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16 *Attorneys for Plaintiff*

17 **IN THE UNITED STATES DISTRICT COURT**  
 18 **FOR THE DISTRICT OF ARIZONA**  
 19 **PHOENIX DIVISION**

20 Apache Stronghold,  
 21 Plaintiff,  
 22 v.  
 23 United States of America, *et al.*,  
 24 Defendants,  
 25 and  
 26 Resolution Copper Mining, LLC,  
 27 Defendant-Intervenor.

No. 2:21-cv-00050-PHX-SPL

**Amended Complaint**

**JURY TRIAL DEMANDED**

1 COMES NOW Plaintiff and pleads as follows:

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### INTRODUCTION

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1. Since time immemorial, Western Apaches have centered their worship on a sacred site in Arizona called *Chi'chil Bildagoteel*, or Oak Flat. Oak Flat is the Apaches' direct corridor to the Creator and the locus of sacred ceremonies that cannot take place elsewhere.

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2. The government has long recognized the significance of Oak Flat and protected Apache ceremonies there—reserving Oak Flat from mining, and placing it in the National Register of Historic Places. Yet the government is now attempting to transfer Oak Flat to a foreign-owned copper-mining company for the sole purpose of creating a mine that will destroy the site, swallowing it in a massive crater and ending Apache religious rituals forever.

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3. The government admits the mine will destroy Oak Flat and that the Apaches will never again be able to access the site or perform sacred rituals there. The government also admits that it has ample alternative sources of copper, and that the copper beneath Oak Flat could be mined without disturbing Oak Flat's surface. Yet the government declined to utilize these alternatives, or even consider them, because the mining company said they would reduce its profits. Thus, the government has authorized the complete physical destruction of an irreplaceable sacred site solely to increase the profits of a foreign-owned mining company.

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4. This wanton, intentional, and needless destruction of Oak Flat violates multiple federal statutes, the U.S. Constitution, the 1852 Treaty of Santa Fe between the U.S. and Apaches, and the nation's fiduciary duties to Western Apaches. Accordingly, this lawsuit seeks a declaration that the government's actions are unlawful and an injunction preventing the destruction of Oak Flat and protecting the Apaches' right to continue accessing and worshipping at Oak Flat.

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**PARTIES**

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2 5. Plaintiff Apache Stronghold is an Arizona 501(c)(3) nonprofit organization that  
3 unites Western Apaches with other Native and non-Native allies to preserve indigenous  
4 sacred sites. Apache Stronghold was co-founded by Dr. Wendsler Nosie, former Chairman  
5 of the San Carlos Apache Tribe and direct descendant of Apache prisoners of war impris-  
6 oned at San Carlos. Among Apache Stronghold’s members are Apaches who exercise their  
7 religion at Oak Flat.

8 6. Defendant United States of America (“United States” or “U.S.”) is being sued for  
9 the wrongful acts of its representatives, employees, and agencies. The United States is fur-  
10 ther implicated by and through the actions, policies, patterns, practices, and customs of the  
11 other Defendants and its policy-makers, agents, and officers.

12 7. Defendant United States Department of Agriculture (“USDA”) is the federal de-  
13 partment responsible for the management of the United States Forest Service (“Forest Ser-  
14 vice”) and national forests, including the Tonto National Forest, which has included Oak  
15 Flat.

16 8. Defendant United States Forest Service (“Forest Service”) is a federal agency of  
17 the USDA. By statutory authority and the agency’s own regulations and policies, the Forest  
18 Service is responsible for implementing the National Historic Preservation Act, the Na-  
19 tional Environmental Policy Act, and other land management laws, regulations, and exec-  
20 utive orders pertaining to actions and decisions about lands administered by Defendants.  
21 The Forest Service has an obligation to consult and coordinate with Native American tribes  
22 and other governmental units when making findings and determinations under Section 106  
23 of the NHPA regarding the effects of Forest Service-approved projects on cultural re-  
24 sources. Importantly, the Forest Service has a fiduciary duty under the federal trust respon-  
25 sibility to consult and coordinate with tribes and protect tribal properties, including tradi-  
26 tional cultural properties and sacred sites, when approving and assessing the effects of  
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1 projects. Thus, the Forest Service is, by law, responsible for the management and actions  
2 undertaken with respect to the public lands at issue here.

3 9. Defendant Brooke Rollins is the Secretary of Agriculture and the chief officer for  
4 the USDA. Rollins is responsible for the supervision of the Forest Service and the imple-  
5 mentation and enforcement of applicable law in this proceeding. Rollins is sued in her  
6 official capacity.

7 10. Defendant Tom Schultz is the Chief of the Forest Service. Schultz is charged with  
8 the primary duties and responsibilities of the United States and the Forest Service, and  
9 those as trustee and fiduciary regarding management of lands and other assets under Forest  
10 Service control or responsibility. Schultz is sued in his official capacity.

11 11. Defendant Robert Trujillo is the Supervisor of the USDA Tonto National Forest.  
12 Trujillo is charged with the primary duties and responsibilities of the United States and the  
13 BLM, and those as trustee and fiduciary regarding management of lands and other assets  
14 under BLM control or responsibility. Trujillo is sued in his official capacity.

15 12. Defendant Raymond Suazo is the Arizona State Director of the Bureau of Land  
16 Management (“BLM”). Suazo is charged with the primary duties and responsibilities of  
17 the United States and the Forest Service, and those as trustee and fiduciary regarding man-  
18 agement of lands and other assets under Forest Service control or responsibility. Suazo is  
19 sued in his official capacity.

20 13. Defendant-Intervenor Resolution Copper Mining LLC (“Resolution Copper” or  
21 “Resolution”) is a joint venture formed by two multinational mining companies, Rio Tinto  
22 and BHP. On June 30, 2023, this Court granted Resolution’s Motion to Intervene as De-  
23 fendant/Appellee. Dkt. 117. With the federal government’s authorization and assistance,  
24 Resolution plans to construct the copper mine that will destroy Oak Flat.

