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February 3, 2021

Via E-mail

Reviewing Official
Regional Forester
Southwest Region
Forest Service
U.S. Department of Agriculture
333 Broadway, SE
Albuquerque, New Mexico 87102

E-M: objections-southwestern-regional-office@usda.gov

Re: San Carlos Apache Tribe's Objection to the Resolution Copper Mine
Project
Final Environmental Impact Statement ("FEIS")
& Draft Record of Decision ("DROD")

Responsible Official: Tom Torres, Acting Forest Supervisor
Tonto National Forest

To Whom It May Concern:

On behalf of the 17,000 members of the San Carlos Apache Tribe ("Tribe") and the San Carlos Council, the Tribe's governing body, and pursuant to 36 CFR Part 218, I submit this Objection to the Final Environmental Impact Statement ("FEIS") and the Draft Record of Decision ("DROD") for the Resolution Copper Mine ("Resolution" or "RCM") Project (the "Project" or "RCM Project") issued by Tom Torres, the Acting

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Supervisor for the Tonto National Forest (“TNF”), on January 15, 2021.¹ Resolution Copper Mining, LLC (“RCM, LLC”) is a Delaware limited liability company. The publication of a single FEIS for the Project is a requirement of Section 3003 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015. Pub. L. 113-291 (“NDAA” or “Section 3003”), also known as the Southeastern Arizona Land Exchange and Conservation Act.

The Forest Service must recognize that there has been a change in the federal executive branch. On January 20, 2021, President Joe Biden was sworn-in and, immediately following his ceremony, signed a number of executive orders, thereby changing federal policy, including matters relating to the environment, Indian tribes, and American Indians. For instance, President Biden has stated that the federal government “has an abiding commitment ... to promote and protect our public health and the environment.” Where the federal government has failed to meet this commitment in the past, President Biden has now directed that the government “must advance environmental justice.” Importantly, President Biden has made it clear that the federal government must prioritize environmental justice.² As part of this policy, President Biden has committed to the American people to “make environmental justice a part of the mission of every agency by directing federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.”³

The Tribe filed comments on the Draft EIS on December 23, 2019. Since then, the Tribe has submitted additional and supplemental comments to the U.S. Forest Service on the RCM Project, as recently as January 12, 2021. *See* Attachment 1. The Tribe has consistently notified the Forest Service of its errors in its analyses of the Project and the Forest Service’s various actions, inactions, procedures and decisions. This Project stands to create disproportionate health, environmental, economic and climate impacts for the Tribe and the communities of Queen Creek and Superior, if not the entire region. Given the scale of the Project, the Regional Officer has a duty incumbent on all federal officials to the American people to provide the highest scrutiny, especially as to the haste that the local TNF has exhibited by rushing to publish the FEIS before the end of the last

¹ See <https://www.resolutionmineeis.us/documents/final-eis>.

² See Executive Order on Protecting Public Health and the Environmental and Restoring Science to Tackle the Climate Crisis, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

³ See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

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Administration. In its haste, the TNF has overlooked substantial issues that remain unresolved and require further scrutiny.

Based upon the Objections provided herein, the FEIS and DROD fail to fully comply with numerous federal and state laws, regulations policies, Executive Orders and other requirements. For these reasons, the Tribe requests that the Regional Officer withdraw the publication of the FEIS and the DROD, and direct the TNF to correct all the errors noted herein and in previous comments. Furthermore, this Objection provides the basis for the Regional Officer to direct the Tonto National Forest to prepare a draft supplemental EIS for the reasons provided herein.

I. Administrative Record

I request that the Reviewing Officer consider all of the comments previously submitted by the Tribe, including exhibits, attachments and prior incorporations by reference for review and consideration as part of the administrative record, including comments and exhibits/attachments presented to the Forest Service as included in the FEIS Volume 6, Appendix R, R-10 to R-24 (listing the issues raised by the Tribe and the Forest Service's response).

The Tribe reserves its right to supplement this Objection and the administrative record up to the March 1, 2021 deadline closing for these objections. Additional pending events will necessitate the supplementation of this Objection and the administrative record prior to the closing deadline.

