper to the United States in the event that the final appraised value of the Federal land exceeds the value of the non-Federal land in accordance with Section 3003(c)(5)(B)(i) of PL 113-291.

1.5.6 Required Permits, Licenses, and Authorizations

Other permits, licenses, and authorizations would be required for the mine to be operational. Additional special use permits and rights-of-way may also be needed for power lines built by SRP, access roads, or other features. The EIS would not determine if a permit through another agency would be approved but would disclose impacts for resources analyzed. Table 1.5.6-1 provides the permits and licenses commonly required for this type of project; it is not meant to be a comprehensive list of all possible permit(s), license(s), or authorization(s) needed. A list of existing Resolution Copper permits and licenses currently held for ongoing operations is shown in table 1.4.2 of the GPO.

Table 1.5.6-1. Permits, licenses, and authorizations required for the Resolution Copper Project

Permitting Agency	Type of Permit	Permit Use
Arizona Corporation Commission, Line Siting Committee	Certificate of Environmental Compatibility	Ensures compliance with Arizona Revised Statutes (ARS) 40-360 and regulates the placement of electrical transmission lines.
Arizona Department of Agriculture	Agriculture Land Clearing Permit	Authorizes disturbance and clearing of State-protected native plants, as required under the Arizona Native Plant Law.
Arizona Department of Environmental Quality	Aquifer Protection Permit (APP)	<p>An APP is required for any activity that discharges a pollutant to an aquifer, or to the land surface so that there is a reasonable probability that the pollutant would reach an aquifer.</p> <p>General APPs are available for some impoundments and facilities, as long as they have characteristics specified by Arizona regulations (like lining). Resolution Copper currently holds a number of general APPs for wash bays (type 3.02 permits), wastewater treatment discharges (type 3.03 permits), and rock stockpiles (type 2.02 permits).</p> <p>Resolution Copper also currently holds an Individual Industrial Reclaimed Water APP, which allows conveyance of treated water to the New Magma Irrigation and Drainage District (NMIDD) for agricultural application (alfalfa, barley, Bermudagrass, cotton, sorghum, turf, and wheat). A similar permit would be required during operations for any treated water discharged to NMIDD.</p> <p>Resolution Copper also holds an area-wide APP that authorizes the closure of existing APP-regulated facilities at the West Plant Site under a compliance schedule, and an individual APP for a non-municipal solid waste landfill, which is approved to accept construction and demolition debris, non-hazardous mine refuse, vegetative waste, non-tire rubber products, solid waste petroleum-contaminated soil, metal-contaminated soil, empty containers, and nonfriable and friable asbestos-containing material.</p> <p>For operations, Resolution Copper would require an Individual APP that would encompass all mining and processing activities with the potential to discharge, most notably the tailings storage facility. The specific project components requiring permitting through the Individual APP are not yet determined.</p>

Resolution Copper Project and Land Exchange

Permitting Agency	Type of Permit	Permit Use
Arizona Department of Environmental Quality	Arizona Pollutant Discharge Elimination System (AZPDES) Permit	<p>The State of Arizona has received jurisdiction (also known as “primacy”) to administer Section 402 of the CWA, which is accomplished through the AZPDES program. Section 402/AZPDES regulates any discharges of pollutants to waters of the U.S., including potential pollutants in stormwater runoff.</p> <p>Any direct discharge of a pollutant into a water typically requires an individual AZPDES permit. Resolution Copper currently holds an AZPDES permit to discharge treated mine site stormwater runoff (Outfall 001) and treated seepage pumping and mine dewatering effluent (Outfall 002) to Queen Creek. The discharge must be in accordance with effluent limitations, monitoring requirements, and other conditions in the Standard Arizona Pollutant Discharge Elimination System Permit Conditions.</p> <p>The Arizona Department of Environmental Quality (ADEQ) has also issued a multi-sector general permit, which covers stormwater discharges from common industrial activities. Typically, a permittee would apply for coverage under the Multi-Sector General Permit (MSGP) program, and develop a Stormwater Pollution Prevention Plan (SWPPP) detailing how stormwater would be handled to reduce the potential for pollutants, including sediment. Resolution Copper currently is authorized under the MSGP for stormwater discharges from both the West Plant Site and East Plant Site. During operations, stormwater discharges from mine facilities most likely would take place under the MSGP program.</p> <p>Temporary stormwater discharges may also be covered under the construction general permit, which has similar requirements as the MSGP program. Certain temporary discharges (such as pump testing of a well) may also be covered under the de minimis permit program. The specific AZPDES permits required for construction and operation would be determined by ADEQ.</p>
Arizona Department of Environmental Quality	Clean Water Act Section 401 Water Quality Certification	<p>The State must issue, waive, or deny certification of an application for a USACE permit for discharge of dredged or fill material to waters of the U.S. To certify, the State must find that the activities proposed under the 404 permit would not result in a violation of State surface water quality standards. The 401 certification may specify conditions, including reporting requirements.</p> <p>ADEQ issued the 401 water quality certification for the Resolution Copper Project on December 22, 2020.</p>
Arizona Department of Environmental Quality	Drinking Water Division Monitoring Assistance Program	Public water system for serving potable groundwater to Resolution Copper employees.
Arizona Department of Environmental Quality	Drinking Water Registration and Regulations	Systems (including nontransient, noncommunity systems) must register with ADEQ and meet substantive requirements. Requires inspection, sampling/analysis, contingency/emergency planning, reporting, and notification.
Arizona Department of Environmental Quality	Hazardous Waste Management Program	Governs the management of hazardous waste (including transport and disposal). Requirements differ somewhat, depending on the volume and nature of hazardous waste generated; however, in general, it requires inspection, training, and contingency/emergency planning.
Arizona Department of Environmental Quality	Solid Waste Plan Approval	Required to meet the requirements of 40 CFR 257, along with other requirements set forth in State statutes (e.g., compliance with location restrictions, recording of a restrictive covenant).
Arizona Department of Environmental Quality	Special Waste Facility Generator	Resolution Copper is authorized to handle wastes designated as “special wastes” by the State.
Arizona Department of Environmental Quality	Air Quality Control Program	Governs the issuance of permits for air emissions under the Clean Air Act. The Skunk Camp alternative lies within Gila County. Gila County relies on ADEQ to issue air permits within the county. At this time, it is anticipated that air permits would be obtained from Pinal County Air Quality Control District (PCAQCD) for operations solely within Pinal County (East Plant Site, West Plant Site, filter plant and loadout facility), and from ADEQ for the tailings storage facility if the Skunk Camp alternative is selected.
Arizona Department of Transportation	Right-of-Way Encroachment Permit	Authorizes work within the State right-of-way, such as highways, driveways, grading, fence removal or replacement, surveying, and geotechnical investigation.

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Permitting Agency	Type of Permit	Permit Use
Arizona Department of Water Resources	Groundwater Permits	<p>Groundwater pumping and use is regulated heavily within Active Management Areas (AMAs), which are areas of intensive water use, originally identified in the Arizona Groundwater Management Act of 1980. The locations of pumping for dewatering (Shafts 9 and 10) and the future makeup water supply (Desert Wellfield) lie within the East Salt River valley subbasin of the Phoenix AMA. Within the AMA, pumping groundwater requires a valid groundwater right, or a valid withdrawal permit.</p> <p>Resolution Copper currently holds several groundwater rights: Type 2 Non-Irrigation Grandfathered Rights/Type II Mineral Extraction Rights, and a dewatering withdrawal permit. Similar rights or permits would be required for any dewatering that occurs during operations.</p> <p>Resolution Copper would be required to permit any wells associated with the Desert Wellfield, which would lie within the MARRCO corridor. Notices of Intent to Drill would be required for any well installation, to ensure proper construction and documentation. Any further permits or rights required would depend on whether water pumped was legally considered recharged or banked water, or regular groundwater. This would be determined by the Arizona Department of Water Resources.</p>
Arizona State Land Department	Right-of-Way Permit	Allows water and electrical supply lines to be placed within a right-of-way. Permit would be issued after the Arizona Corporation Commission approves the electrical supply alignment.
Arizona State Land Department	Special Land Use Permit	Resolution Copper holds several permits for geotechnical and hydrological data gathering, installation of surface water monitoring equipment, and groundwater monitor well installation and access. These permits may or may not be required during operations.
Arizona State Mine Inspector	Arizona Mined Land Reclamation Plan Approval	Applies to reclamation activities at the site. Requires certification, plan updates, annual reporting, and financial assurance. Resolution Copper currently holds a plan authorizing the reclamation of surface disturbances at the East and West Plant Sites.
Bureau of Land Management	Mining Plan of Operations and Record of Decision	In the event Alternative 5 – Peg Leg is selected, Resolution Copper's GPO would be denied with respect to the facilities proposed on NFS lands that are identified to be placed on BLM-managed public lands, State lands, or private lands. To use BLM-managed public lands, Resolution Copper would need to obtain surface use authorization from BLM in accordance with BLM's surface management regulations 43 CFR subpart 3809. BLM would then issue a separate ROD from the Forest Service to approve mine-related actions on BLM-administered lands, and would need to conduct any post-decision administrative review processes required under BLM regulations.
Bureau of Land Management	Right-of-Way Application	In the event Alternative 5 – Peg Leg is selected, Resolution Copper's GPO would be denied with respect to rights-of-way proposed on NFS lands that are identified to be placed on BLM-managed public lands, State lands, or private lands. To use BLM-managed public lands for right-of-way purposes, Resolution Copper would need to obtain surface use authorization from BLM for any right-of-way that crosses BLM-managed public lands.
Federal Communications Commission	Radio License	Required for current use of communication network; would be required during operations.
Pinal County Air Quality Control District	Air Quality Control Permit	<p>Resolution Copper currently holds an air quality control permit that pertains to the historical mining (reclamation) and development and exploratory mining exploration facilities operated by Resolution Copper. A similar air quality permit would be required for the full operations.</p> <p>The PCAQCD may also issue dust permits for construction, earthwork, and land development.</p> <p>The Skunk Camp alternative also lies within Gila County. Gila County relies on ADEQ to issue air permits within the county. At this time, it is anticipated that air permits would be obtained from PCAQCD for operations solely within Pinal County (East Plant Site, West Plant Site, filter plant and loadout facility), and from ADEQ for the tailings storage facility if the Skunk Camp alternative is selected.</p>