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1 **JURISDICTION AND VENUE**

2 14. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343,  
3 1361, and 1367 because Plaintiff challenge federal officers’ violations of the Constitution  
4 and laws of the United States.

5 15. Jurisdiction is also proper pursuant to the Declaratory Judgment Act 28 U.S.C. §§  
6 2201(a) and 2202, and in equity.

7 16. The challenged agency actions are subject to judicial review and authority pursu-  
8 ant to 5 U.S.C. §§ 702, 704, and 706.

9 17. Venue lies in this District under 28 U.S.C. § 1391(e) because it is a judicial district  
10 in which “a defendant in the action resides” and where “a substantial part of the events or  
11 omissions giving rise to the claim occurred.”

12 **FACTUAL ALLEGATIONS**

13 ***Oak Flat***

14 18. For centuries before and after Europeans first appeared on this continent, Western  
15 Apaches and other tribes have worshipped at a sacred site called *Chi’chil Bildagoteel* (“a  
16 broad flat of Emory oak trees”), or Oak Flat: a Western Apache sacred site used by Apaches  
17 and other indigenous groups.

18 19. Oak Flat is located within a 6.7-square-mile area about three miles east of present-  
19 day Superior, Arizona, between the high escarpment called “Apache Leap” on the west and  
20 Ga’an Canyon (called “Devil’s Canyon” by non-Indians) on the east.

21 20. The terrain is characterized by old-growth oak groves, grassy basins, boulder  
22 fields, jagged cliffs, and perennial waters used by birds, mountain lions, foxes, bears, deer,  
23 and other animals and plants that are important to Apaches and other indigenous peoples  
24 of the region.

25 21. The site also includes sacred springs, burial sites, and an unmatched concentration  
26 of archaeological sites testifying to its persistent use for at least 1,500 years.

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1           22. Sometimes described as the birthplace of Western Apache religion, Oak Flat fig-  
2 ures prominently in Western Apache cosmology as a unique dwelling place of spiritual  
3 beings, called Ga'an, who are holy spirits and messengers between the Creator and human  
4 beings.

5           23. As the dwelling place of the Ga'an, Oak Flat is a direct corridor to the Creator and  
6 is uniquely endowed with holiness and medicine. As such, Oak Flat is the site of religious  
7 ceremonies that are tied to that place and cannot be replicated elsewhere.

8           24. As one scholar has observed: "For centuries, Western Apaches have maintained  
9 close ties to [Oak Flat] as a place to collect traditional foods and medicines, a place of  
10 ancestral origins, a place where holy beings reside, and the only place where certain pray-  
11 ers, offerings, and ceremonies can be conducted." Tisa Wenger, *Fighting for Oak Flat:  
12 Western Apaches and American Religious Freedom*, 39 J.L. & Religion 247, 248 (2024)  
13 ("Wenger").

14           25. Ceremonies that occur at Oak Flat include sweat lodge ceremonies for boys enter-  
15 ing manhood, Holy Ground Ceremonies for blessing and healing, the Sunrise Ceremony  
16 marking an Apache girl's entry into womanhood, and the gathering of sacred medicine  
17 plants, animals, and materials essential to those ceremonies.

18           26. The Holy Ground Ceremony is a blessing and a healing ceremony that a medicine  
19 man conducts for people who are sick or seeking guidance. It takes place at Oak Flat as a  
20 holy place for healing; it draws on holy medicinal plants available only at Oak Flat. It has  
21 been performed in its current form at Oak Flat for at least 100 years, and it reflects and  
22 builds on much older practices.

23           27. The Holy Ground Ceremony traces back at least to the 1920s and the Apache  
24 prophet Silas John, who relied on much older traditions. Silas John's Holy Ground move-  
25 ment "very clearly included ceremonies at *Chi'chil Bildagoteel* [Oak Flat]." Wenger at  
26 257-58. By "selecting sites that Apaches already considered sacred, the Holy Ground  
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1 movement secured credibility in Indigenous terms and deepened the sanctity of the places  
2 where its ceremonies were held.” *Id.* at 259-60.

3 28. The federal government actively suppressed the Holy Ground movement by for-  
4 bidding Silas John’s dances and jailing him. *Id.* at 259. Nevertheless, some families still  
5 held Holy Ground ceremonies at Oak Flat. *Id.* And they continue to do so today.

6 29. The Sunrise Ceremony, which marks an Apache girl’s entry into womanhood, re-  
7 quires months of planning, takes several days to celebrate, and is often attended by hun-  
8 dreds of tribal members. To prepare, the girl gathers plants from Oak Flat and speaks to  
9 the spirit of Oak Flat, expressing gratitude for its resources. Her godmother dresses her in  
10 the essential tools of womanhood, and tribal members surround her with singing, dancing,  
11 and prayer. In the night, the Ga’an enter Apache men called crown dancers. The Ga’an  
12 bless the girl, who joins their dance.

13 30. On the final day, one of the Ga’an dancers paints the girl with white clay taken  
14 from the ground at Oak Flat, molding her into the woman she is to become. When her  
15 godmother wipes the clay from her eyes, she is a new woman forever imprinted with the  
16 spirit of Oak Flat.

17 31. Oak Flat is also the site of several natural springs, which are rare in this arid region,  
18 and which are sources of spiritual power for Apaches.

19 32. One example is *Tú Nahikaadi*, Dripping Spring, a cave with a dripping spring,  
20 which has a unique role in Apache oral tradition.

21 33. According to Apache tradition, a great flood scoured the world, and the matriarch  
22 of the Apache people, Changing Woman, survived the flood and took refuge in a cave with  
23 a dripping spring. Wenger at 250-51. She emerged alone into this world, and her children,  
24 conceived with the Sun, received guidance from the Ga’an on how to live in this land. *Id.*

25 34. Western Apaches continue to visit Dripping Spring for religious rituals, and the  
26 Apache girl in a Sunrise Dance embodies Changing Woman as she dances her way to  
27 womanhood.