II. Interest and Description of the Tribe as an Objector

The Tribe is a federally recognized American Indian tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The RCM Mine and its associated infrastructure are located on the aboriginal lands of the Western Apache,⁴ which include the San Carlos Apache Tribe, and other Indian tribes with significant traditional, cultural and religious connections to the land. The Tribe brings this Objection in its own capacity and as *parens patriae* on behalf of its members who have traditional, religious, cultural and familial ties to the land.

⁴ The term "Western Apache" refers to tribes of Apaches that live in east central Arizona, including the San Carlos Apache Tribe, the White Mountain Apache Tribe, Tonto Apache Tribe, Yavapai-Apache Nation, and the Fort McDowell Yavapai Nation. This term was developed after 1934, and does not describe the Apache tribes, bands or clans or aboriginal territories that were prevalent prior to the Apache Treaty of 1852 through 1934.

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The Forest Service has admitted that this mining operation will permanently damage, destroy, and irreparably harm sites of profound religious, cultural, and historic significance to the Tribe, its members and other Indian tribes, nations, and communities in Arizona. The excuse provided by the Forest Service, however, has been that its hands are tied; meaning that it cannot stop nor thoroughly analyze this Project under applicable laws because Section 3003 of the NDAA directs the Forest Service to conduct the land exchange. Regardless of any statutory mandate contained in the NDAA, federal officials are still obligated to perform other statutory duties imposed on those officials.

The San Carlos Apache Reservation (“Reservation”) is situated in three counties in eastern Arizona – Gila, Pinal and Graham. The Reservation is a much smaller portion of the larger aboriginal and ancestral homelands of the Tribe, its members and other Western Apaches. The Tribe, its members and other Western Apaches have strong religious, historical and cultural connections to the lands where the Mine, its associated facilities and connected activities are to be located and operated.

Long before Anglo-Europeans appeared in the western hemisphere, the Tribe’s members’ ancestors lived on the land where the Mine and its associated facilities will be located and operated. Since time immemorial, the Tribe’s ancestors have used and occupied a broad area throughout the States of Arizona and New Mexico, as well as the States of Sonora and Chihuahua of the United Mexican States. The entire area of the Resolution mining operation including, but not limited to, large power transmission lines, numerous high capacity groundwater wells, transportation corridors, pipelines, ore processing facilities, service roads and a tailings waste storage facility, are located on aboriginal lands. The Western Apache and other Indian tribes have identified their ancestral roots to this area.

Within the area of the planned copper mining operations is a landscape filled with religious, cultural and historical significance central to the Tribe’s and its members’ identity, and embody important and significant core aspects of traditional Apache religion. Within this landscape is Oak Flat, a site of religious and traditional significance to the Tribe and its members. Tribal members and other Western Apaches have practiced and continue to practice Apache culture, tradition and religion, comprising of ceremonies, songs, rituals, gatherings, prayers and celebrations.

The traditional and ancestral territory of the Tribe’s members and other Western Apaches extends well beyond the current Reservation’s exterior boundaries. These traditional and ancestral territories encompass all the lands that are within and around the proposed copper mining operations at issue in this Project. The Forest Service has repeatedly acknowledged that these lands are traditional, ancestral and aboriginal lands of

the Tribe's members' ancestors, the ancestors of other Western Apaches and the ancestors of other federally recognized tribes.

The Tribe and its members have been and are being harmed by the Forest Service's failure to comply with environmental, historic preservation and other laws which are legally binding on the Forest Service and require Forest Service compliance. The Mine, its associated facilities and connected activities include lands of great historical, religious and cultural significance to the Tribe.

The Mine, its associated facilities and connected activities will destroy waters and lands of cultural, religious, economic and ecological significance to the Tribe and its members. Furthermore, the Mine, its associated facilities and connected activities will despoil, defile and permanently damage unique sacred lands where traditional Apache religious ceremonies and practices have been conducted by the Tribe's members and other Western Apaches, thereby causing permanent harm.

