

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 19, 2021

Kevin Shea
Acting Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Acting Secretary Shea,

As you know, section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA) authorized the release of 2,422 acres of U.S. Forest Service land in a land exchange (Exchange) that will allow international mining companies, Rio Tinto and BPH, to develop the Resolution Copper mine (Project) in the Tonto National Forest. This land, often called Oak Flat or *Chi’chil Bildagoteel*, is of cultural importance and considered a sacred site by the San Carlos Apache Tribe and other tribal communities in Arizona, specifically those located in the Tonto National Forest.

The Project will destroy Oak Flat, use massive amounts of water, harm local ground and surface waters, negatively impact imperiled species, and create a crater up to 1,000 feet deep and roughly 1.8 miles across. Any development of this scale requires a serious and comprehensive review. Unfortunately, on January 15, 2021, the Trump administration rushed to release the Project’s Final Environmental Impact Statement (FEIS), triggering a requirement for the land exchange to occur within 60 days.

This is unacceptable. The FEIS and draft Record of Decision (DROD) were fast-tracked and contained violations of numerous federal laws and Executive Orders including: the National Environmental Policy Act (NEPA), the Forest Service Organic Administration Act of 1897 (Organic Act), the Federal Land Policy and Management Act of 1976 (FLPMA), the Clean Water Act, the National Forest Management Act, the Clean Air Act, the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, Executive Order 13186 (January 11, 2001), the Administrative Procedure Act, and regulations implementing these various laws.

Section 3003 of the NDAA land exchange provision requires a legally compliant FEIS before the Forest Service can approve the land exchange. It is clear that this requirement has not been met, and we request the Secretary of Agriculture instruct the Forest Service to withdraw the FEIS to allow the Biden administration time to review and address implementation or administrative flaws, including several federal Special Use Permits required for the proposed mine.

The attached objection was filed by the Inter-Tribal Association of Arizona, the lead objector representing 21 federally recognized tribes located in Arizona and several conservation organizations, and details the numerous inadequacies of the FEIS and DROD. To summarize, the four issues below highlight the severe legal weaknesses of the FEIS and DROD.

1. Improper regulation and review of the Project and infrastructure under erroneous interpretations of federal law.

One of the fundamental flaws in the FEIS and DROD is that the Forest Service used incorrect legal authority to define the Project's purpose and need. This includes its review of two Special Use Permits for the tailings waste and electrical transmission lines that would cross national forest land. This interpretation misrepresents the Forest Service's ability to protect public resources and represent the public interest.

Further, these Special Use Permits were never subject to public review and comment as required by NEPA and the NDAA. The applications were submitted by Resolution Copper to the Forest Service long after the Draft EIS was issued and the public comment period was closed. The requirement to complete a single EIS does not obviate the requirement that Special Use Permit applications be made available for public review as required by law.

The Forest Service also stated that the Project would be considered under Resolution Copper's General Plan of Operations (GPO) submitted under the agency's mining regulations (36 C.F.R. Part 228A). However, the FEIS's review of the Project changed and is now being considered under the Forest Service's Part 251 Special Use regulations. Their rationale is because the Special Use Permits are associated with mining on private property, and therefore do not involve operations conducted under the United States Mining Laws.

The distinction between the Forest Service's review of a mining GPO and a Special Use Permit is significant. For example, the Forest Service does not have to consider whether a GPO's approval is "in the public interest." Still, it is required to do such analysis and issue a finding regarding whether a permit is in the public interest under the Part 251 regulations. In this case, the Special Use Permits are not in the public interest because, among other impacts, they would destroy cultural and religious artifacts and undertake massive water consumption with generational effects on local and tribal communities.

The Forest Service acknowledges that they have complete authority to approve or deny Special Use Permit applications that are not in the public interest, as compared to a GPO under the agency's mining laws where their discretion is more limited. Yet, the Forest Service failed to apply those requirements to the review of these Special Use Permits. As such, the Forest Service should have denied these applications.