1           35. Oak Flat is also the site of a large rock overhang with ancient pictographs and  
2 petroglyphs known as *Tséyaa Gogeschin*, translated as “Written or Painted under the  
3 Rocks,” which holds special meaning for Apache medicine people and provides a tangible,  
4 irreplaceable connection to Apache ancestors. The Chairman of the San Carlos Apache  
5 Tribe has described the pictographs and petroglyphs as “the footprints and the very spirit  
6 of our ancestors,” akin to “the Western Wall in Jerusalem, St. Peter’s Basilica in Vatican  
7 City, or Ang[k]or Wat in Cambodia. This is why I call Oak Flat the Sistine Chapel of  
8 Apache religion.” 6-EIS-U-9.

9           ***Apache Stronghold’s Religious Practices***

10           36. Apache Stronghold is a nonprofit organization comprised of Apaches and other  
11 Native and non-Native allies who seek to preserve their irreplaceable sacred site, Oak Flat.

12           37. Apache Stronghold’s co-founder, Dr. Wendsler Nosie, Sr., is one among many  
13 Apache Stronghold members who have practiced, currently practice, and will continue to  
14 practice their religion at Oak Flat.

15           38. According to Dr. Nosie, his family, and many others, the Apaches have never lost  
16 their relationship to Oak Flat. Despite the violent history of invasion; forced march and  
17 imprisonment of Native people on reservations; and the efforts by the United States to  
18 discourage, impede, or fully disallow Apaches from practicing their religion at their sacred  
19 site, Dr. Nosie honors and maintains his ancestors’ unbroken tie to Oak Flat.

20           39. For Dr. Nosie, Oak Flat’s religious value to the Apaches’ prayers, ceremonies, and  
21 family histories cannot be overstated. Native religion was the first religion practiced in the  
22 San Carlos region, and Dr. Nosie and his family continue to practice it today.

23           40. Dr. Nosie’s connection to Oak Flat is central to who he is as an Apache man. He  
24 has a deep spiritual and religious connection to the land, water, plants, and animals at Oak  
25 Flat. He recognizes Oak Flat as a special, holy, and sacred place that must be honored and  
26 protected. He sincerely believes in the spiritual forces of God the Creator, whom he  
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1 believes gave Oak Flat to the Apaches so they could protect and honor the land through  
2 their humble exercise of their traditional Apache religious ways.

3 41. Dr. Nosie's granddaughter, Naelyn Pike, is another Apache Stronghold member  
4 who has practiced, currently practices, and will continue to practice her religion at Oak  
5 Flat.

6 42. Naelyn believes Oak Flat in particular must be protected because it is a God-given  
7 gift the Creator has given to the Apaches for sacred ceremonies and other religious and  
8 cultural purposes.

9 43. Naelyn has participated in many sacred ceremonies at Oak Flat, including the Sun-  
10 rise Ceremony of her sister, Nizhoni Pike.

11 44. Because Naelyn believes the essence of an Apache woman is the Apache's tradi-  
12 tional land and religious connection to *Nahgosan*, Mother Earth, she continues to stand for  
13 Oak Flat so future Apache women and girls can celebrate their Sunrise Ceremonies at this  
14 irreplaceable sacred site.

15 45. Many of Apache Stronghold's members share Dr. Nosie's and Naelyn's religious  
16 beliefs and also engage in religious ceremonies uniquely tied to Oak Flat.

17 46. Many of Apache Stronghold's members are also parents who wish to raise their  
18 children in Apache religious ways, including by holding and participating in religious cer-  
19 emonies with their children at Oak Flat. If Oak Flat is destroyed, they will be unable to  
20 raise their children in the traditional Apache ways and provide them with initiation into  
21 Apache manhood and womanhood at Oak Flat.

22 ***The United States and Oak Flat***

23 47. Oak Flat was Apache land before the United States, Mexico, and "New Spain"  
24 ever existed.

25 48. Beginning in the 1500s, other nations made claims on the area, including Spain  
26 and, later, Mexico.

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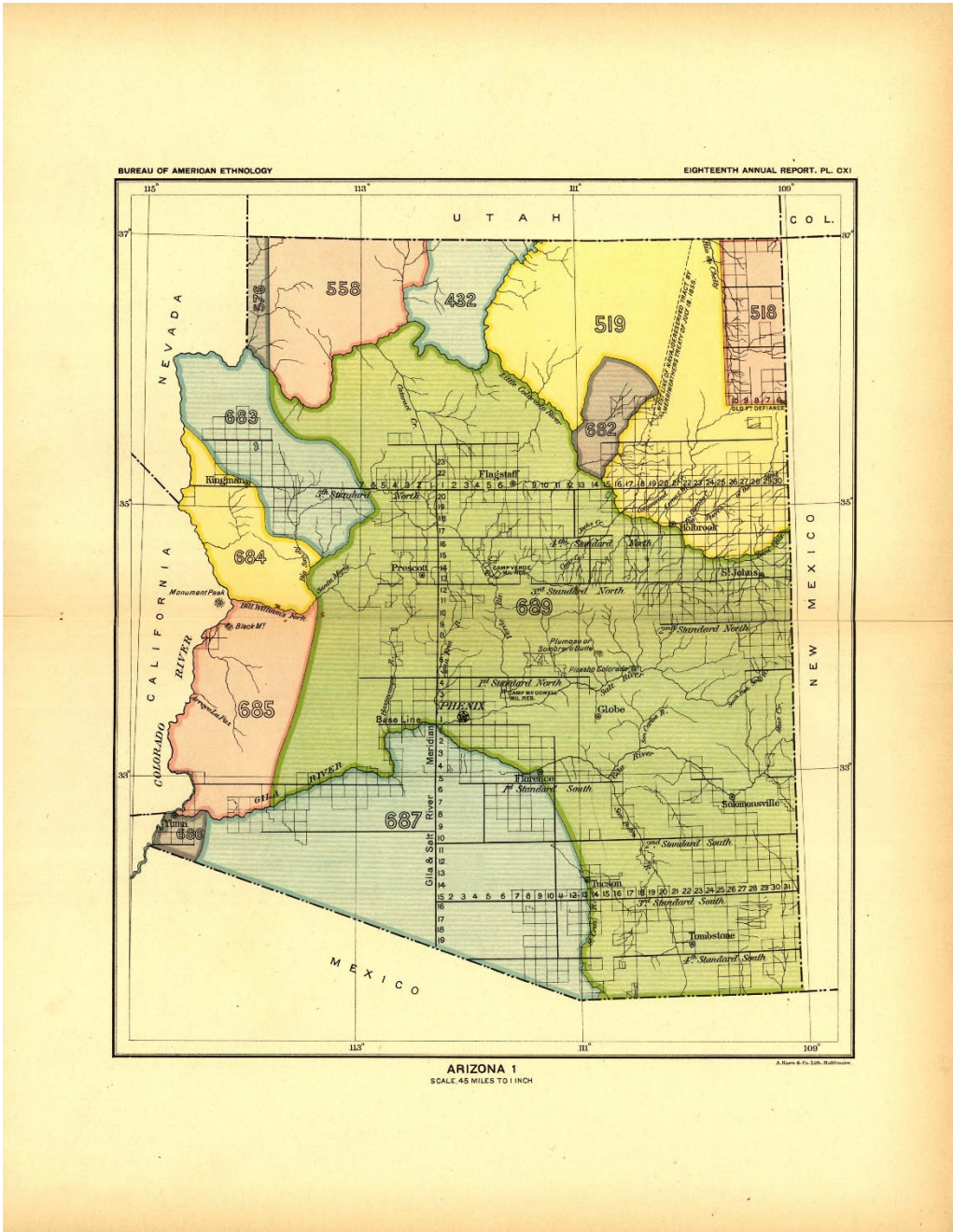
1 49. The United States first gained an interest in the area in 1848, after the Mexican-  
2 American War, when Mexico ceded its claim to the area in the Treaty of Guadalupe Hi-  
3 dalgo.