Resolution Copper Project and Land Exchange

Permitting Agency	Type of Permit	Permit Use
Pinal County Air Quality Control District	Meteorological and Ambient Air Monitoring Plan	Resolution Copper collects meteorological and air quality monitoring data under a plan approved by PCAQCD. Data collection would continue during operations, but possibly under a separate plan.
U.S. Army Corps of Engineers	Project-specific (Individual) Section 404 Clean Water Act Permit	This permit is required for the discharge of dredged or fill material into waters of the U.S. This permit may only be applicable to certain alternatives (see section 1.5.3). Individual Section 404 permits typically incorporate mitigation that would be implemented to compensate for lost aquatic resources. A conceptual mitigation plan was approved by the USACE and is included as appendix D of the FEIS.
U.S. Department of Transportation	Hazardous Materials Certificate of Registration	Resolution Copper is certified and would be required to keep certification current during operations as required by the U.S. Department of Transportation hazardous materials program procedures in 49 CFR 107, Subpart G.
U.S. Department of Transportation	Hazardous Materials Transportation Permit	Governs the transport of hazardous materials as defined by the U.S. Department of Transportation. Requires specific employee training and security and contingency planning.
U.S. Environmental Protection Agency	Hazardous Waste Identification Number	Authorizes facilities to generate and transport off-site hazardous waste in quantities in excess of 100 kilograms per month (or those that generate acute hazardous waste in quantities exceeding 1 kilogram per month). Requires specific employee training, inspections, and contingency planning.
U.S. Fish and Wildlife Service	Biological Opinion	<p>The Biological Opinion is issued by the U.S. Fish and Wildlife Service at the completion of consultation under Section 7 of the Endangered Species Act. The Biological Opinion ensures that the Tonto National Forest's approval of the revised mining plan of operations would not jeopardize the continued existence of a threatened or endangered species or adversely modify designated critical habitat. Biological Opinions may authorize "take" of a protected species, and would detail the conservation measures committed to by Resolution Copper, as well as other reasonable and prudent measures (and associated terms and conditions) that must be taken by Resolution Copper. Failure to comply with requirements specified in the Biological Opinion could require reconsultation and could also result in civil and criminal penalties.</p> <p>The Biological Opinion is included as appendix P of the FEIS.</p>
U.S. Forest Service	Baseline Hydrologic and Geotechnical Data Gathering Activities Plan of Operations	To collect hydrologic, geochemical, and geotechnical data in order to provide baseline information on these aspects of the environment over an area being considered at the Near West site. These activities are complete.
U.S. Forest Service	Final Mining Plan of Operations (after publication of the FEIS and approval of the ROD)	<p>For projects being approved under mining laws, a final mining plan of operations must be approved by the Forest Supervisor. Approval of the final mining plan provides the authorization to conduct activities on NFS lands. The final mining plan must reflect requirements specified in the ROD, including mitigation, monitoring, reporting, requirements of all applicable permits and authorizations, and is accompanied by posting of a bond or other financial assurance.</p> <p>If the land exchange takes place and Alternative 6 – Skunk Camp is identified in the ROD as the selected alternative, authorization likely would take place under special use regulations, not mining regulations.</p>
U.S. Forest Service	Special Use Permit	<p>The existing Special Use Permit authorizes Resolution Copper to construct and maintain a water pipeline corridor from the water treatment plant to an irrigation canal operated by the NMIDD. Future activity within the MARRCO corridor potentially could be covered under the final mining plan of operations, rather than a special use permit.</p> <p>If the land exchange takes place and Alternative 6 – Skunk Camp is identified in the ROD as the selected alternative, authorization likely would take place under special use regulations, not mining regulations. This would require the issuance of a special use permit to Resolution Copper for the tailings pipeline corridor across NFS lands, and to SRP for the tailings power line corridor across NFS lands. The power line permit would be issued after the Arizona Corporation Commission approves the electrical supply alignment.</p>

Appendix J

FS-RC-02: Access to Oak Flat Campground
Other names: RC-216 (DEIS appendix J); PA Measure #B5:
Description/overview: Resolution Copper will ensure access to the Oak Flat campground to members of the public and Tribes as long as safety allows. Resolution Copper will develop an Oak Flat Campground Management Plan prior to completion of the land exchange. The management approach is consistent with the current Forest Service management of the campground, but would also incorporate additional measures requested by Tribes, including closure of the campground to the public periodically or upon request by Indian Tribes for traditional and ceremonial purposes.
Source of measure: Programmatic Agreement
Resource affected/impacts being mitigated: These actions seek to mitigate potential adverse effects on recreation and tribal values.
Applicable alternatives: All
Authority to require: As this measure is included in the Programmatic Agreement of which Resolution Copper is a signatory, implementation is required to take place.
Funded by: Resolution Copper
Additional ground disturbance: No additional ground disturbance anticipated.

FS-RC-03: Mitigation for adverse impacts to recreational trails (Forest multi-use trail plan)
Other names: RC-214 (DEIS appendix J); M-R14; M-R17; M-R19; M-R20; M-R23; M-R35
Description/overview: In the DEIS, Resolution Copper had agreed to support the Recreation User Group (RUG) and the Superior Trail Network Plan to offset loss of public roads at Oak Flat. The RUG had proposed a conceptual plan for a trail system on the Tonto National Forest, located southwest of the town of Superior, that would meet the needs and interests of different stakeholders (WestLand Resources Inc. 2019). In 2020, land managers and resource specialists from the Tonto National Forest evaluated the proposed measures intended to mitigate recreation impacts on the Tonto National Forest resulting from actions associated with the proposed project. This review resulted in a set of measures found to be legitimate, practicable, and effective, and inclusion in the FEIS was recommended (Rausch and Rasmussen 2020). The recommendations include 9.3 miles of motorized trail and 11.5 miles of non-motorized trail that would be located on and managed by Tonto National Forest. Resolution Copper has committed to funding the construction and maintenance of the new multi-use trail network on the Tonto National Forest, with the further intent that investment funding can be supported by additional grants and funds from recreational groups and other organizations to further expand recreational opportunities.

EXHIBIT 2



United States Department of Agriculture

Draft Record of Decision Resolution Copper Project, January 2021 Authorization of Special Uses and Road Use

**U.S. Forest Service
Tonto National Forest
Pinal and Gila Counties, Arizona**

Abstract

The final environmental impact statement (FEIS) for the Resolution Copper Project and Land Exchange analyzes the potential environmental effects from the disposition of National Forest System (NFS) land and development of the proposed Resolution Copper Mine near Superior, Arizona. Under the Southeast Arizona Land Exchange and Conservation Act (16 U.S.C. § 539p) Congress mandated that the U.S. Forest Service dispose of certain NFS land by exchange. Congress further specifies that proposed mining operations on land to be conveyed in the exchange are not to be regulated by the Forest Service.

The Forest Service does regulate uses of NFS land outside of the exchange area that will be required to conduct mining operations. This draft record of decision (ROD) documents the Forest Service decision to authorize uses of NFS land by issuing a road use permit and special use authorizations for pipeline and power line corridors associated with the Resolution Copper Project.



Draft Record of Decision

Authorization of Special Uses and Road Use Resolution Copper Project

LEAD AGENCY: U.S. Department of Agriculture
Tonto National Forest
2324 East McDowell Road
Phoenix, Arizona 85006
(602) 225-5200

DATE DECISION SIGNED: _____

COOPERATING AGENCIES: U.S. Army Corps of Engineers
U.S. Department of the Interior Bureau of Land
Management
U.S. Environmental Protection Agency
Arizona State Land Department
Arizona Department of Environmental Quality
Arizona Department of Water Resources
Arizona Game and Fish Department
Arizona State Mine Inspector
Pinal County Air Quality Control District

PART 1 INTRODUCTION

1.1 About This Document

The U.S. Forest Service (Forest Service), in cooperation with the U.S. Army Corps of Engineers (USACE), U.S. Department of the Interior Bureau of Land Management (BLM), U.S. Environmental Protection Agency, Arizona State Land Department (ASLD), Arizona Department of Environmental Quality (ADEQ), Arizona Department of Water Resources, Arizona Game and Fish Department (AGFD), Arizona State Mine Inspector, and Pinal County Air Quality Control District, prepared an environmental impact statement (EIS) to review the potential environmental impacts of the Resolution Copper Project and Land Exchange (herein called the project).

In addition to the proposed action, four action alternatives were considered, along with the no action alternative. Public scoping for this project began in 2016 and resulted in the identification of the issues described in part 5.3 of this draft record of decision (Draft ROD). The Final EIS (FEIS) (U.S. Forest Service 2021) was released to the public in January 2021, along with this Draft ROD. This Forest Service ROD is specific to the authorization of special uses on National Forest System (NFS) lands.

This ROD is organized into eight parts:

- *Part 1 – Introduction* provides background information about the proposed Resolution Copper Mine from Resolution Copper Mining LLC (Resolution Copper), which has mineral claims for the Oak Flat area.
- *Part 2 – Decision* explains the authorities of the Forest Service to regulate use and occupancy of NFS lands for special use permit activities associated with development of the Resolution Copper Project.
- *Part 3 – Principal Reasons for the Decision* explains the circumstances and rationale behind the Forest Service decisions.
- *Part 4 – Applicant-Committed Environmental Protection Measures, Monitoring, and Mitigation* specifies the requirements necessary for implementation of special use permit activities.
- *Part 5 – Public Involvement and Issues* describes the public involvement process, a summary of public comments, a description of government consultation, and a summary of the issues.
- *Part 6 – Alternatives Considered* briefly summarizes the no action alternative and the action alternatives that were considered in detail, the environmentally preferred alternative, and alternatives that were eliminated from detailed analysis.
- *Part 7 – Legally Required Findings* lists the laws and regulations that were considered during the decision-making process.
- *Part 8 – Administrative Review Opportunities* describes the opportunity provided for pre-decisional administrative review under 36 Code of Federal Regulations (CFR) 218 Subparts A and B, identifies the contact person for the project, and documents the signature authorizing this decision.

1.2 Proposed Resolution Copper Mine Project

1.2.1 Project Overview (as originally proposed)

In November 2013, Resolution Copper submitted a General Plan of Operations (GPO) to the Tonto National Forest for development and operation of a large-scale mine near Superior, Arizona. The proposed GPO sought authorization for surface disturbance on NFS lands for mining operations and processing of

copper and molybdenum. The proposed mine would be located in the Tonto National Forest Globe and Mesa Ranger Districts. The Forest Service determined that the proposed GPO was complete in December 2014. The GPO describes the full breadth of activities that would take place for construction, operation, closure, and reclamation of the mine project. These activities are also described in detail in chapter 2 of the FEIS. They are briefly summarized below to provide context to the decisions considered in this Draft ROD.

The project will progress through three distinct phases: construction (years 1 to 9), operations (years 6 to 46), and closure and reclamation (years 46 and beyond). The type of copper deposit that would be mined at the East Plant Site is a porphyry deposit, a lower-grade deposit that requires higher mine production rates to be economically viable. The copper deposit that Resolution Copper proposes to mine averages 1.54 percent copper (i.e., every ton of ore would on average contain 31 pounds of copper). Operational projections are removal of 1.4 billion tons of ore and production of 40 billion pounds of copper using a mining technique known as panel caving. Using this process, a network of shafts and tunnels is constructed below the ore body. Access to the infrastructure associated with the panel caving would be from vertical shafts in an area known as the East Plant Site, located on an area known as Oak Flat. This area would include mine shafts and a variety of surface facilities to support mining operations. As originally proposed in 2013, portions of the East Plant Site were located on NFS lands and would have been subject to Forest Service regulation; however, these operations will now be occurring on private lands following the land exchange and will be subject to regulations outside the Forest Service.