III. The Tribe's First Amended Complaint

The Tribe filed a First Amended Complaint ("FAC") in the United States District Court for the District of Arizona, Case No. CV-21-00068-PHX-DWL on January 21, 2021. The Defendants in this case are the Forest Service, Forest Supervisor Neil Bosworth and Acting Forest Supervisor Tom Torres. The FAC was verified under penalty of perjury by San Carlos Apache Tribe Chairman Terry Rambler and Tribal Historic Preservation Officer Vernelda Grant on January 24, 2021. The FAC is attached hereto and included herewith as a part of the Tribe's Objection. *See* Attachment 2.

Facts relevant to this Objection are contained in paragraphs 1 to 105 of the Tribe's FAC. These facts are incorporated herein by this reference and the attachment of the FAC to this Objection.

IV. The Tribe Incorporates the Objection Filed by the Inter-Tribal Association of Arizona, Inc., Arizona Mining Reform Coalition, Access Fund, Center for Biological Diversity, Earthworks and the Sierra Club – Grand Canyon (Arizona) Chapter.

The Tribe's Objection further incorporates the Objection filed with the Reviewing Official on January 26, 2021 by the Inter-Tribal Association of Arizona, Inc. ("ITAA"), Arizona Mining Reform Coalition ("AMRC"), Access Fund, Center for Biological Diversity, Earthworks and the Sierra Club – Grand Canyon (Arizona) Chapter. *See* Attachment 3.

V. Remedy Sought by the Tribe

The Forest Service has violated Section 3003 of the NDAA, along with environmental, mining, public land, and historic preservation laws. The Forest Service has failed to comply with § 106 of the National Historic Preservation Act (“NHPA”) (16 U.S.C. § 470 *et seq.*) and the National Environmental Policy Act (“NEPA”) (42 U.S.C. § 4321 *et seq.*).

Most concerning, the Project will authorize the transfer of federal public land, which includes Oak Flat, an area the Tribe’s members’ hold as central to Apache traditional religion. Under American religious precepts, in some sense Oak Flat serves as what may be described as a “church” to Apaches, a sacred place for prayer, rituals, ceremonies, and worship – aspects of Apache traditional religion that will be destroyed by RCM’s Project.

RCM’s Project will use block-cave mining to extract the copper ore beneath Oak Flat.⁵ In the process, subsidence will create a massive crater that will swallow, damage and destroy the Tribe’s members’ church.

Accordingly, this Project violates the Tribe’s members’ free exercise of religion under the Free Exercise Clause of the First Amendment of the U.S. Constitution and the Religious Freedom Restoration Act. This Project thus is unconstitutional. In addition, the FEIS authorizes a project that ultimately violates the Tribe’s and its members’ treaty rights under the Apache Treaty of 1852 (10 Stat. 979).

In remedy, the Tribe demands that the Forest Service withdraw the FEIS and DROD, and not issue any decision or take any administrative action to authorize the land exchange or any related appraisals, special use permits, road use permits or other authorizations proposed to be issued by the Forest Service to RCM or the Salt River Project (“SRP”), pursuant to Section 3003 of the NDAA.

The Tribe demands that the Forest Service correct all errors noted herein and, in the Tribe’s, FAC, in the Objection filed by the ITAA, *et al.* and its Complaint. In

⁵ Block cave mining is defined as “an underground hard rock mining method that involves undermining an ore body, allowing it to progressively collapse under its own weight,” where “a large section of rock is undercut, creating an artificial cavern that fills with its own rubble as it collapses,” and then the “broken ore falls into a pre-constructed series of funnels and access tunnels underneath the broken ore mass.” Geoengineering.org, “Block caving: A new mining method arises,” Jul. 25, 2018, <https://www.geoengineer.org/news/block-caving-a-new-mining-method-arises>.

addition to withdrawing the FEIS and DROD, the Forest Service must submit a Supplemental Draft Environmental Impact Statement that complies with each and every applicable law, regulation, policy and Executive Order. Such Supplemental Draft Environmental Impact Statement must then be published for public examination and comment.