4 50. In 1852, in fulfillment of specific obligations the United States made to Mexico in  
5 the Treaty of Guadalupe Hildalgo to secure peace between their two nations and the  
6 Apaches, the United States entered the Treaty with the Apache (“Treaty of Santa Fe”) with  
7 several Apache leaders. In it, the United States promised to settle the Apaches’ territorial  
8 boundaries and to pass and execute laws “and act as to secure the permanent prosperity and  
9 happiness of said Indians.” Treaty with the Apache, Apache Nation-U.S., July 1, 1852, 10  
10 Stat. 979, arts. 9, 11.

11 51. The government’s official ethnographic map of the area, published by the U.S.  
12 Department of the Interior’s Bureau of American Ethnology in 1899, shows Oak Flat to be  
13 within the Apache homeland. *See* John Wesley Powell, 2 *Eighteenth Annual Rep. of the*  
14 *Bureau of Am. Ethnology*, H.R. Dkt. 736, at 923 (1899) (noting 689, in green below, as  
15 “original domain” of “Western [Apache] bands”; “[n]o treaty of purchase was made with  
16 them”).

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22           52. However, the government failed to carry out its treaty obligation to settle territorial  
23 boundaries formally.

24           53. Shortly after the Treaty of Santa Fe, settlers and miners entered the area over  
25 Apache opposition, and U.S. soldiers and civilians repeatedly massacred Apaches. John R.  
26 Welch, *Earth, Wind, and Fire: Pinal Apaches, Miners, and Genocide in Central Arizona,*  
27 1859-1874, SAGE Open, Dec. 2017, at 7, <https://perma.cc/V457-4HDT>.

1 54. In 1862, U.S. Army General James Carleton ordered Apache men to be killed  
2 wherever found. *Id.* at 7.

3 55. When miners discovered gold and silver nearby, General Carleton ordered the  
4 Apaches’ “removal to a Reservation” or “utter extermination” to protect “all those who go  
5 to the country in search of precious metals.” *Id.* at 8.

6 56. By 1874, the government had forced 4,000 Apaches onto the San Carlos Reserva-  
7 tion—nicknamed “Hell’s 40 Acres” because it was a barren wasteland.

8 57. In 1883, the U.S. Commissioner of Indian Affairs issued the Code of Indian Of-  
9 fenses, prohibiting traditional Native American religious practices on pain of imprison-  
10 ment. Hiram Price, *Rules Governing the Court of Indian Offenses*, University of North  
11 Dakota, Mar. 1883, at 4-5, <https://perma.cc/2YQT-7ENT>.

12 58. The government also forcibly removed hundreds of Apache children from their  
13 families, sending them to boarding schools aimed at rooting out their “savagism” and con-  
14 verting them to Christianity. David Wallace Adams, *Education for Extinction: American*  
15 *Indians and the Boarding School Experience, 1875-1928* 6 (Univ. Press of Kan. 1st ed.  
16 1995).

17 59. After decades of conflict over their ancestral lands, the Chiricahua Apaches who  
18 remained at liberty, led by Geronimo, surrendered in 1886 and agreed to be detained for  
19 two years in exchange for the return of their land. Gilbert King, *Geronimo’s Appeal to*  
20 *Theodore Roosevelt*, *Smithsonian Mag.*, Nov. 9, 2012, <https://perma.cc/VT82-ZS95>; Mi-  
21 chael Lieder & Jake Page, *Wild Justice: The People of Geronimo vs. The United States*  
22 (Random House, 1997).

23 60. But the government broke this promise, too. It held them prisoner for 23 years and  
24 eventually relocated and confined most of them to the San Carlos Reservation (except for  
25 Geronimo and a few others who were never allowed to return to their homelands).

26 61. The government states that Oak Flat is “part of the traditional territories of the  
27 Western Apache,” who “lived on and used the resources of these lands”; that the

1 government obtained Oak Flat “by force 150 years ago”; and that because of the govern-  
2 ment’s actions, Western Apaches “today live on lands that do not encompass places sacred  
3 to their cultures.” 3-EIS-873–75.