While all mining will be conducted underground, removing the ore would cause the ground surface to collapse, creating a subsidence area at Oak Flat. The crater will start to appear in year 6 of active mining. The subsidence area ultimately will be between 800 and 1,115 feet deep and roughly 1.8 miles across. The EIS evaluated alternative mining techniques that could avoid subsidence, and explains why the Forest Service determined that those mining techniques were not reasonable alternatives to consider in detail. As the mine will be on private land, the Forest Service will not be approving any mining method.

Under Resolution Copper's proposed plan, mined ore will be crushed underground and then transported underground approximately 2.5 miles west to an area known as the West Plant Site (the location of the old Magma Mine in Superior, Arizona), where ore will be processed to produce copper and molybdenum concentrates. As originally proposed, a portion of the West Plant Site would have been located on NFS lands, which would have been subject to Forest Service regulatory jurisdiction. Resolution Copper later modified this portion of the West Plant Site to avoid use of NFS land (see "Changes to the Proposed Action during the NEPA Process" below).

Once processed, the copper concentrate will be pumped as a slurry through a 22-mile pipeline to a filter plant and loadout facility located near Florence Junction, Arizona, where copper concentrate will be filtered and then sent to off-site smelters via rail cars or trucks. The molybdenum concentrate will be filtered, dried, and sent to market via truck directly from the West Plant Site.

The copper concentrate slurry pipeline corridor will be located along an existing, previously disturbed right-of-way known as the Magma Arizona Railroad Company (MARRCO) corridor. The MARRCO corridor will also host other infrastructure for the mine, including water pipelines, power lines, pump stations, and groundwater wells. Resolution Copper holds an existing right-of-way for those portions of the MARRCO corridor that cross NFS lands.

Tailings produced at the West Plant Site will be pumped as a slurry through several pipelines to a tailings storage facility. The tailings storage area will gradually expand over time. As originally proposed, the tailings storage facility was to have been located on NFS lands, which would have been subject to Forest Service regulatory jurisdiction. Resolution Copper later modified that part of the proposed mine plan to avoid use of NFS land (see "Changes to the Proposed Action during the NEPA Process" below).

Section 3003 of PL 113-291 required Resolution Copper and the Forest Service to develop mutually acceptable measures to address tribal concerns and minimize the adverse effects to affected Tribes. During government-to-government consultation, the affected Tribes provided the Forest Service with numerous suggestions on ways to help minimize the adverse effects of the proposed project on areas and resources of tribal interest. The mitigation measures that the Forest Service developed in response to tribal input are contained in the PA. The PA describes the separate mitigation measures in addition to actions related to Section 106 compliance, and is the document through which Resolution Copper commits to implementing those measures.

Resolution Copper has committed to create three compensatory mitigation funds for five tribal programs that will be available to the 11 consulting Tribes. The administration and management of the three funds will be the responsibility of a to-be-determined 501(c)(3) organization(s). The National Forest Foundation is a candidate for the administration of those programs and funds, which require coordination with the Forest Service, although the final selection is yet to be made. Funding for the programs is timed to specific milestones/actions and will be memorialized in a separate agreement between the Forest Service and Resolution Copper. The five programs are as follows:

1. **The Emory Oak Collaborative Tribal Restoration Initiative:** Funds the implementation of the treatments for the Emory Oak Collaborative Tribal Restoration Initiative, a multi-year restorative fieldwork program for Emory oak groves located in the Tonto and Coconino National Forests. Developed through consultation with the Forest Service and Tribes, the program is designed to restore and protect Emory oak groves that are accessed by Apache communities for traditional subsistence gathering and ensure their sustainability for future generations. The program funds the long-term restorative treatment, maintenance, and monitoring for the Emory oak, and includes research, cultural activities, and educational activities.
2. **Tribal Monitoring Program:** Funds the long-term continuation of the existing Tribal Monitor Program and administration, program development, training, and funding for monitors working on NHPA Section 106 and 110 projects on public lands.
3. **Tribal Youth Program:** Funds the development of a Tribal Youth Program in partnership with the Forest Service and consulting Tribes to provide cultural and educational opportunities to Tribal Youth on Forest Service lands.
4. **Tribal Cultural Fund:** Funds to address unique and specific tribal proposals brought forth by Tribes during government-to-government consultation. The fund will provide a mechanism to fulfill tribal requests that do not fit under the other funding programs, such as direct funding to assist tribal projects, programs, and infrastructure.
5. **Tribal Education Fund:** Funds scholarships for 2-year and 4-year programs of study for members of the consulting Tribes.

Several other non-financial measures were included in the PA as well, to address the concerns of the affected Tribes and minimize the adverse effects from mining and related activities on the conveyed lands. These include the following:

1. **Resource Salvage.** The Forest Service is facilitating the salvage of resources (e.g., culturally important plants and mineral resources) to address the loss of access to traditional collection areas and a loss of access to the *Chi'chil Bildagoteel* Historic District within the Oak Flat Federal Parcel (selected lands). To the extent practicable and in collaboration and partnership with Tribes, an inventory will be conducted to identify the natural resources within the Oak Flat Federal Parcel area, pipeline corridor, and tailings storage facility footprint. When the inventory is complete, the resources will be "salvaged" (collected) and the material gathered will be distributed amongst the Tribes for traditional and cultural use.

2. **Access to Oak Flat:** Resolution Copper will provide access to the surface of the Oak Flat Campground to members of the public and Tribes, to the maximum extent practicable and consistent with health and safety requirements, until the operation of the mine precludes public access for safety reasons. An Oak Flat Campground and Access Management Plan is complete and follows the current management practices of the Tonto National Forest for the site (Resolution Copper 2020a). The plan ensures access to Oak Flat Campground to the public and tribal members and provides stipulations for closing the campground to accommodate tribal ceremonies and other activities. Resolution Copper will allow access to and use of the Oak Flat Campground until such time as mining activities make further use unsafe.

7.1.3 American Indian Religious Freedom Act of 1978 and Religious Freedom Restoration Act of 1993

The American Indian Religious Freedom Act states that no Federal lands may be managed in a manner that undermines and frustrates a traditional Native American religion or religious practice, except management decisions for those lands where it is necessary to protect a compelling government interest. The law states, “In making such a management decision, the Federal agency shall attempt to accommodate the various competing interests and shall, to the greatest extent feasible, select the course of action that is least intrusive on traditional Native religions or religious practices.”

The Religious Freedom Restoration Act states that the government shall not substantially burden a person’s exercise of religion, with the following exception. A government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The act allows for judicial relief for a person whose religious exercise has been burdened in violation of this act.

The Forest Service has a responsibility to ensure that decisions affecting NFS lands do not substantially burden the rights of Native Americans and others to practice their religion.

The exchange of lands with Resolution Copper is congressionally mandated and is not part of this ROD. The decisions to authorize special uses on NFS land for the pipelines, power lines, and use of roads do not substantially burden the rights of Native Americans and others to practice their religion. Therefore, I find that the selected Federal action complies with the American Indian Religious Freedom Act and the Religious Freedom Restoration Act.

7.1.4 Summary of Compliance with Executive Orders 13175 and 13007, and with Section 3003 of PL 113-291

In addition to binding requirements for treatment of historic properties and for implementing measures to address impacts to resources of tribal interest, the PA also serves to clearly acknowledge the continued tribal opposition to the project. As articulated in the final version of the PA circulated for signature included with the FEIS (appendix O), representatives of the Hopi Tribe, Mescalero Apache Tribe, Pueblo of Zuni, San Carlos Apache Tribe, Tonto Apache Tribe, and White Mountain Apache Tribe have crafted the following statement:

EXHIBIT 3

I, Victoria Peacey, declare as follows:

1. I am over the age of 18 and am competent to make this declaration. I could and would testify to the following facts, which are within my personal knowledge and based on my review of relevant documents, if called as a witness to do so.

2. I joined Resolution Copper Mining LLC (“Resolution”) in September 2010. I am the Senior Business Partner - Community and Social Performance (“CSP”), Copper – America and Joint Ventures. In this role, I lead the CSP teams at various Rio Tinto operations, including at Resolution, while also continuing to lead the federal permitting activities at Resolution. Previously, I was the Senior Manager of Permitting and Approvals for Resolution. In that position, I managed the permitting processes at the federal, state, and local levels for Resolution.

3. Before joining Resolution, I spent approximately ten years managing environmental affairs and permitting at several Rio Tinto facilities, including America’s only primary nickel mine and one of the world’s largest open-pit copper mines.

4. From March 2008 to September 2010, I served as manager of environmental affairs and permitting for the Rio Tinto project at the Eagle Mine, located in Michigan’s Upper Peninsula. The Eagle Mine is an underground, high-grade nickel and copper mine that required significant investment in the mine and related facilities. It is the only primary nickel mine located in the United States. In 2007, the Eagle Mine was the first mine permitted by the State of Michigan under its Non-Ferrous Metallic Mining Law. In 2013, the mine was sold by Rio Tinto to Lundin Mining. The mine began production in September 2014.

5. From 2002 until 2008, I worked on environmental compliance and permitting issues at the Kennecott Bingham Canyon copper mine, located about 25 miles south of Salt Lake City, Utah. Bingham Canyon is one of the world’s largest sources of copper. Rio Tinto acquired the mine in 1989, more than 100 years after the mine was established. Rio Tinto has invested significant sums of money in environmental upgrades and reclamation.

During 2006-2008, I helped the facility obtain necessary permits and approvals for an expansion, supervised the collection of environmental data, managed permit compliance, and assisted with reclamation of areas impacted by Rio Tinto's predecessors. I also worked on reclamation of the Barney's Canyon gold mine, which stopped operating in 2001 and is now recognized as elk and deer habitat.

6. I hold two degrees from the University of Western Ontario: a Bachelor of Science degree in applied geosciences and a Master of Science degree in civil and environmental engineering.

Resolution Copper: Overview of the Project

7. Resolution is a limited liability company owned by subsidiaries of the Rio Tinto Group and BHP.

8. In 2004, Resolution acquired property and equipment associated with the historic Magma Copper Mine near Superior, Arizona, in an area that forms part of the Copper Triangle. Mining in the Superior area reportedly began in the late 1880s and the Magma Copper mine operated from 1911-1996, when operations were suspended.

9. Resolution's work on the project began in 2005. At that time, Resolution started reclamation work at the former Magma West Plant. That work has lasted about 15 years and cost approximately \$75 million. As a result of our reclamation efforts, an area impacted by mining operations has been restored and reclaimed per state regulatory requirements.

10. The proposed Resolution mine would be underground rather than open-pit. Block cave mining has been used in Arizona for decades and would result in a smaller footprint than an open pit mine. The San Manuel and the Inspiration complex were both block cave operations. Rio Tinto has successfully operated three block cave operations in Australia and South Africa, and this will be a modern, leading-edge operation utilizing the most sophisticated technology available.

11. Once in operation, the Resolution Copper mine could supply up to one-

quarter of the nation's copper demand. Copper is an essential component in mobile devices, medical equipment and clean energy technologies, and demand is growing worldwide.

12. After the mine is closed, Resolution Copper—not taxpayers—must cover all costs associated with closing the mine and all post-closure monitoring.