VI. San Carlos Apache Tribe's Objection

A. Introduction

Section 3003 of the NDAA requires a single FEIS for the RCM Project mine, its tailings and other associated mining facilities and a land exchange between the Forest Service and RCM, LLC. Section 3003 of the NDAA was a rider attached to a “must pass” national defense funding act. Section 3003 was sponsored by former U.S. Arizona Senators John McCain and Jeffrey Flake.

RCM, LLC is a subsidiary of the foreign mining corporations Rio Tinto and BHP Billiton. RCM, LLC or its successor(s) seek to mine a copper ore body located 7,500 feet below the surface of certain Forest Service lands, beneath Oak Flat, within the Tonto National Forest (“TNF”) near the Town of Superior, Arizona. Section 3003 of the NDAA is the mechanism by which RCM, LLC (or its successor) obtains the federal land and the authorization to mine and extract the copper ore body over a mile below the surface of the earth.

The RCM Project Mine will destroy the land that overlies the ore body, specifically Oak Flat. The proposed mining method will create a massive crater on the surface of the land; a crater roughly two miles wide and over 1,000 feet deep. This crater will be a permanent rubble of broken and shattered land. All features within this crater will be destroyed including all of the religious, cultural and historical which are currently present on the land surface.

The Tribe fully participated in the Forest Service’s review of the Project and land exchange. The Tribe filed comments on the Draft EIS on December 23, 2019. It provided information and data to the AMRC for the comments filed by AMRC, *et al.* in November 2019. The Tribe has consistently engaged with the TNF personnel.

The Tribe also actively participated in the review of drafts of a programmatic agreement (“PA”) to develop a conformable process for Section 106 NHPA compliance. It became evident that TNF personnel toiled with the process for developing a legally compliant PA. The Tribe, and others involved in the process, attempted to facilitate

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TNF's drafting of a legally compliant PA. The process employed by TNF personnel to develop a PA was mishandled by TNF.

As examples, the TNF cut off public participation during the process for the development of a PA. The TNF conducted PA development meetings from which the Tribe and the public were not invited to participate. Unilateral decisions were made by TNF personnel regarding the inclusion of provisions in the final PA. Up through version 9 of the PA, the final version distributed for final signature, the Tribe and others, submitted additional and supplemental comments to Mr. Torres in December of 2020 and January of 2021.

Pursuant to the NDAA, the publication of the FEIS triggers a mandatory land exchange of over 2,400 acres of TNF land to RCM, LLC. The Forest Service published the FEIS on January 15, 2021. The FEIS and the accompanying DROD failed to comply with numerous federal laws, regulations and federal agency policies. The federal laws which were not complied with when the FEIS was published include, but are not limited to, Section 3003 of the NDAA, NEPA, NHPA, the Religious Freedom Restoration Act (42 U.S.C. § 2000bb et seq., "RFRA") the Administrative Procedures Act (5 U.S.C. § 551 et seq., "APA"), the Apache Treaty of 1852 (10 Stat. 979), the implementing regulations for these laws, federal agency policy directives and related Executive Orders.

Section 3003 of NDAA requires the Forest Service to exchange certain federal lands, including the lands overlying the subsurface copper ore body, which encompasses Oak Flat, to Resolution after certain conditions are fulfilled. As noted above, Resolution intends to mine that ore body by a mining method, known as block cave mining. *See* footnote 5 *supra*. This method will permanently destroy the land above the ore body and leave a massive crater, in which polluted, toxic water will accumulate.

The federal lands to be exchanged with Resolution include lands that currently prohibit any type of mining. These same federal lands are lands which are of historic, cultural and religious significance and importance to the Tribe, and are recognized as the aboriginal lands of Western Apaches before title devolved to the federal government. Most concerning, these lands include Oak Flat. Oak Flat is included in the National Register of Historic Places as a Traditional Cultural Property ("TCP") under Section 106 of the NHPA and it meets the criteria to be identified as a "sacred site" within the meaning of Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 ("E.O. 13007"), the American Indian Religious Freedom Act, 42 U.S.C. § 1996, *et. seq.* ("AIRFA"), and related laws, regulations and policies.