4 62. Starting in the 1900s, the government took steps to protect Oak Flat.

5 63. In 1905, the government created the Tonto National Forest, which included Oak  
6 Flat.

7 64. In 1955, President Eisenhower reserved part of Oak Flat to protect it from mining.  
8 20 Fed. Reg. 7319, 7336-37 (Oct. 1, 1955).

9 65. In 1971, President Nixon renewed the protection. 36 Fed. Reg. 18,997, 19,029  
10 (Sep. 25, 1971).

11 66. As recently as 2016, the National Park Service placed Oak Flat in the National  
12 Register of Historic Places, recognizing “that *Chi’chil Bildagoteel* is an important feature  
13 of the Western Apache landscape as a sacred site, as a source of supernatural power, and  
14 as a staple in their traditional lifeway.” Nat’l Park Serv., *Chi’chil Bildagoteel Historic Dis-*  
15 *trict, Traditional Cultural Property, National Register of Historic Places Registration*  
16 *Form (NPS Form 10-900)* 8 (Jan. 2016).

17 ***Resolution Copper lobbies Congress to mine Oak Flat***

18 67. In 1995, a large copper deposit was discovered 4,500 to 7,000 feet beneath Oak  
19 Flat.

20 68. In 2004, two large multinational mining companies, Rio Tinto and BHP, formed a  
21 joint venture called Resolution Copper and began lobbying Congress to transfer Oak Flat  
22 so Resolution could mine the deposit.

23 69. Rio Tinto’s largest shareholder is Aluminum Corporation of China, a “state-owned  
24 enterprise” of the Chinese government.<sup>1</sup>

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26 <sup>1</sup> *About Chinalco, Overview*, Aluminum Corp. of China, <https://perma.cc/2E4J-6HMF>;  
27 *see* Neil Hume, *Rio faces rebellion from biggest shareholder*, Financial Times (Apr. 10,  
2019), <https://archive.ph/MOCv6>.

1           70. Rio Tinto has been widely condemned internationally for destroying indigenous  
2 sacred sites—including 46,000-year-old caves constituting one of Australia’s most signif-  
3 icant cultural sites.<sup>2</sup> Australia’s Parliament found that “Rio knew the value of what they  
4 were destroying but blew it up anyway ... despite having options which would have pre-  
5 served [the site].”<sup>3</sup>

6           71. Between 2005 and 2013, Congress considered at least twelve standalone bills to  
7 transfer Oak Flat to Resolution. Those proposals were met with the opposition of individual  
8 Apaches and their tribal governments, led by the San Carlos Apache Tribe, and joined by  
9 many other tribes, as well as local, state, regional, and national environmental and conser-  
10 vation organizations. Each proposed bill failed in committee.

11           72. Lacking congressional support for a standalone bill, Resolution and its allies tried  
12 a different tack: attaching the bill as a rider to other legislation.

13           73. Each year, Congress passes the National Defense Authorization Act (NDAA),  
14 which is necessary legislation to fund the military. In 2014, amidst a series of government-  
15 shutdown political battles within Congress, the NDAA was 698 pages long and authorized  
16 hundreds of billions of dollars in defense spending, shot through with a wide range of pro-  
17 posed riders. *See* Carl Levin and Howard P. “Buck” McKeon National Defense Authori-  
18 zation Act for Fiscal Year 2015, 128 Stat. 3292 (2014) (“§ 3003, 128 Stat.”). At the last  
19 minute, Arizona Senators McCain and Flake attached to that bill a land-transfer provision  
20 as a rider—called the “Southeast Arizona Land Exchange and Conservation Act”—without  
21 a separate vote or debate. The land-transfer provision then passed as Section 3003 of the  
22 NDAA. § 3003, 128 Stat. 3732-3741.

23           74. Section 3003 authorizes the Secretary of Agriculture “to convey” the United  
24 States’s interests in approximately 2,422 acres of Forest Service managed lands, including

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25           <sup>2</sup> Parliament of the Commonwealth of Australia, Joint Standing Committee on Northern  
26 Australia, *Never Again*, at vi (Dec. 2020), <https://perma.cc/JHF6-NZBA>.

27           <sup>3</sup> *Id.*

1 Oak Flat, to Resolution, in exchange for other parcels of land owned by Resolution scat-  
2 tered elsewhere in Arizona. § 3003(b)(2), (b)(4), (c)(1), (d)(1), 128 Stat. 3732-3737.

3 75. Section 3003 also revokes the orders by Presidents Eisenhower and Nixon protect-  
4 ing Oak Flat. § 3003(i)(1)(A), 128 Stat. 3740.

5 76. Section 3003 instructs that, before conveying any federal land, the Secretary must  
6 “prepare a single environmental impact statement under the National Environmental Policy  
7 Act [(NEPA)] which shall be used as the basis for all decisions under Federal law related  
8 to the proposed mine and the Resolution mine plan of operations and any related major  
9 Federal actions significantly affecting the quality of the human environment, including the  
10 granting of any permits, rights-of-way, or approvals for the construction of associated  
11 power, water, transportation, processing, tailings, waste disposal, or other ancillary facili-  
12 ties.” § 3003(c)(9)(B), 128 Stat. 3735-3736.

13 77. Section 3003 also requires the Secretary to “engage in government-to-government  
14 consultation with affected Indian tribes concerning issues of concern to the affected Indian  
15 tribes related to the land exchange.” § 3003(c)(3)(A), 128 Stat. 3733. Following consulta-  
16 tion with the Indian tribes, the Secretary must consult with Resolution “and seek to find  
17 mutually acceptable measures to—(i) address the concerns of the affected Indian tribes;  
18 and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining  
19 and related activities on the Federal land conveyed to Resolution Copper under this sec-  
20 tion.” § 3003(c)(3)(B), 128 Stat. 3733.