Location of Resolution's Claims and Chi'chil Bildagoteel

13. Resolution holds approximately 185 unpatented mining claims in the vicinity of Oak Flat, Pinal County, Arizona (the "Claims"). The Claims are located on lands, the surface of which is administered by the Tonto National Forest. The Claims were located by Resolution or a predecessor in interest between 1903 and 2011. The Claims are adjacent to the Oak Flat Withdrawal Area ("Withdrawal Area"). The area around the Claims and the Withdrawal Area is commonly known as "Oak Flat" or "Oak Flats."

14. In 2013, Resolution Copper submitted a proposed Mine Plan of Operations ("MPO") to the Tonto National Forest pursuant to 36 CFR Part 228 seeking authorization to conduct mining operations on the Claims. The Tonto National Forest declared the application complete in 2014, and initiated the necessary administrative and environmental review, which is still in process.

15. In December 2014, Congress passed the Southeast Arizona Land Exchange and Conservation Act, 16 USC § 539p (the "Act"), as part of a lands package that was included in the National Defense Authorization Act. The Act provides that the Federal land, as defined by the Act, shall be exchanged for non-Federal lands held by Resolution Copper. Both the Withdrawal Area, as well as a portion of the Tonto National forest lands where Resolution Copper's Claims are located, constitute the Federal land for purposes of the Act. A graphic depicting the Claims relative to the boundaries of the Federal land is attached as Exhibit A.

16. In December 2015, the US Forest Service submitted an application to have part of Oak Flat listed on the National Register of Historic Places as a traditional cultural property ("TCP") known as Chi'chil Bildagoteel.

17. On March 4, 2016, the National Park Service announced that Chì'chil Bildagoteel was listed on the National Register of Historic Places as a TCP. A graphic depicting the Claims relative to the approximate boundaries of the Chì'chil Bildagoteel TCP is attached as Exhibit B.

Apache Leap Special Management Area

18. In 2017, the Forest Service established the Apache Leap Special Management Area ("ALSMA"), as required by the Act.

19. Pursuant to the Act, Resolution set aside 697 acres of mining claims and provided approximately 140 acres of privately-held land to permanently protect Apache Leap as part of the ALSMA. *See* 16 U.S.C. § 539p (f), (g). Specific measures were taken within the ALSMA to accommodate tribal concerns regarding public access, grazing, and other protections for locations of cultural importance.

20. Including Apache Leap in this special management area will (A) preserve the natural character of Apache Leap; (B) allow for traditional uses of the area by Native American people; and (C) protect and conserve the cultural and archeological resources of the area.

21. Apache Leap will be monitored to ensure that future mining-related activity does not impact the feature and this monitoring will continue throughout construction, operation, closure and reclamation of the mine.

The Environmental Impact Statement Process

22. Because the federal permitting process for the MPO was already underway at the time that the land exchange became law, the legislation specifies that the US Forest Service must produce a single environmental impact statement as the basis for all decisions under federal law related to the proposed mine, the MPO and any related major federal actions. *See* 16 U.S.C. § 539p(c)(9)(b).

23. While the Forest Service began its official independent review of the proposed project required under the National Environmental Policy Act ("NEPA"),

Resolution began deepening an existing shaft, sinking a new shaft, performing extensive ore body exploration drilling, and conducting reclamation of historical mining activity.

24. In 2016, the Forest Service initiated public scoping with a notice of intent to prepare an Environmental Impact Statement (“EIS”) for the Resolution Copper MPO and land exchange.

25. In the project schedule, initially set by the USFS during the Obama Administration, the target date for Final EIS publication was July 2020.

26. In August 2019, the Forest Service published a Draft EIS. After consideration of all the public comments, the Final EIS was published on January 15, 2021. Under the Act, exchange of title to the lands is to occur within 60 days of publication of the Final EIS.

27. I understand that approximately 130,000 comments were received during public scoping and close to 30,000 public comments were received on the Draft EIS and subsequently reviewed and addressed through the NEPA process.

The Final Environmental Impact Statement

28. Because this is a congressionally mandated land exchange, it differs in many respects from an administrative land exchange.

29. Because the Act is a legislative land exchange, “the Tonto National Forest Supervisor has no decision authority due to the constraints imposed by PL 113-291 [the Act].”¹

30. As described in chapter 2 of the Final EIS, Alternative 6 – Skunk Camp was identified as the preferred alternative. This alternative is unique because the tailings storage facility would be located on private lands (after eventual acquisition of Arizona State Trust land). This means that, if the land exchange occurs, the mine, all processing facilities, and the tailings storage facility would be located off National Forest System lands.²

¹ Final EIS at 62. <https://www.resolutionmineeis.us/documents/final-eis>

² See *id.*

31. The remaining portions of the project on National Forest System land would be roads, pipelines, and utilities, which are considered special uses and regulated under 36 CFR 251.50.

32. Notably, the “ROD for this project does not include any decision related to the land exchange—it only includes decisions related to authorizing roads, pipelines and utilities located on Forest Service land. The land exchange itself was mandated by Congress and is not subject to the objection process, objection resolution process, or the ROD.”³

Resolution’s Plans for Management of Oak Flat After the Exchange

33. After the land exchange, Resolution will ensure ongoing public access to the Oak Flat Campground, recreational trails and climbing.

34. Resolution published a detailed management plan on its website, showing how it will continue to operate the campground in keeping with current Tonto National Forest practices. The plan was submitted to the Forest Service and they distributed to consulting Native American tribes for input.

35. Input from community groups and Native American tribal representatives will continue to guide how the area is protected and managed, even after the land exchange.

36. Resolution Copper intends to contract with 4 Winds, a local small business part-owned by members of the San Carlos Apache Tribe, to maintain the campground areas, infrastructure, and access to recreation.

37. Consistent with Forest Management, Resolution will permit grazing to continue on the Devil’s Canyon Grazing Allotment, as it has for the last 17 years.

38. With respect to the Western Apaches annual fall harvesting of Emory oak acorns, Resolution Copper will continue to permit harvesting of the Emory oak groves by individuals, or commercially through an authorization, and will administer the

³ See Final EIS at 19.

authorization process in a manner similar to the TNF.

39. In coordination with the TNF Tribal Liaison, the tribes requested that a complete natural resources survey of the Oak Flat Parcel be conducted by the TNF Tribal Monitors using their Traditional Ecological Knowledge. Surveys were conducted between May and September 2020 and resulted in approximately 6,906 salvage locations within the Oak Flat Parcel, which includes: 6,871 plant salvage locations, 9 animal salvage locations (animal carcasses and remains), and 26 mineral salvage locations. Resolution Copper will continue to manage culturally significant natural resources on the Oak Flat Parcel by removing any cultural resources using the salvage operations set forth in the FEIS.

40. Cultural resources on the Oak Flat Parcel will be managed as provided in the approved Historic Preservation Treatment Plan (HPTP), the Archaeological Resources Protection Act (ARPA) permit issued by the USFS, the Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action and/or Arizona State Museum-issued Burial Agreement, and the curation agreement with the Gila River Indian Community (GRIC) Huhugam Heritage Center, and the associated Resolution Copper Cultural Heritage Management Plan.

41. Any Euromerican and Non-Apache Native American historic properties identified on the parcel will undergo full data recovery per the approved HPTP. Data recovery includes the collection of surface artifacts, excavation and sampling of cultural features, archival research, and identification and respectful excavation of artifacts and or burials if present. All of the resources collected will be curated at the GRIC curation facility.

42. As requested by the Apache Tribes, Apache historic properties will only involve surface recovery and repatriation to the GRIC curation facility. No excavation will occur on these sites.

43. Resolution Copper will continue to permit climbing and bouldering on the Oak Flat Parcel. The Oak Flat Parcel and a number of climbing areas outside the Parcel

on TNF, State Trust and other land owned by Resolution Copper, contains several climbing and bouldering resources, in what is collectively known as the Queen Creek Climbing Area. This area extends from Queen Creek Canyon, south along Apache Leap and east across the Property to Devils Canyon. A portion of this climbing area falls within the Oak Flat Parcel. Resolution Copper has an agreement in place with a local climber organization, Queen Creek Coalition, to manage climbing on Resolution Copper owned property.

44. The Oak Flat Parcel is frequently utilized by off-highway vehicles (OHV), and will continue to be used for such after Resolution takes ownership. Existing approved roads for OHV users include FRs 315, 469, 2432, 2435, 2438, 2439 and 3153.

45. The Oak Flat Parcel is within Arizona Game and Fish Department's Game Management Unit 24A. To ensure the safety of Resolution Copper employees and all members of the public using the property, as well as to prevent potential wildfires, hunting and shooting will be banned on the property. However, hunters will be allowed to travel through the property to get to other hunting areas off the property.

46. Resolution will provide access to the surface of the Oak Flat Campground to members of the public and Tribes, to the maximum extent practicable and consistent with health and safety requirements, until the operation of the mine precludes public access for safety reasons. Resolution has developed an Oak Flat Campground Management Plan consistent with the current Forest Service management of the campground, and will also incorporate additional measures to accommodate requests to periodically close the campground to the public for traditional and ceremonial purposes.

47. Further permitting will be progressed with other authorities and a detailed feasibility study completed over several years to inform investment considerations on the project. When an investment decision is made, Resolution Copper is expected to take around 10 years to build infrastructure to prepare for mining.

48. If we proceed with developing the project, the Oak Flat Campground will remain open for as long as it is safe, which is expected to be at least for the next few decades.

49. Resolution Copper does not expect to see subsidence at the site for at least ten years.

Resolution's Conservation Lands

50. Resolution's parcels to be conveyed to the US Forest Service and BLM include high-priority conservation lands that will be added to National Forests in Arizona, as well as lands that will be added to the San Pedro Riparian and Las Cienegas national conservation areas, managed by the Bureau of Land Management.⁴

51. The conservation value of the lands being conveyed to the United States has been analyzed during the NEPA process. Each parcel was evaluated by Westland Resources for evidence of special species, habitats, or cultural or historical significance. Westland's reports were in turn included in the EIS administrative record.

52. The Conservation Lands provide a range of benefits, as follows:

53. *Apache Leap South End Parcel.* This land includes cultural, recreational, and scenic resources that are important to Superior, Native American tribes, and the general public. It is located above and below Apache Leap, an area of sheer cliff faces, hoodoos, and buttresses that frames the town of Superior and provides opportunities for hiking, rock climbing, and nature viewing. Additionally, numerous cultural resource inventories have identified sites representing Prehistoric, Protohistoric, and Historic Native American occupations and activities spanning several thousand years in the area within the parcel and the surrounding Apache Leap Special Management Area. This land has already undergone a separate NEPA process, which resulted in a final Environmental Assessment in August

⁴ Resolution's conservation lands are described in the FEIS. ES-8 of the FEIS and page 13 provide thumbnail descriptions and detail the acreage. More detailed descriptions are provided on pages 51-53 of the FEIS.

2017 and a final Decision Notice in December 2017. The Apache Leap Special Management plan excludes future grazing leases and limits construction and motorized vehicles in order to protect the area. Apache Leap South End Parcels are surrounded by NFS lands and would become part of the Apache Leap Special Management Area, administered by the Tonto National Forest. Upon title exchange, Resolution will also surrender all mining claims and interests to the parcels.