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The lands which will be destroyed by Resolution's block cave mining will destroy all of the overlying lands which are sacred to the Tribe's members as well to other Western Apaches. The destruction of these lands means the destruction of the Apache religion.

Ethnographers and archaeologists have scientifically documented in peer reviewed journals and multiple publications that the Oak Flat Area and surrounding areas are sacred sites where ceremonies, songs, rituals, prayers, and gatherings are practiced and where Apache ceremonial items, such as Apache Crown Dancer headdresses, are buried. These ceremonies and songs are central to Apache religious identity. The Project's block-cave mining method will permanently destroy these ceremonies, songs, items, prayers and, most importantly, will destroy the Apaches' church.

Once this area is destroyed, the Tribe's members will be forced to violate their religion because ceremonies and songs tied to the area will be gone. No other site contains the powers and history that stand within the Oak Flat area. The Tribe's members will have no other place to practice these ceremonies, songs, prayers, rituals and gatherings specifically related to Oak Flat can be conducted. There is no greater burden that will be placed on religion then what this Project will have on traditional Apache religion. If this was a Judeo, Christian, Muslim or any other's religion's church or temple, there would be national outrage and the Project would not be allowed to move forward. Why should traditional Apache religion be treated any differently?

The physical destruction of Oak Flat will prevent the full and free exercise of Apache traditional religion, prevent the harvesting of cultural foods and medicines, and forever foreclose access to sites that have been an integral part of Apache life for time immemorial. The destruction of this land will also prevent the Tribe and its members from being able to physically practice and celebrate traditional religious and spiritual ceremonies, prayers, gatherings, celebrations, rituals, and songs, in the vicinity where those ceremonies have been practiced for generations, predating European contact and the establishment of the United States. By the destruction it causes, this Project will impose a substantial burden on the traditional Apache religion of the Tribe's members.

Section 3003 of the NDAA mandates that within sixty days after the publication of the FEIS, the Forest Service will consummate the land exchange and convey the federal lands to Resolution. Title to the federal land will thereby become the private property of RCM, LLC. Federal law and the protections it affords will no longer apply to private land.

Nonetheless, Section 3003 of the NDAA did not release (or absolve) the Forest Service, as a federal agency, from complying with the NEPA, the NHPA and other federal laws that apply to the Forest Service's environmental review and analysis required by the NDAA. Section 3003 of the NDAA expressly requires that the Forest Service comply with NEPA.

B. The Forest Service has violated Section 3003 of the NDAA

The Forest Service's actions and decisions in the preparation, issuance, and reliance upon an inadequate FEIS as part of its review of the land exchange and the Resolution Project were arbitrary, capricious, an abuse of discretion. The Forest Service failed to take the required "hard look" at the land exchange and the Resolution Project. Section 3003 of the NDAA did not absolve the Forest Service from conducting a legally compliant NEPA review. The failure of the Forest Service to conduct a legally compliant NEPA analysis was arbitrary, capricious, an abuse of discretion, contrary to the NDAA and NEPA. Accordingly, the Forest Service's NEPA analysis was and is not in accordance with the law, and without observance of procedures required by law.

Furthermore, the Forest Service's actions, inactions and decisions resulting in the failure to prepare, issue and present the appraisals to be conducted on the Federal land and non-Federal land before the publication of the FEIS was arbitrary, capricious, an abuse of discretion, and contrary to NDAA Section 3003(c)(4)(B)(iv). Thus, the Forest Service has not acted in accordance with the law or the procedures required by law and in excess of statutory jurisdiction, authority, or limitations, within the meaning of the NDAA Section 3003(c)(4)(B)(iv) and the APA Section 706 *et seq.*

The Tribe has been caused irreparable harm.