21 78. Section 3003 also provides that the land transfer cannot occur until “the final ap-  
22 praised values of the Federal land and non-Federal land are determined and approved by  
23 the Secretary.” 16 U.S.C. § 539p(c)(4)(B)(ii). The appraisals must be conducted “in ac-  
24 cordance with nationally recognized appraisal standards, including (I) the Uniform Ap-  
25 praisal Standards for Federal Land Acquisitions [“UASFLA”]; and (II) the Uniform Stand-  
26 ards of Professional Appraisal Practice,” 16 U.S.C. § 539p(c)(4)(B), and must provide “the  
27 market value of Federal and non-Federal properties involved in an exchange.” 36 C.F.R.

1 § 254.9(a)(1). The UASFLA likewise requires that “[t]he federal land [be] appraised as if  
2 in private ownership, to its highest and best use,” and that “the appraiser must avoid esti-  
3 mating a property-specific investment value to a particular owner instead of developing an  
4 opinion of the market value of the property if it were placed for sale on the open market.”  
5 The land-transfer statute further requires that “[t]he value of the Federal land and non-  
6 Federal land to be exchanged under this section shall be equal or shall be equalized in  
7 accordance with this paragraph.” 16 U.S.C. § 539p(c)(5)(A). If the appraised value of the  
8 federal lands exceeds the value of the non-federal lands, Resolution Copper was required  
9 to convey additional non-federal land to the United States, make a cash payment, or both.  
10 16 U.S.C. § 539p(c)(5)(B)(i).

11 79. Once the Secretary publishes the EIS, Section 3003 provides that “the Secretary  
12 shall convey all right, title, and interest of the United States” in Oak Flat “to Resolution  
13 Copper” within “60 days.” § 3003(c)(10), 128 Stat. 3736.

14 ***The mine will destroy Oak Flat***

15 80. The government initially published an EIS on January 15, 2021, but withdrew it a  
16 few weeks later, stating that it needed additional “time” to “fully understand concerns  
17 raised by Tribes.” USDA, Resolution Copper Project & Land Exchange Environmental  
18 Impact Statement: Project Update (Feb. 21, 2023), <https://perma.cc/K2HD-XWEG>.

19 81. Before publishing the 2021 EIS, the Secretary failed to properly coordinate with  
20 the Advisory Council on Historic Preservation (“ACHP”) in the production of a plan to  
21 avoid, minimize, and mitigate harm to Oak Flat’s historical features.

22 82. Due to this failure, in March 2021, the ACHP submitted comments including rec-  
23 ommendations to which the Secretary was required to respond.

24 83. The Secretary declined to adopt the ACHP’s recommendations in a letter issued in  
25 April 2025.

26 84. The government republished an EIS on June 20, 2025.

27 85. The EIS confirms that the mine will destroy Oak Flat.

1 86. The copper is located between 4,500 and 7,000 feet below Oak Flat’s surface. To  
2 mine it, Resolution stated it will use a technique called panel caving, which involves tun-  
3 neling beneath the ore, fracturing it with explosives, and removing it from below.

4 87. This method is purportedly cheaper than other feasible mining techniques, but far  
5 more destructive of Oak Flat’s surface.

6 88. Once the ore is removed, approximately 1.37 billion tons of toxic mining and pro-  
7 cessing waste (“tailings”) will need to be stored forever. These tailings will permanently  
8 bury or otherwise destroy many prehistoric and historic cultural artifacts, including human  
9 burials. Oak Flat itself will collapse (“subside”) into a crater almost 2 miles across and 800  
10 to 1,110 feet deep.

11 89. The EIS admits that the impacts of the mine will be “immediate, permanent, and  
12 large in scale”; that all “public access” to the site will be “eliminate”; and that nothing can  
13 “replace or replicate the Tribal resources and [traditional cultural properties] that would be  
14 destroyed.” 1-EIS-153; 3-EIS-892.

15 90. Among other things, the mine will destroy the places used for Sunrise, Holy  
16 Ground, and other sacred ceremonies; old-growth oak groves and sacred medicinal plants;  
17 sacred springs, including Dripping Spring; burial grounds; and ancient religious and cul-  
18 tural artifacts, including the petroglyphs and pictographs of *Tséyaa Gogeschin*.

19 91. The destruction of Oak Flat will terminate forever the Apaches’ access to the site;  
20 destroy the foods, medicines, springs, artifacts and locations that are essential to their reli-  
21 gious practices; and make it physically impossible for the Apaches ever to engage in their  
22 core religious practices again.

23 ***The mine will not further any compelling governmental interest***

24 92. The Resolution mine does not further any compelling governmental interest. Nor  
25 is it the least-restrictive means of furthering any such interest.

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1 93. The United States already produces at least half of the copper it needs domesti-  
2 cally. The rest is imported from a diverse set of reliable, longstanding allies—mainly Chile,  
3 Canada, Mexico, and Peru.

4 94. The United States also has ample copper reserves apart from the Resolution de-  
5 posit. In fact, the Resolution deposit is not even the largest porphyry copper deposit in  
6 Arizona: that is the Morenci deposit, in Morenci, Arizona. Larger copper and copper-nickel  
7 deposits are also located in Alaska and Minnesota.

8 95. Copper is also readily recyclable, and recycled copper contributes over one third  
9 of the United States’ copper supply; but “the U.S. predominantly exports its copper scrap”  
10 rather than recycling it at home. Bruno Venditti, *The State of Copper Recycling in the U.S.*,  
11 Elements by Visual Capitalist (Dec. 12, 2023), [https://elements.visualcapitalist.com/the-  
12 state-of-copper-recycling-in-the-u-s/](https://elements.visualcapitalist.com/the-state-of-copper-recycling-in-the-u-s/).

13 96. The primary limit on United States copper supply is not ore, but a shortfall of do-  
14 mestic copper refining capacity. Because domestic production of raw copper already vastly  
15 outstrips American copper refining capacity, the U.S. already “sends nearly half its copper  
16 abroad,” “only to import” it again later as “refined copper.” Bruno Venditti, *Visualizing  
17 the U.S. Copper Gap*, Elements by Visual Capitalist (July 11, 2025), [https://elements.vi-  
18 sualcapitalist.com/visualizing-the-u-s-copper-gap/](https://elements.visualcapitalist.com/visualizing-the-u-s-copper-gap/). Resolution’s mine will do nothing to ad-  
19 dress the lack of domestic copper refining capacity; it will exacerbate it.