54. *Tangle Creek Parcel.* The Tangle Creek parcel is located in the heart of Bloody Basin, long known for its rugged, scenic terrain and abundant hiking, camping, and hunting opportunities. The parcel is adjacent to the Seven Springs Recreation Area, Cave Creek Campground and Trailhead, and the Civilian Conservation Corps Campground. It is bisected by Tangle Creek and features a variety of trees and shrubs, including netleaf hackberry, mesquite, ash, and sycamore trees, many of which are believed to be over 100 years old. The netleaf hackberry groves provide exceptional habitat for migratory and nesting songbirds. The Tangle Creek parcel also has both pre-historic and historic value: it is believed that the property was farmed by Native Americans and homesteaded by the Babbitt family in the 1890s. Two of the previously cultivated farm fields are reverting to open woodlands or thickets of hackberry, mesquite, and cat-claw acacia. Reestablishment of these native plants will increase wildlife connectivity within the Bloody Basin by transforming the area into a migratory corridor with ideal habitat for various bird and mammal species.

55. *Turkey Creek Parcel.* The Turkey Creek parcel is an inholding within the Tonto National Forest about eight miles southeast of Pleasant Valley and is the site of a historic homestead dating back to the 1880s. Turkey Creek flows through the property and supports abundant and diverse wildlife, including elk, mule deer, bear, and three species of native fish. It also provides potential habitat for bald eagles and the Chiricahua leopard frog, a threatened species. Additionally, Turkey Creek is within the proposed critical habitat for the Mexican spotted owl; the parcel has two Protected Activity Centers for this

threatened species. Public acquisition of this parcel presents a significant opportunity to preserve alluvial surface (rare in the area) by reestablishing native cottonwood and sycamore trees. Preservation of historical resources from the homestead era, including the cabin site, hand-dug well, and fruit trees, is also a significant opportunity offered by the parcel.

56. *Cave Creek Parcel.* Totally surrounded by the Tonto National Forest, the property includes the lush Cave Creek riparian corridor. Wildlife present in the area include Neotropical migratory songbirds, raptors, amphibians, javelinas, mule deer, and coyotes. The Cave Creek parcel is also home to numerous archaeological sites, including petroglyphs, structure ruins, and grinding sites. This land would help protect Cave Creek and its riparian area; protect the prehistoric ruins, petroglyphs, and agricultural sites scattered throughout the parcel; provide for the enhancement and expansion of the Forest Service's trail network and other recreational opportunities in the area; and help consolidate Tonto National Forest lands.

57. *East Clear Creek Parcel.* East Clear Creek, which extends more than two miles through the property, contains riparian and aquatic ecosystems which have long been recognized for their scarcity and overall contribution to wildlife diversity in the Coconino National Forest. The land has also been featured in *Arizona Highways* magazine. In 1993, a preliminary analysis was conducted to document a 25-mile portion of East Clear Creek (including the parcel) as being eligible for a scenic designation under the Wild and Scenic Rivers Act. Acquisition of this parcel will help protect the Mogollon Rim area of the Coconino National Forest, which is known for its outstanding natural beauty and unique landscape. The parcel provides habitat for a variety of resident big game, such as Rocky Mountain elk, mule deer, turkey, black bear, and Coues white-tailed deer. It also supports a variety of smaller resident mammals, such as beavers, raccoons, and ringtails, as well as diverse amphibian, reptile, and bird species. East Clear Creek has become a notable fishery with sustained populations of both rainbow and brown trout. The upper ridges provide

habitat for a variety of big game and are home to native fish species occurring within the East Clear Creek system, including bluehead suckers, Little Colorado suckers, speckled dace, roundtail chub, and the Colorado spinedace. The segment of East Clear Creek flowing through the property is a designated critical habitat for these species. The property provides suitable habitat for other federally-threatened, endangered, proposed, and sensitive species, including the southwestern willow flycatcher, bald eagle, Mexican spotted owl, Chiricahua leopard frog, peregrine falcon, northern goshawk, northern leopard frog, Arizona southwestern toad, and the narrow-headed garter snake.

58. *Lower San Pedro River Parcel.* The San Pedro River is unique, as it is one of only two major rivers that flow north out of Mexico into the United States and is one of the few remaining free-flowing rivers in the Southwest. These qualities of the San Pedro River ecosystem have earned it The Nature Conservancy's designation as one of the "Last Great Places on Earth." Deep in the bosque that forms part of this parcel (believed to be one of the largest remaining in the Southwest), a free-flowing artesian spring creates a rare wetland populated by lowland leopard frogs and nesting birds. This area has also been recognized by the Tucson Audubon Society and BirdLife International as an "Important Bird Area." It contains habitat for various threatened, endangered, proposed, and candidate species, including the cactus ferruginous pygmy owl, the southwestern willow flycatcher, the yellow-billed cuckoo, and the Gila topminnow. The San Pedro corridor is one of the most important riparian habitats in the Sonoran and Chihuahuan deserts, with more than 390 species of birds and a highly diversified mammal population. It also has a rich cultural history: a cultural resources inventory report performed by WestLand Resources in 2017 identified 59 archaeological sites within the parcel.

59. *Appleton Ranch Parcel.* This property offers protection to land within the boundaries of the Appleton Whittell Research Ranch. The land acquired from the Appletons will eliminate non-federal lands that are intermingled with and adjacent to the Las Cienegas National Conservation Area established by Congress in December 2000. The

mission of the Research Ranch is to formulate, test, and demonstrate methods to restore and safeguard the bioregion, and to assist citizens and policy makers in the protection and stewardship of our native ecosystems, natural resources, and quality of life. In 1980, The National Audubon Society assumed management of the Research Ranch, which is now a cooperative partnership among the National Audubon Society, Forest Service, Bureau of Land Management, and the Research Ranch Foundation. The dozens of ongoing projects at the Ranch have a common goal of working toward preservation of the grassland ecosystems in the Southwest. More than 90 species of native grass and 480 native plant species create a biologically rich plant community. Over 200 species of birds use the Ranch for wintering, breeding, or as a migratory habitat and more than 60 species of mammals have been found on the Ranch, including pronghorn. The land is also suitable habitat for threatened, endangered, proposed, and sensitive species, including the Huachuca water umbel, Canelo Hills ladies' tresses, Gila chub, Gila topminnow, desert pupfish, Chiricahua leopard frog, Mexican spotted owl, bald eagle, western yellow-billed cuckoo, ocelot, jaguar, lesser long-nosed bat, Huachuca springsnail, northern Mexican gartersnake, and golden eagle.

60. *Dripping Springs Parcel.* This land is situated in the Dripping Springs Mountains near Tam O'Shanter Peak in Gila County. It is almost completely surrounded by BLM-administered lands, with some adjacent ASLD-administered State Trust land. The Dripping Springs parcel includes rock formations with excellent climbing opportunities. National and local rock climbers also indicate that this is a significant rock-climbing resource.

Protecting Arizona's Cultural Heritage: Some Highlights

61. As the lead agency overseeing the multi-year federal review of the project, the Forest Service has participated in hundreds of consultations with communities and

tribal nations since 2008.⁵

62. Resolution conducted a multi-year ethnographic and ethnohistoric study in partnership with consulting tribes and the Forest Service to identify places, areas, artifacts, and natural features of importance.⁶

63. Over the past 15 years more than 150 cultural baseline studies and reports, including a variety of tribal perspectives, have been conducted and prepared to inform consultation with Native American tribes.

64. In 2018, Resolution funded a new Tribal Monitor program, hosted by the Forest Service. This innovative program ensures tribal members are a part of the informed decision-making process to identify areas, resources, and sites of importance. More than 30 members from seven Native American tribes have been trained and employed to work alongside archaeologists and biologists to gather baseline information and tribal perspectives within the footprint of the Resolution Copper Project. In June 2020, the Arizona Preservation Foundation and State Historic Preservation Office recognized the program at the Governor's Heritage Preservation Honor Awards. To date, Tribal Monitor crews have performed approximately 61,000 acres of pedestrian surveys.

65. Apache elders have made it clear during consultation that Emory oaks are culturally significant trees that produce acorns that are traditionally harvested and used as a food source for the Western Apache. Grazing and other practices are preventing the new growth of younger trees. In recognition of the cultural importance of this species, the Forest Service, consulting Western Apache tribes, Northern Arizona University, and Resolution are partnering through a multi-year program to study, protect, and conserve Emory oak groves across Arizona.

⁵ See Appendix S of the Final EIS, which lists the consultation records between the Tonto National Forest and the Tribes.

<https://www.resolutionmineeis.us/sites/default/files/feis/resolution-final-eis-vol-6.pdf>

⁶ Hopkins, M.P., C. Colwell, T.J. Ferguson, and S.L. Hedquist. 2015. *Ethnographic and Ethnohistoric Study of the Superior Area, Arizona*. Prepared for Tonto National Forest and Resolution. Tucson, Arizona: Anthropological Research LLC.

Measures to Address Tribal Concerns

66. The Act directs the Forest Service to “consult with Resolution and seek to find mutually acceptable measures to—(i) address the concerns of the affected Indian tribes; and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution under this section.”⁷ 16 USC § 539p (c)(3)(B).

67. For over 11 years, Tribes have been consulted meaningfully and consistently on the proposed project. They have had considerable influence on various activities, including protecting traditional cultural properties; avoiding medicinal plants, springs, and ancestral sites for activities related to the project; completing a comprehensive ethnographic report; nominating the Oak Flat Traditional Cultural Property to the National Register of Historic Places; implementing a tribal monitoring program; and creating a program to protect and restore Emory oak groves. The compensatory funds described below were developed in response to the tribal consultation efforts.

68. Mutually acceptable measures identified through consultation have already been initiated, implemented, or completed, including, but not limited to:

69. *Funding and Completion of Ethnographic and Ethnohistory Study of the Superior Area.* In response to tribal requests, and working collaboratively with Tribes, Resolution funded, and the Forest Service managed, completion of an ethnographic and ethnohistoric study. Information from the study provided the basis for environmental and cultural analysis and the development of additional mitigation measures.

70. *Implementation of a Tribal Monitor Program.* At the request of various

⁷ The tribes with traditional territory claims to the general area in which the 2,422 acres known as the Oak Flat Federal Parcel are located—the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe—are described as a Tribe or Tribes.

tribes, Resolution funded, and the Forest Service implemented, a Tribal Monitor Program, including both training and employment, to gather baseline cultural and natural resource information and tribal perspectives for use during environmental and cultural resource analysis and to support development of additional mitigation measures. To date, more than 50 tribal members have been trained, and 30 tribal members from seven Tribes employed, with approximately \$1.8 million paid to tribal members in wages and benefits in 2018 and 2019.

71. *Initiation of Emory Oak Collaborative Tribal Restoration Initiative.* In partnership with the Forest Service, Resolution has funded Northern Arizona University and Tribal Monitors to gather biological and cultural field data to define treatments that would form a multi-year restorative field work program. The identification of the Emory Oak groves and field work is directed by the Forest Service in consultation with tribal elders from the Yavapai Apache, White Mountain Apache, San Carlos Apache and Tonto Apache. Data gathering, analysis, and treatments have already begun.