2. Failure under NEPA to take a "hard look" and adequately analyze connected actions and the direct, indirect, and cumulative impacts from the Exchange and Project.

At a minimum, the FEIS never analyzes: (1) whether, and how, federal public lands would be fully protected under FLPMA's right-of-way provisions and the protection of national forest resources

under the Organic Act, as well as under the FLPMA and Organic Act's implementing regulations; (2) whether, and how, Native American cultural and religious resources and uses would be protected; (3) whether, and how, there would be enough water available for the Project and other uses in the area, without adversely affecting Arizona water users and resources; (4) whether, and how, the agency and Resolution Copper would comply with substantive state and federal laws that mandate protection of wildlife, such as A.R.S. §17-236 (prohibiting the take or injury of any bird), and the federal Migratory Bird Treaty Act; (5) how all Project facilities resulting from issuance of the Special Use Permits comply with all applicable federal and state environmental laws; and (6) how approving Special Use Permits for the Project pipelines, transmission lines, and new roads would be "in the public interest" and comply with the Forest Service Special Use Regulations at 36 C.F.R. Part 251 subpart B and Part 261. As such, FEIS and DROD violate the public and environmental review requirements of NEPA, NDAA, FLPMA, and other applicable laws.

3. The FEIS and DROD Failed to Properly Analyze Water Resources and Water Use.

One of the glaring inadequacies in the FEIS involves water and the discrepancies in the amount of dewatering and pumping that would result from the mine, its operations, and how such impacts may be mitigated. The FEIS did not address the clear disconnect between the Project's water usage figures in the GPO, totaling up to 786,626 acre-feet, and the numbers ultimately analyzed by the Forest Service in the FEIS, which totaled up to 677,000 acre-feet. The FEIS admits that at least 550,000 acre-feet of fresh groundwater — enough to meet the annual water demand for 2.2 million households in Arizona — will be pumped by Resolution Copper.

The FEIS fails to provide any meaningful analysis demonstrating that the groundwater pumping impacts would be fully mitigated and compensated by Resolution Copper. Nor did the Forest Service analyze and detail how, and where, all this mitigation water will come from. Instead, the FEIS relies on future Arizona state water permitting processes to ascertain these critical water issues. There is no analysis of the physical availability of Arizona's water resources that will be consumed by the mine. There is no mention of the direct, indirect, and cumulative impacts that the consumption of such a large volume of water would have on Arizona in terms of its local, regional, or state-wide water supplies. The agency has not demonstrated a clear mitigation for the expected water depletions. In a region where groundwater supplies are already stretched to their limit by drought and existing pumping, evaluations of massive groundwater pumping impacts must be thoroughly and adequately analyzed, and mitigation clearly identified. Numerous other FEIS flaws regarding groundwater depletions are enumerated in the attached objections, including its failure to comply with the Clean Water Act.

4. Failure to adequately analyze impacts to Arizona State Trust Lands and National Forest Lands.

The Forest Service failed to adequately analyze the impacts to the southeastern portion of the area at the East Plant Site, most of which is state trust lands administered by the Arizona State Land Department. A massive tailings storage facility would contain the waste material left over after processing. Under the agency's chosen alternative site for the tailings waste facility and associated infrastructure in an area known as "Skunk Camp," the tailings dump with the revised pipeline/power line corridor would include approximately 14,950 acres of disturbance. This area

encompasses 2,467 acres of National Forest Service land, 8,218 acres of Arizona State Land Department managed land, and 4,265 acres of private land.

The Forest Service's preferred alternative for Skunk Camp – upon which the entire FEIS and DROD is premised – and its plans for the development of the East Plant Site are “speculative.” These plans are based on the marginal possibility of multiple approvals from the Arizona State Land Department that may or may not occur in the future. Resolution Copper may never have a right to deposit its tailings at Skunk Camp or take, by means of land subsidence, State Trust Lands at the East Plant Site since, before doing this, Resolution Copper would have to submit a formal application for the acquisition of these lands, meet the Arizona State Land Department's strict screening process, and ultimately outbid any other interested parties to acquire these lands at a competitive, public auction.