C. The Forest Service failed to consult under Section 106 of the NHPA, and therefore violated Section 3003 of the NDAA

Issuance of any permit for the licensing, construction or operation of the Resolution Mining Project is an "undertaking" as defined in the NHPA. NHPA Section 106 consultation was required to be conducted by the Forest Service to determine the effect of such undertaking on historic or culturally significant properties. Section 3003(c)(9)(C) of the NDAA requires that the single EIS prepared under Section 3003 assess the effects of the mining and related activities on the cultural and archeological resources on the Federal land to be exchanged; and identify measures that may be taken, to the extent practicable, to minimize adverse impacts on those resources.

The Section 106 determination of the effect of the Resolution mining activities and land exchange on historic, cultural and archeological resources has not been completed which violates Section 3003 of the NDAA. Any Federal properties which are exchanged will not have been identified for protection or mitigation of adverse impacts on the historic, cultural and archeological resources required under the NDAA. The identification of properties for protection or mitigation should have been provided before the publication of the final FEIS. The § 106 determination of the effect of the Resolution mining activities and the land exchange has failed to adequately assess the effects of the mining and related activities on the properties the Tribe and its members hold as central to Apache tradition and religion.

The Forest Service's actions, inactions and decisions in the preparation, issuance and presentation of the § 106 determination was arbitrary, capricious, an abuse of discretion, and contrary to the NDAA Section 3003(c)(3)(B) and 3003(c)(9)(C). Thus, the Forest Service has not acted in accordance with the law or the procedures required by law within the meaning of the NDAA Section 3003(c)(3)(B) and 3003(c)(9)(C) and the APA Section 706 *et seq.*

Here, too, the Tribe has been caused irreparable harm.

D. The FEIS authorizes the land exchange which will lead to the Destruction of Sacred Sites within the Oak Flat area and therefore cause a substantial burden on Apache traditional religion, in violation of the Religious Freedom Restoration Act

The Religious Freedom Restoration Act of 1993 applies to Section 3003 of the NDAA and applies to the Forest Service as a federal agency. The transfer of the land to Resolution, pursuant to Section 3003 of the NDAA, will transfer title to lands, which the Tribe's members hold as historically, culturally and religiously.

Once title to this land is transferred to Resolution, Resolution will have an unencumbered right to mine this land, resulting in irreparable harm and damage to the Tribe and its members. Section 3003 of the NDAA and its application by the TNF have placed a substantial burden on the Tribe's members' free exercise of their sincerely held religious beliefs.

Section 3003 of the NDAA and its application discriminate against the Tribe's members and creates a government imposed coercive pressure on the Tribe's members to change or violate their religious beliefs. Section 3003 of the NDAA and its application chill the Tribe's members' religious exercise. Section 3003 of the NDAA does not

identify any compelling government interest, nor has the Forest Service identified any such interest.

The United States through its agency the Forest Service is not furthering or advancing a compelling government interest. Any government interest which may exist has not been shown by the Forest Service, as either compelling or being advanced by the least restrictive means of furthering that interest. If anything, the only reason advanced by the Forest Service is Section 3003 of the NDAA requires the transfer. A review of Section 3003 states it is to advance economic and mining objectives. No case has been found that has ruled that advancing economic or mining objectives are compelling government interests which justifies imposing a substantial burden on religion. The right to practice one's religion is a fundamental right of all American citizens, and this constitutional protection is not limited solely to a specific religion.

Therefore, Section 3003 of the NDAA and its enforcement by the Forest Service violates the Tribe's members' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq.* The Forest Service's actions, inactions and decisions in the exchange of the Federal land are in violation of the Religious Freedom Restoration Act, and in excess of statutory jurisdiction, authority, or limitations, within the meaning of the Religious Freedom Restoration Act and the APA Section 706 *et seq.*

In the event of the destruction of the Oak Flat area and the sites sacred to traditional Apache religion, the Tribe's members will be irreparably harmed.