20 97. The copper produced from Resolution’s mine will likely be sent to China to be  
21 refined there, and—if it returns at all—re-imported at a premium, benefitting the Nation’s  
22 leading mineral competitor.

23 98. Resolution is wholly owned by foreign corporations, Rio Tinto and BHP; and is  
24 controlled by Rio Tinto. Rio Tinto’s largest shareholder is Aluminum Corporation of  
25 China, a “state-owned enterprise” controlled by the Chinese government.

26 99. China is the world’s dominant copper-refining power, controlling over 50% of  
27 global smelting.

1 100. China is also Rio Tinto’s largest customer, accounting for “a commanding 57 per-  
2 cent of [its] total revenue.” Zheng Xin, *Rio Tinto banks on nation’s energy shift*, China-  
3 daily.com.cn (Mar. 26, 2025), <https://perma.cc/C9HX-UC24>.

4 101. Rio Tinto recently told federal regulators it is “nearly impossible for U.S. smelters  
5 to ... operate profitably,” and that Chinese “dominance over copper smelting makes China  
6 the most profitable destination for almost any mine in the world to sell its copper.”<sup>4</sup>

7 102. Even focusing on the copper at Oak Flat, the government and Resolution have  
8 chosen a gratuitously destructive mining method. The government admits that other under-  
9 ground mining techniques are technically and physically feasible; would allow billions of  
10 tons of copper to be profitably mined; and, would preserve Oak Flat’s surface. But the  
11 government rejected any detailed consideration of these alternatives on the ground that  
12 they “would result in higher per-ton mining costs” and thus “reduce the amount of ore that  
13 could be profitably mined.” 1-EIS-50–51; 4-EIS-F-3–4.

14 ***Apache Stronghold and other groups challenge the 2021 EIS***

15 103. Before the government initially published an EIS on January 15, 2021 (before  
16 withdrawing it a few weeks later), Apache Stronghold filed this suit challenging the legality  
17 of the proposed conveyance of Oak Flat to Resolution. *Apache Stronghold v. United States*,  
18 No. 2:21-cv-50 (D. Ariz. Jan. 12, 2021).

19 104. Shortly thereafter, two other groups—the San Carlos Apache Tribe (“SCAT” or  
20 “the Tribe”) and the Arizona Mining Reform Coalition, at al. (“AMRC”)—filed additional  
21 lawsuits. *San Carlos Apache Tribe v. U.S. Forest Serv.*, No. 2:21-cv-68 (D. Ariz. Jan. 14,  
22 2021) (“SCAT”); *Ariz. Mining Reform Coal. v. U.S. Forest Serv.*, No. 2:21-cv-122 (D. Ariz.  
23 Jan. 22, 2021) (“AMRC”). Those two lawsuits initially focused on the adequacy of the 2021  
24 EIS and were stayed when the EIS was withdrawn on March 1, 2021. Order, *SCAT*, No.

25 \_\_\_\_\_  
26 <sup>4</sup> *Rio Tinto Comment on Bureau of Industry and Security Request for Public Comments*  
27 *on Section 232 National Security Investigation of Imports of Copper (BIS-2025-0010)*,  
Regulations.gov (Apr. 1, 2025), <https://perma.cc/BWG6-4GPB>.

1 2:21-cv-68 (D. Ariz. Mar. 23, 2021), Dkt. 47; Order, *AMRC*, No. 2:21-cv-122 (D. Ariz.  
2 Mar. 16, 2021), Dkt. 35.

3 105. Apache Stronghold's lawsuit challenged the legality of the land transfer under,  
4 *inter alia*, the Religious Freedom Restoration Act and the First Amendment, as well as the  
5 rights of the Stronghold's Apache members under the Treaty of Santa Fe and the federal  
6 government's trust responsibility and duties as a fiduciary of the Apaches.

7 106. Apache Stronghold sought an emergency injunction. The district court declined to  
8 enjoin the government. *Apache Stronghold*, No. 2:21-cv-50, 2021 WL 689906 (D. Ariz.  
9 Feb. 22, 2021). Apache Stronghold sought an emergency injunction from the Ninth Circuit.  
10 Six hours before its response was due, the government rescinded the EIS, paused the trans-  
11 fer, and argued the harm was no longer imminent. Over a dissent from Judge Bumatay, a  
12 motions panel denied emergency relief on March 5, 2021, agreeing that immediate relief  
13 was no longer necessary. *Apache Stronghold v. United States*, 2021 WL 12295173 (9th  
14 Cir. Mar. 5, 2021); *id.* at \*1 (Bumatay, J., dissenting). On plenary review, a divided panel  
15 rejected Apache Stronghold's claims on June 24, 2022. *Apache Stronghold v. United*  
16 *States*, 38 F.4th 742 (9th Cir. 2022); *id.* at 773 (Berzon, J., dissenting). After granting re-  
17 hearing, the en banc Ninth Circuit affirmed, on March 1, 2024, by a sharply divided, 6-5  
18 vote. *Apache Stronghold v. United States*, 101 F.4th 1036 (9th Cir. 2024) (en banc). Apache  
19 Stronghold filed a petition for certiorari, which the U.S. Supreme Court denied on May 27,  
20 2025, over a dissenting opinion from Justices Gorsuch and Thomas. *Apache Stronghold v.*  
21 *United States*, 145 S. Ct. 1480 (2025) (Gorsuch & Thomas, JJ., dissenting).

22 ***The United States issues another EIS***

23 107. On April 17, 2025, while Apache Stronghold's petition for certiorari was still  
24 pending at the Supreme Court, the government provided notice that it intended to publish  
25 a new EIS and draft record of decision as early as June 16, 2026. Dkt. 148.