- The program is intended to restore and protect Emory oak groves that are accessed by Apache communities for traditional subsistence gathering and ensure their sustainability for future generations.
- This Tribal Restoration Initiative is designed to partially address the adverse effects on the loss of the oak groves within the Chi'chil Bildagoteel Historic District, which is within the Oak Flat Federal Parcel.

72. *Design features for the Resolution Copper Project.* In response to public and agency comments, as well as tribal consultation, components of the Resolution Copper Project have been modified or relocated as follows:

- The proposed tailings storage facility has been relocated from National Forest lands to Arizona State and private lands, avoiding disturbance of Forest resources, including seeps and springs identified by Tribes as having cultural importance.

- The Oak Flat Access and Management Plan has been developed and adopted to ensure that current management continues and assuring Tribal access for traditional, cultural, and ceremonial purposes.
- Power and pipeline infrastructure has been routed to avoid physical impacts Devil's Canyon and Queen Creek. The proposed tailings conveyance pipeline and associated power lines have been located to avoid resources identified as culturally important during tribal consultation, including Devil's Canyon and Queen Creek.
- *Subsidence Monitoring and Management Plan.* The subsidence monitoring plan was developed to help avoid impacts to cultural resources, including Devil's Canyon and the Apache Leap Special Management Area, and will be used to manage continued access to Oak Flat and the Oak Flat Campground.
- *Monitoring and Mitigation Plan for Groundwater Dependent Ecosystems.* In response to expressed concerns over potential impacts to groundwater dependent ecosystems from Tribes and others, Resolution has developed and the Forest Service has approved a monitoring and mitigation plan which will mitigate potential impacts associated with the mining project.
- In collaboration with consulting Tribes, Resolution has agreed to salvage select natural resources with cultural significance from the footprint of the Land Exchange area, tailings pipeline corridor, and tailings storage facility.

73. Further, in order to partially address effects on the Chi'chil Bildagoteel Historic District and other historic properties significant to Tribes, Resolution is committing \$15 million, in installments at various project milestones, to fund three programs:

- *Tribal Monitor Program.* This program, discussed above, coordinates and administers the continued use of tribal monitors to work on NHPA Section 106 and 110 projects on public lands, including providing for the training of

monitors and payment of a tribal monitor salary for select public projects.

- *Emory Oak Collaborative Tribal Restoration Initiative*. This initiative will commence at the conclusion of the Emory Oak Collaborative Tribal Restoration Initiative funded by Resolution and will fund oak grove treatments, monitoring and research, cultural research or activities, and educational activities.
- *Tribal Youth Program*. This program will fund the development of a Tribal Youth Program in partnership with the Forest Service and consulting Tribes to provide cultural and educational opportunities to tribal youth.

74. *Endowment for Tribal Cultural Heritage Fund*. In order to partially address the physical and visual effects on the Chi'chil Bildagoteel Historic District and other historic properties significant to Tribes, Resolution will deposit, in installments at various project milestones, a total of \$20 million into an endowment fund from which the Tribes may receive direct financial support for activities that further the receiving Tribe's preservation, protection, recognition, or development of its culture or heritage. The concept of this fund was developed through government-to-government consultation and its purpose is to provide a fund from which Tribes could request financial support for activities that do not fit under the other tribal-related funding programs.

75. *Tribal Education Fund*. To partially address effects on the Chi'chil Bildagoteel Historic District and other historic properties significant to Tribes, Resolution will deposit a total of \$6.5 million, in installments at various project milestones, into an endowment fund to fund scholarships for tribal members pursuing two-year and four-year courses of post-secondary education at an accredited college, university, vocational school, or community college.

Additional Mitigation Efforts Associated with the Land Exchange

76. *Oak Flat Historic Properties Treatment Plan ("HPTP")*. The Forest Service has completed preparation of an archaeological HPTP for the Oak Flat Federal Parcel to

resolve adverse effects on historic properties eligible for the National Register of Historic Places.

77. *General Plan of Operations Research Design and Treatment Plans.* The Forest Service has prepared an archaeological Research Design (GPO Research Design) in consultation with the State Historic Preservation Office, Tribes, and appropriate managing agencies to guide the development of treatment plans to address adverse effects on historic properties within the GPO project areas and the Section 404 permit compensatory mitigation parcels (i.e., West Plant Site, Magma Arizona Railroad Company (“MARRCO”) corridor, tailings facility, etc.).

78. *Copper Triangle Community Development Fund.* Resolution has agreed that at various project milestones it will place a total of \$5 million into a designated fund that will focus on the built environment located within the visual/atmospheric/socioeconomic and cumulative effects of the Area of Potential Effects. The primary purpose of the fund is to address effects on historic properties and other community infrastructure within the communities of Superior, Miami, Globe, Kearny, Hayden, and Winkelman. The monies in the fund will financially support a revolving loan program. Applications for use of monies from the Community Development Fund will be reviewed by a committee consisting of representatives from the State Historic Preservation Office, the applicable administering organization, and the affected communities. Specific parameters for the Community Development Fund will be defined through consultation between Resolution Copper, applicable administering organization(s), and the State Historic Preservation Office and will be:

- available to municipalities, counties, non-profits, private citizens, and private organizations;
- prefer projects participating in other historic preservation incentive programs; and
- prefer projects agreeing to repay funds within 5 years of award, with

extensions possible.

79. *Archaeological Database Funds.* Resolution has agreed that it will deposit \$2 million, in installments, into a restricted fund for use by the State of Arizona for the creation and/or enhancement and/or management of existing electronic archaeological databases.

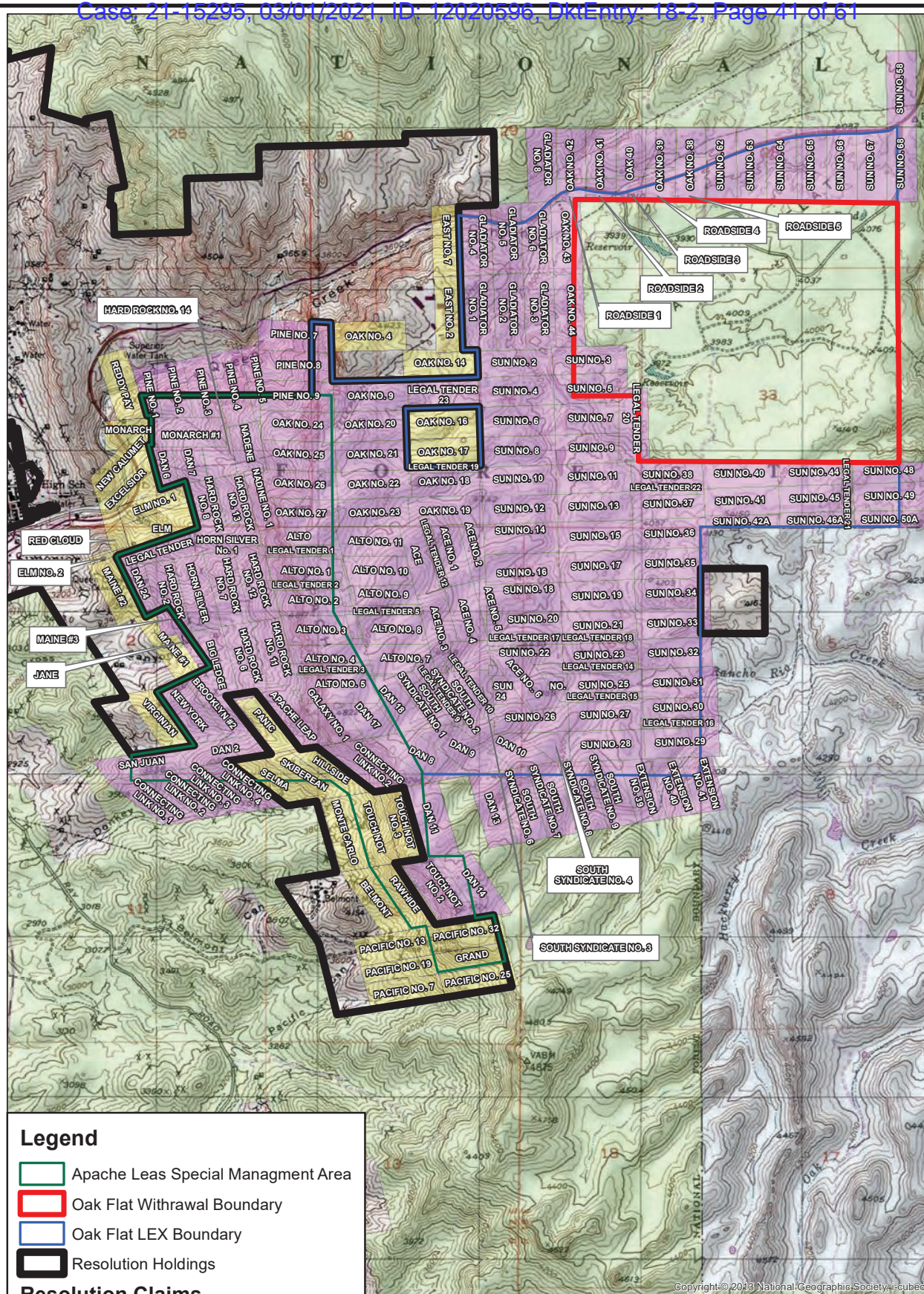
80. *Castleberry Campground.* Resolution has agreed to establish an alternative campground site known as Castleberry to mitigate the loss of Oak Flat Campground. The new Castleberry Campground will be located on private property owned by Resolution near the town of Superior that contains numerous prehistoric and historic-era historic properties. All efforts will be made to avoid effects on these properties when developing the campground facilities. If effects on any of the identified historic properties from construction of the Castleberry Campground cannot be avoided, a Historic Properties Treatment Plan will be developed to address the effects and implemented prior to the campground being constructed. A plan will be developed in consultation with the Tribes to install interpretive signs at a few historic properties located near the Castleberry Campground.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This Declaration was executed on February 26, 2021.