The FEIS fails to disclose that Resolution Copper has not taken any concrete steps towards the acquisition of these State Trust Lands, and there are no public plans disclosed for the competitive auction of these lands as required by Arizona law. The Arizona State Land Department has also already expressed substantial concerns about the Resolution Copper mine, including specifically the proposed Skunk Camp tailings site vis-à-vis impacts to the Trust:

“The [Skunk Camp] location is predominately State Trust land, and it is highly likely that this location will adversely impact the Trust.”

Additionally, the Arizona State Land Department has already concluded that the negative impacts of the proposed water consumption for the mine “outweighs the estimated financial benefits to the Trust resulting from other aspects of the project by a factor of 20:1.”¹

Lastly, the Forest Service has failed to include any information or opportunity to comment on the appraisals that Congress required. Despite repeated requests from the public and stakeholders to provide this mandatory public review of the appraisals, the agency refused to provide any meaningful information on the appraisals to the public before issuance of the FEIS.

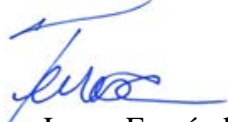
Given that time is of the utmost importance, we strongly urge the Biden administration to immediately withdraw the FEIS and thoroughly review and address its numerous flaws, including several federal Special Use Permits required for the proposed mine. We appreciate your attention to this issue.

¹ U.S. Department of Agriculture Forest Service. (2021, January). Final Environmental Impact Statement: Resolution Copper Project and Land Exchange [MB-R3-12-10]. R-43. Retrieved from <https://www.resolutionmineeis.us/sites/default/files/feis/resolution-final-eis-vol-6.pdf>

Sincerely,



Raúl M. Grijalva
Chair
House Committee on Natural Resources



Teresa Leger Fernández
Chair
Subcommittee on Indigenous Peoples of the
United States



Gregorio Kilili Camacho Sablan
Vice Chair
Office of Insular Affairs



Alcee L. Hastings
Member of Congress



Betty McCollum
Member of Congress



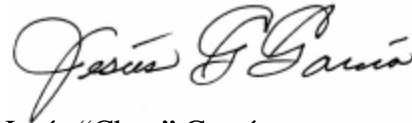
Gwen Moore
Member of Congress



Norma J. Torres
Member of Congress



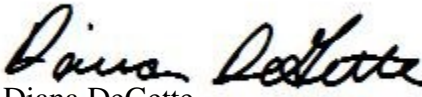
Grace F. Napolitano
Member of Congress



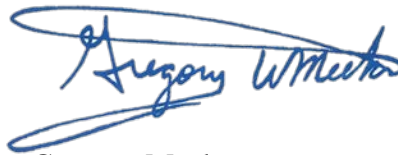
Jesús "Chuy" García
Vice Chair
House Committee on Natural Resources



Jared Huffman
Chair
Subcommittee on Waters, Oceans, and
Wildlife



Diana DeGette
Member of Congress



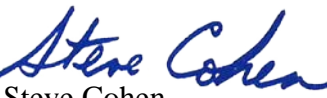
Gregory Meeks
Member of Congress



Eleanor Holmes Norton
Member of Congress



Chellie Pingree
Member of Congress



Steve Cohen
Member of Congress



Earl Blumenauer
Member of Congress



Mark Pocan
Member of Congress



Mike Levin
Member of Congress



Ruben Gallego
Member of Congress



Mondaire Jones
Member of Congress



Pramila Jayapal
Member of Congress



Raul Ruiz, M.D.
Member of Congress

CC: Robert Bonnie, Deputy Chief of Staff for Policy and Senior Advisor, Climate, Office of the Secretary, United States Department of Agriculture

Enclosure: Objection to the Resolution Copper Project Final Environmental Impact Statement and Draft Record of Decision on behalf of the Inter-Tribal Association of Arizona, Inc. (Lead Objector).