E. The land exchange will trigger a violation of the free exercise clause of the First Amendment to the U.S. Constitution

The practice of traditional Apache religion on the lands to be exchanged, including Oak Flat, are part of sincerely held religious beliefs of members of the Tribe. Section 3003 of the NDAA is not a law of general applicability. Section 3003 of the NDAA fails to state a compelling governmental interest. Section 3003 of the NDAA is not narrowly tailored to any governmental interest. Section 3003 of the NDAA fails to state any governmental interest to show the statute is the least restrictive means of furthering a compelling government interest.

Section 3003 of the NDAA creates government-imposed coercive pressure on the Tribe's tribal members to change, violate or abandon their religious beliefs. The lands, including Oak Flat, will be permanently destroyed, thereby preventing the Tribe's members' physical access to sacred sites to practice their Apache traditional religion. Section 3003 of the NDAA chills the Tribe's members' religious exercise. Section 3003

of the NDAA will subject the Tribe's tribal members to private property trespass penalties for their religious exercise. Section 3003 of the NDAA imposes a substantial burden on the Tribe's tribal members' religious exercise.

F. The Land Exchange and the certain destruction of Oak Flat will prohibit the Treaty right of Apaches to the free exercise of their religious beliefs

The Apache Treaty of 1852 (10 Stat. 979) guaranteed that the Tribe and its members "are lawfully and exclusively under the laws, jurisdiction and government of the United States . . ." *Id.*, Art. I. By reason of the Apache Treaty of 1852, Art. I, Apaches were guaranteed the rights, protections and benefits of the First Amendment to the United States Constitution.

The Tribe's members are descendants of the original beneficiaries of the Apache Treaty of 1852. The Tribe's members' right to the free exercise of their religious beliefs was guaranteed by the Treaty.

Section 3003 of the NDAA is a law which denies the Tribe's members and other Western Apaches the free exercise of their religion of choice. The enforcement of Section 3003 of the NDAA will destroy the Tribe's members' and other Western Apaches' sacred grounds in and around Oak Flat amounting to a case of aggression against and maltreatment of the Tribe's members and other Western Apaches in violation of the Apache Treaty of 1852, Art. 6.

The United States and its agency, the Forest Service, have not asserted that Section 3003 of the NDAA is justified by any compelling government interest. Section 3003 of the NDAA targets traditional Apache religious adherents in violation of the First Amendment of the United States Constitution and the Apache Treaty of 1852. The Forest Service's actions and decisions under Section 3003 of the NDAA are in violation of the First Amendment of the United States Constitution and the Apache Treaty of 1852.

Conclusion

For the foregoing reasons and in previous comments submitted by the Tribe to the Forest Service, the FEIS and DROD fail to fully comply with numerous federal and state laws, regulations, policies, Executive Orders and other requirements. The Forest Service cannot approve any of the administrative action alternatives that RCM may propose, unless and until all laws, regulations and other requirements are satisfied.

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Accordingly, the Regional Officer has an obligation to the Tribe, other objectors and the American public to withdraw the publication of the FEIS and the DROD, and direct the TNF to correct all the errors noted herein and in previous comments. Furthermore, the Regional Officer must direct the Tonto National Forest to prepare a draft supplemental EIS for the reasons provided herein.

If you have any questions regarding this Objection please contact me via e-mail at trambler@scatui.net and the Tribe's Attorney General at alex.ritchie@scat-nsn.gov.

As we say in our Apache language, Ahi'yi'é (thank you) in advance for your consideration of this Objection to the TNF FEIS and DROD for the RCM Project and my request to withdraw publication of the FEIS and the DROD.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Enclosures

Attachment 1 – Letter to TNF Acting Supervisor Torres, dated January 12, 2021
Attachment 2 – First Amended Complaint
Attachment 3 – Objections filed by ITAA et al.

Cc: Maria Dadgar, Exec. Dir., ITAA
Roger Featherstone, Dir., AMRC
Access Fund
Center for Biological Diversity
Earthworks
Sierra Club – Grand Canyon Chapter
Wendsler Nosie, Sr., Apache Stronghold

San Carlos Apache Tribe
Tao Etpison, Vice Chairman
San Carlos Council Members
Vernelda Grant, THPO
A.B. Ritchie, AG, DOJ
Chrono