Vicky Peacey

Victoria Peacey

Exhibit A



Legend

- Apache Leas Special Management Area
- Oak Flat Withdrawal Boundary
- Oak Flat LEX Boundary
- Resolution Holdings

Resolution Claims

- Unpatented
- Patented

Surface Management (BLM 2012)

- Private Land (No Color)
- State Trust Land
- US Forest Service (USFS)



0 2,000 4,000
Feet

0 500 1,000
Meters

RESOLUTION
COPPER

Resolution Copper Claims Within
the ALSMA and Oak Flat LEX Parcel

June 10, 2019
Prepared By: Mary Morissette

Exhibit A

Exhibit B

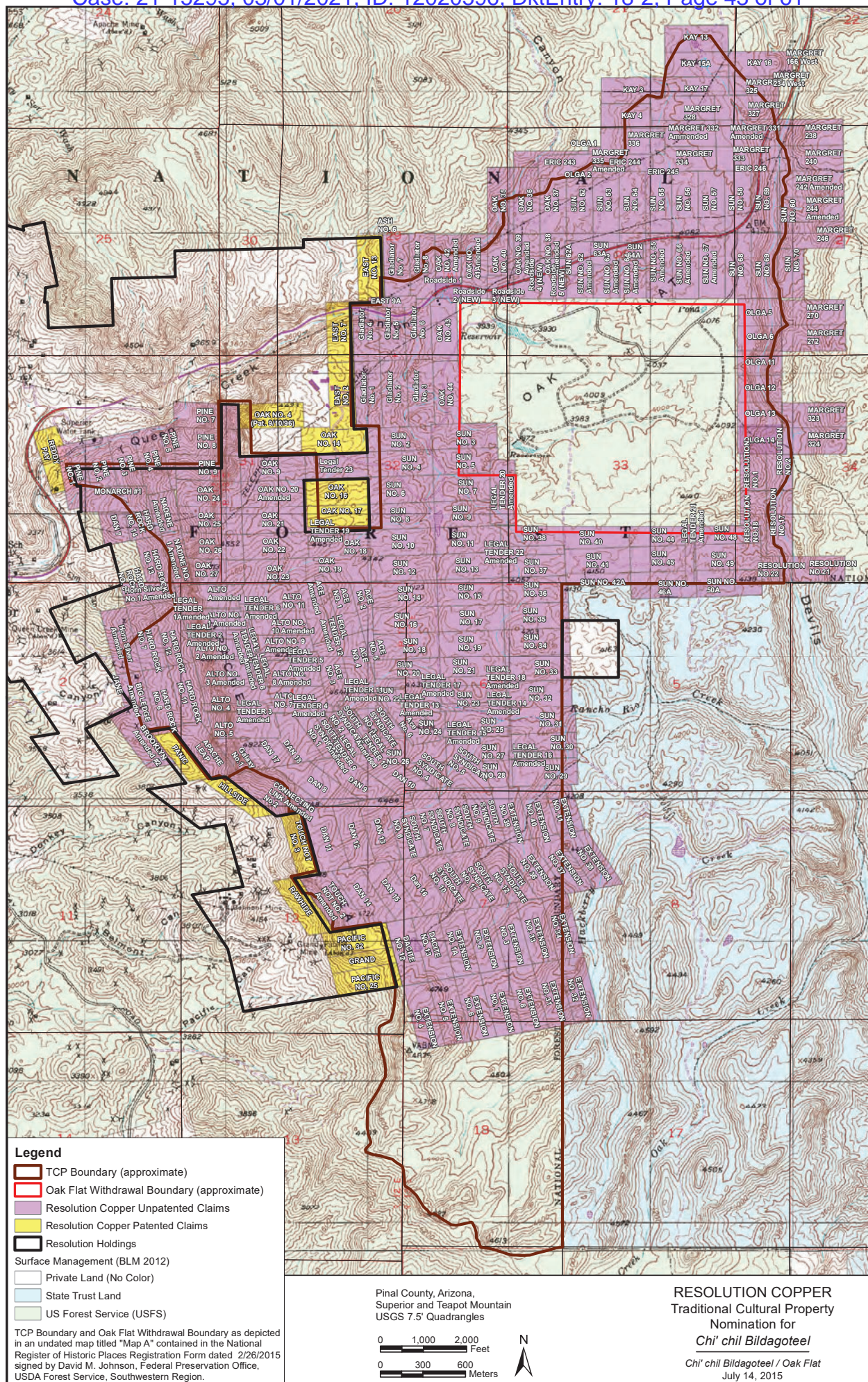


EXHIBIT 4

I, Andrew Lye, declare as follows:

1. I am over the age of 18 and am competent to make this declaration. I could and would testify to the following facts, which are within my personal knowledge and based on my review of relevant documents, if called as a witness to do so.

2. I started working at Resolution Copper Mining in February 2016. As of February 2021, I am the Acting Managing Director for Rio Tinto's Managed Copper Assets. A key part of my role includes advancing the Resolution federal permitting process. Previously, I held the position of Project Director at Resolution, where I led a diverse team with responsibility for safely rehabilitating previous mining activities, safely operating and maintaining the existing site infrastructure, and delivering a business case that provides optionality for development. As Project Director, I also focused on Resolution's federal permitting process and de-risking the overall project.

3. Before joining Resolution, I spent approximately 15 years managing operations and projects at several Rio Tinto businesses around the world. From 1995 through 2000, I worked for North Limited as a geologist. From 1992-1995, I also worked as a geologist—first for Aztec Mining and then for Zapopan NL.

4. I hold a Bachelor of Science degree from Macquarie University in Geology and Geomorphology, which I completed in 1991. I have approximately 30 years of experience in geology and project management.

5. I have reviewed the Complaint filed by Apache Stronghold in the US District Court, as well as the Emergency Motion for an Injunction Pending Appeal filed with the Ninth Circuit.

6. The claims in the Complaint directly concern Resolution's development of an underground copper mine on private land and unpatented mining claims on National

Forest System lands near Superior, Arizona. As the former Project Director of Resolution, and as the Acting Manager Director of Rio Tinto Copper Assets, I am responsible for managing Resolution's activities relating to the project, and I have personal knowledge regarding those activities and the project.

7. To date, project partners (Rio Tinto and BHP) have spent over \$2 billion to progress the Resolution Copper project, including the remediation of the historic Magma Mine tailings impoundments, rehabilitation of underground mine workings, exploration, development of new underground infrastructure, shaft sinking, and permitting.

8. Completion of the final environmental impact study does not mean that Resolution Copper will immediately become an operational mine. Apart from the environmental studies, development of any mine must await additional feasibility study work and detailed study of the geologic characteristics and mineralization of the orebody.

9. The information learned about the geologic characteristics and mineralization in the Oak Flat Mineral Withdrawal Area is critical information that will inform the planning and design of the future mine and ultimately, the future investment decision by Rio Tinto and BHP. Until the knowledge of the Resolution Copper orebody is more fully developed, Resolution cannot proceed to operations.

10. Additionally, the Resolution mine will require underground infrastructure, much of which does not yet exist and cannot be developed until the orebody is better understood. This infrastructure includes vertical shafts, drifts (commonly known as tunnels), electrical installations, mechanical ventilation, and other workings.

11. Until the underground infrastructure is complete, Resolution Copper will not be an operational mine. Completion of this infrastructure is several years away, perhaps longer. The exchange of title between Resolution Copper and the United States will not result in any immediate subsidence at Oak Flat. The final environmental impact study

estimated that subsidence beneath Oak Flat would occur no sooner than approximately six years after the land exchange, and I believe that to be an accurate estimate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This Declaration was executed on February 26, 2021.

Andrew Lye

Andrew Lye

EXHIBIT 5

**ACCESS AND MANAGEMENT PLAN
OAK FLAT CAMPGROUND**

**Resolution Copper Mining, LLC
November 13, 2020**

Table of Contents

1.	Introduction and Background.....	1
2.	Existing Campground Conditions.....	1
3.	Current Campground Access and Management by the Tonto National Forest	3
4.	Campground Access and Management by Resolution Copper	5

Figures

(follow text)

- Figure 1. Vicinity Map
Figure 2. Campground Overview with Access Roads
Figure 3. Oak Flat Campground

1. Introduction and Background

Oak Flat Campground (the campground) is a 50-acre site located immediately East of Superior along the Gila-Pinal Scenic Route U.S. Highway 60 (**Figure 1**). The 16-campsite campground sits within a larger parcel known as the Oak Flat Parcel (Oak Flat). Currently, Oak Flat and the campground are located on U.S. Forest Service (USFS) lands managed by the Tonto National Forest (TNF).

In 2015, Section 3003 of the National Defense Authorization Act for Fiscal Year 2015 (NDAA, or the Act) authorized the exchange of lands between the federal government and Resolution Copper Mining, LLC (Resolution). The Act directs the conveyance of the approximately 2,422-acre Oak Flat parcel, which is part of the National Forest System (NFS), to Resolution. According to the Act, ownership of the Oak Flat parcel, including the campground, must be transferred from the United States to Resolution. Consistent with the Act, specific to public access in and around the campground and as a condition of the conveyance, Resolution shall provide access to the surface of the campground to members of the public including Native American Tribes to the maximum extent practicable, consistent with health and safety requirements, until such time as actions related to or arising from the operation of the mine precludes continued public access for safety reasons, as determined by Resolution.

This document outlines the access and management plan for the campground once transfer of ownership is complete. This document contains four sections: a description of the existing campground (**Section 2**), current management of the campground by TNF (**Section 3**), proposed management of the campground by Resolution (**Section 4**), and accommodations for engagement and use by Native American Tribes (**Section 5**).

2. Existing Campground Conditions

2.1. Environmental Setting

The campground lies within the mountainous Pinal Highlands on the northeastern edge of the Basin and Range physiographic province.¹ This region is transitional to the Central Highlands bordering the Colorado Plateau province. The local physiography is defined by the Apache Leap, a prominent escarpment rising sharply east of Superior. The campground is located at approximately 4,800 feet above mean sea level within a relatively flat upland basin. The Oak Flat Parcel is characterized by horizontal stratified volcanic rocks (tuff) that have eroded into numerous canyons, plateaus, and scarps.²

Vegetation within the campground is mapped as Interior Chaparral vegetation community³. Dominant plants including scrub live oak (*Quercus turbinella*), Emory oak, pointleaf manzanita (*Arctostaphylos pungens*), one-seed juniper (*Juniperus monosperma*), chaparral honeysuckle (*Lonicera interrupta*), Wright silktassel (*Garrya wrightii*), redberry buck-thorn (*Rhamnus crocea*), and a variety of grasses, and forbs. In 2020, several of the mature oaks in the campground were removed by the Forest Service due to instability and safety concerns.⁴

¹ Chronic, Halka. 1983. *Roadside Geology of Arizona*. Missoula, Montana: Mountain Press Publishing Company.

² Nations, Dale, and Edmund Stump. 1996. *Geology of Arizona*. Second ed. Dubuque, Iowa: Kendall/Hunt Publishing Company.

³ Brown, David. E. 1994. *Biotic Communities – Southwestern United States and Northwestern Mexico*. Salt Lake City, Utah: University of Utah Press.

⁴ Personal Communication via phone with Sherly Cormack of the TNF on October 26, 2020.

2.2. Camping

The campground contains 16 designated camp sites each with a picnic table and fire pit grill (**Photos 1-3**). Unimproved dispersed camping is also available in the immediate area. Much of the dispersed camping occurs along Forest Road (FR) 2438, which is not regularly maintained, requiring users to have four-wheel drive and high-clearance vehicle to access camping there. There are no designated group camp sites.

Designated and dispersed camp sites are available on a first-come, first-served basis. No fees are collected from campground users. There is currently a 14-day stay limit for camping at the site, however, this has been waived by the TNF for members of the Apache Stronghold who have had a permanent presence at the campground since 2015.



Photo 1. Campsite with table and firepit with grill.



Photo 2. Close-up of a campground firepit.



Photo 3. One of 16 designated campsites in the campground.



Photo 4. One of the vault toilets in the campground.

2.3. Toilets

There are two accessible vault toilets located within the campground (**Photo 4**).

2.4. Parking

Parking is located at each campsite. Two parking areas are located just northeast of the entrance and can accommodate approximately six to eight vehicles each (**Figure 3**).

2.5. Waste Disposal

The campground is a 'pack it in, pack it out' site. There are no trash receptacles within the campground. Users are expected to haul away their own waste.

2.6. Potable Water

There is no potable water source within the campground. Users must bring their own water.

2.7. Electricity

There is no electricity available within the campground.

2.8. Trails

There are no designated hiking, equestrian, or Off-Highway Vehicle (OHV) trails located within the campground. The TNF restricts access to unauthorized trails as-needed to facilitate natural rehabilitation.

3. Current Campground Access and Management by the Tonto National Forest

3.1. Access

The campground is used year-round by both day and overnight users; the heaviest use period is during the cooler weather of fall and early spring.⁴ The campground is accessed via U.S. Highway 60 to Magma Mine Road. A TNF sign is located at the entrance of the campground (**Photo 5**). An information kiosk is located within the campground (**Photo 6**). In addition to the main access road, several unauthorized roads have been created within the campground by users to access dispersed camping. There are no gates on the entrance to the campground.



Photo 5. TNF signage at campground entrance.



Photo 6. Information kiosk at the campground.

3.2. *Annual Maintenance*

The campground is currently inspected by TNF annually for safety hazards, management needs and other problems. In areas of overuse, the TNF will block off portions of the campground with barricades and signage to reduce use and allow the area to rehabilitate.

The toilet vaults are pumped out on an as-needed basis. The one closest to the entry road is currently pumped twice per year and the second toilet is usually pumped once per year.

3.3. *Weekly Maintenance*

The following tasks are completed at least once weekly throughout the year. During periods of heavy use (September to May and weekends), the campground amenities are spot-checked and maintained more frequently.

Interior of Toilet Buildings:

- Clean and sanitize interior and exterior of toilet risers, seats and lids.
- Fill toilet paper supply.
- Sweep or pressure wash floors and walls.
- Squeegee/ mop floors.
- Deodorize and “float” vault contents (ensure that waste is below water level).
- Remove or cover graffiti.

Exterior of Toilets Buildings:

- Sweep off cobwebs, cocoons, and loose dirt and debris.
- Sweep off cement foundation, sidewalks, and entrance.
- Rake around doors and building.
- Clear path to toilets of any obstructions.
- Remove or address safety hazards.
- Remove or cover graffiti.
- Trim branches away from buildings.

Camp Sites and Picnic Sites:

- Remove weeds and litter and rake core areas.
- Break up rock fire rings, shovel ashes and coals into waste container, and haul debris offsite.
- Prune tree branches.
- Picnic tables:
 - Clean tabletop and benches with high pressure washer.
 - Sweep/wash off cobwebs.
 - Check legs and tabletops for steadfastness.
 - Remove or cover graffiti.
- Grills:
 - Sweep ashes and coals into waste container and haul debris offsite.
 - Stack unburned firewood away from grill or disperse into surrounding area.

Information Kiosk:

- Remove weeds, brush and litter from and around boards.
- Paint or stain at least once per year, more if necessary.

3.4. Fire Management

There is no specific fire management program for the campground. In general, wildfire is managed at a national level under the U.S. Department of Agriculture and Department of the Interior's Forest and Rangeland's National Fire Plan.⁵

3.5. Notifications

All notifications regarding the campground are posted via TNF's website and on the information kiosk located within the campground.

3.6. Camp Host

The TNF allows camp hosts at this campground. The primary responsibility of the camp host is to greet users, provide information about the campground and facilities, and provide daily maintenance and cleaning of campground. In return, the camp host can stay at the campground for an extended period for free. The TNF routinely posts requests for a volunteer Camp Host at Volunteer.gov. If a volunteer applies and is approved, the TNF provides them with a camp site, water buffalo tank, and solar panels to use while volunteering. It is important to note that there is currently no campground host and there has not been a host in the recent past.

3.7. Permits

USFS Special Use Permits are required for events greater than 75 people. Native American ceremonies are not required to obtain a permit. Generally, tribes will notify and coordinate with the district ranger regarding tribal ceremonies to be held at the campground.

3.8. Events

The campground has been used more recently for Native American Sunrise Ceremonies. Through coordination with the District Ranger, events can reserve portions of the campground, however campers are not forced to vacate their campsites if established prior to the event. The campground remains open to campers and day users during events.

3.9. Closures

The campground is open year-round and will only close for emergencies. In the event of an emergency closure, TNF will block the campground entrance road with a barricade and signage.

4. Campground Access and Management by Resolution Copper

Resolution proposes to operate the campground consistent with current TNF practice, to the extent practicable, with the goal of maintaining continued safe and sanitary conditions for continued public use. The following sections describe how Resolution will manage the campground.

⁵ U.S. Department of Agriculture. 2020. <https://www.forestsandrangelands.gov/strategy/index.shtml>

4.1. Access

The site will continue to be accessed from Magma Mine Road. All authorized roads per the Tonto National Forest Travel Management Plan will be maintained at their current maintenance level. Unauthorized roads or trails will be closed.

The 14-day maximum camping policy will continue, however, it will be waived for members of the Apache Stronghold who have had a permanent presence at the campground since 2015.

4.2. Campsites

The 16 existing designated campsites and amenities will remain open (**Figure 2**) under the current procedures.

4.3. Toilets

The two existing vault toilets will remain open.

4.4. Parking

Parking will remain as-is. No new parking improvements are proposed.

4.5. Waste Disposal

The campground will remain a 'pack it in, pack it out' site. There will continue to be no trash receptacles within the campground. Users are still expected to haul away their own waste.

4.6. Potable Water

Users must continue bring their own water with them. There will continue to be no potable water sources within the campground.

4.7. Electricity

There will continue to be no electricity available within the campground.

4.8. Trails

No designated hiking, equestrian, or OHV trails will be created within the campground. Any unauthorized trails may be subject to closure and rehabilitation.

4.9. Annual Maintenance

The campground will be inspected annually for safety hazards, management needs and other problems.

The toilet vaults will be pumped out on an as-needed basis, approximately three times per year for both toilets.

4.10. Weekly Maintenance

The following tasks will be completed on a regular basis (i.e. weekly) throughout the year. During periods of heavy use (September to May and weekends), the campground may be spot-checked and maintained more frequently and on an as-needed basis:

Interior of Toilet Buildings:

- Clean and sanitize interior and exterior of toilet risers, seats, and lids.
- Fill toilet paper supply.
- Sweep or pressure wash floors and walls.
- Squeegee/mop floors.
- Deodorize and “float” vault contents.
- Remove or cover graffiti.

Exterior of Toilets Buildings:

- Sweep off cobwebs, cocoons, loose dirt, and debris.
- Sweep off cement foundation, sidewalks, and entrance.
- Rake around doors and building.
- Clear path to toilets of any obstructions.
- Remove or address safety hazards.
- Remove or cover graffiti.
- Trim branches away from buildings.

Camp Sites and Picnic Sites:

- Remove weeds and litter from core areas and rake.
- Break up rock fire rings, shovel ashes and coals into waste container and haul debris offsite.
- Prune tree branches.
- Picnic tables:
 - Clean tabletop and benches.
 - Sweep/ wash off cobwebs.
 - Check legs and tabletops for steadfastness.
 - Remove or cover graffiti.
- Grills:
 - Sweep ashes and coals into waste container and haul debris offsite.
 - Stack unburned firewood away from grill or disperse.

Bulletin Boards and Signage:

- Remove weeds and brush from around boards.
- Clean, paint or stain as needed.

4.11. Fire Management

Fire management for the campground will continue to be implemented consistent with the existing Forests and Rangeland’s National Fire Plan.

4.12. Notifications

Information and notifications regarding the campground will be posted on Resolutions website and signage will be posted at the information kiosk located within the campground.

4.13. Events

The campground will continue to host Sunrise Ceremonies and other related events. No event fees will be charged. Additional information regarding Tribal ceremonies is provided below.

4.14. Temporary Closures

The campground will remain open year-round, including during events. The campground will only close in the event of an emergency. If an emergency should occur, Resolution will barricade the entrance road and place signage as needed.

4.15. Accommodations for Engagement and Use by Native American Tribes

Consultation with Native American Tribes interested on management of the campground is ongoing and will continue. Accommodations for closure of facilities, when appropriate, will be made for Native American tribal activities including, but not limited to, collection of plant materials, acorn gathering, tribal ceremonies, etc. Decisions about whether a process will be established for closure during ceremonies will be part of ongoing discussions with Native American Tribes.

4.16. Closure

Resolution will determine when it is necessary, for safety reasons related to or arising from the operation of the mine, to preclude public access to the campground. Upon this determination, Resolution will provide as much notice as possible to the public.

EXHIBIT 6

United States Department of Agriculture
Office of the Under Secretary, Natural Resources and Environment
Washington, D.C. 20250

TO: Victoria Christiansen, Chief, USDA Forest Service

FROM: Chris French, Acting Deputy Under Secretary



CHRISTOPHER FRENCH
2021.03.01 14:04:10 -05'00'

DATE: March 1, 2021

SUBJECT: Withdrawal of Notice of Availability; Rescind Final Environmental Impact Statement and Draft Record of Decision for Resolution Copper

With this memorandum I am instructing the Forest Service to withdraw the Notice of Availability, and rescind the Final Environmental Impact Statement and draft Record of Decision released on January 15, 2021, for Resolution Copper project on the Tonto National Forest in Arizona and re-initiate tribal consultation.

The withdraw will terminate the pre-decisional objection period. The Resolution Copper project is proposed on Oak Flat, a site sacred to numerous Federally Recognized Tribes in the Southwest. The Department is taking this step to provide an opportunity for the agency to conduct a thorough review based on significant input received from collaborators, partners, and the public since these documents were released.

The recent Presidential Memorandum on tribal consultation and strengthening nation to nation relationships, counsels in favor of ensuring the Forest Service has complied with the environmental, cultural, and archaeological analyses required. USDA has 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 ensures the agency's compliance with federal law. The agency should take appropriate steps to re-initiate consultation and undertake this review and keep USDA informed of progress.

EXHIBIT 7



United States
Department of
Agriculture

Forest
Service

Southwestern Region
Regional Office

333 Broadway SE
Albuquerque, NM 87102
505-842-3292
Fax: 505-842-3800

File Code: 1950
Date: March 1, 2021

Julie Roemele
Federal Register Lead Coordinator
Environmental Protection Agency
Washington D.C.
roemele.julie@epa.gov

Dear Julie Roemele:

The Tonto National Forest of the Southwestern Region of the USDA Forest Service requests to officially withdraw the Notice of Availability for EIS No. 20210005, Final, USFS, AZ, Resolution Copper Project and Land Exchange in the Federal Register.

Please contact Wendy Jo Haskins at wendy.haskins@usda.gov or 505-331-2564 if there are any questions or if further information is required.

Sincerely,

NEIL
BOSWORTH
NEIL BOSWORTH
Forest Supervisor

Digitally signed by NEIL BOSWORTH
Date: 2021.03.01 10:20:39 -0700

cc: Neil Bosworth, Tom Torres, Wendy Jo Haskins, Mary Rasmussen