26  
27

1 108. Apache Stronghold moved to lift the stay in this Court and sought a temporary  
2 injunction prohibiting the government from transferring Oak Flat to Resolution Copper  
3 during the pendency of Apache Stronghold’s Supreme Court appeal. Dkt. 150.

4 109. On May 9, 2025, this Court enjoined the government from issuing the EIS and  
5 transferring the land until after the Supreme Court resolved Apache Stronghold’s appeal.  
6 Dkt. 170.

7 110. A few weeks after the Supreme Court declined to review the denial of a prelimi-  
8 nary injunction to Apache Stronghold, the Forest Service published the new final EIS on  
9 June 20, 2025.

10 111. Barring judicial intervention, the new EIS triggered a 60-day deadline for the gov-  
11 ernment to convey Oak Flat to Resolution. § 3003(c)(10), 128 Stat. 3736.

12 ***While judicial review is ongoing, the United States conveys deeds to Resolution***

13 112. The newly issued EIS revived the two lawsuits stayed since 2021. Both the Tribe  
14 and AMRC filed amended complaints and sought preliminary injunctions. First Am.  
15 Compl., *SCAT*, No. 2:21-cv-68 (D. Ariz. July 14, 2025), Dkt. 104; Mot. for Prelim. Inj.,  
16 *SCAT*, No. 2:21-cv-68 (D. Ariz. July 14, 2025), Dkt. 105; Second Am. Compl., *AMRC*,  
17 No. 2:21-cv-122 (D. Ariz. July 14, 2025), Dkt. 87; Mot. Prelim. Inj., *AMRC*, No. 2:21-cv-  
18 122 (D. Ariz. July 14, 2025), Dkt. 88.

19 113. A third lawsuit challenging the new EIS was also filed in the District of D.C.,  
20 *Lopez v. United States*, No. 2:25-cv-2408 (D.D.C. July 24, 2025). That suit was transferred  
21 to the District of Arizona and assigned to Judge Lanza, who was also presiding over the  
22 *SCAT* and *AMRC* cases. Order, *Lopez*, No. 2:25-cv-2408 (D.D.C. Aug. 1, 2025), Dkt. 27.

23 114. On August 15, 2025, Judge Lanza denied a preliminary injunction in the *SCAT* and  
24 *AMRC* cases, despite acknowledging that “it is difficult to overstate just how profoundly  
25 the land exchange will undermine the ability of members of the San Carlos Apache Tribe  
26 (‘the Tribe’) to practice their religion.” Order at 2, *SCAT*, No. 2:21-cv-68 (D. Ariz. Aug.  
27 15, 2025), Dkt. 124. Two days later, Judge Lanza denied a preliminary injunction in the

1 *Lopez* case, incorporating by reference the analysis in the *SCAT* and *AMRC* orders. Order  
2 at 4-6, *Lopez*, No. 2:25-cv-2758 (D. Ariz. Aug. 17, 2025), Dkt. 45.

3 115. The *SCAT*, *AMRC*, and *Lopez* plaintiffs promptly sought emergency relief from  
4 the Ninth Circuit. *AMRC*, No. 25-5185 (9th Cir. Aug. 15, 2025); *SCAT*, No. 25-5189 (9th  
5 Cir. Aug. 15, 2025); *Lopez*, No. 25-5197 (9th Cir. Aug. 17, 2025).

6 116. On August 18, 2025, the Ninth Circuit granted “a temporary administrative injunc-  
7 tion to preserve the status quo while the motions are pending.” Order, *SCAT*, No. 25-5189  
8 (Aug. 18, 2025), Dkt. 17. In the same order, the Ninth Circuit consolidated the *SCAT* and  
9 *AMRC* appeals.

10 117. On September 11, 2025, the Ninth Circuit consolidated the *Lopez* appeal with the  
11 *SCAT* and *AMRC* appeals. Order, *SCAT*, No. 25-5189 (9th Cir. Sept. 11, 2025), Dkt. 46.  
12 The Ninth Circuit heard oral argument on January 7, 2026.

13 118. On March 13, 2026, the Ninth Circuit affirmed the district court’s denial of a pre-  
14 liminary injunction. *AMRC v. U.S. Forest Serv.*, 170 F.4th 879, 903 (9th Cir. 2026),  
15 *amended and superseded by*, No. 25-5185, 2026 WL 958126 (9th Cir. Apr. 8, 2026). In the  
16 same order, the Ninth Circuit dissolved the administrative stay. *Id.*

17 119. The Ninth Circuit issued its ruling on Friday, March 13, at 7:34 p.m. ET. At 8:58  
18 p.m. ET that evening, the *Lopez* plaintiffs informed the government and Resolution that  
19 they intended to file an emergency application for a stay from the U.S. Supreme Court and  
20 asked the government to inform them by 10:00 a.m. ET on Saturday if the government  
21 would agree to a brief stay of the land exchange to allow the Supreme Court to review the  
22 emergency application.

23 120. Despite being on notice that an emergency appeal to the Supreme Court was forth-  
24 coming, the government nevertheless transferred the land to Resolution Copper sometime  
25 on Friday night or Saturday morning and did not inform the *Lopez* plaintiffs of the transfer  
26 until 1:00 p.m. ET on Saturday, March 14. The *Lopez* plaintiffs filed an emergency appli-  
27 cation with the Supreme Court later that day.

1 121. In its March 15, 2026, response to the *Lopez* plaintiffs’ emergency petition, Reso-  
2 lution Copper informed the Supreme Court that it was starting to drill immediately—even  
3 before the Supreme Court ruled on the *Lopez* plaintiffs’ emergency application. Opp’n to  
4 Req. for Immediate Administrative Stay at 6, *Lopez*, No. 25A1008 (U.S. Mar. 15, 2016).

5 122. Justice Kagan denied the emergency application on March 19.

6 **CLAIMS**

7 **COUNT I**

8 **Violation of the Religious Freedom Restoration Act:**  
9 **Destruction of Sacred Site and Prevention of Religious Exercise**  
10 **42 U.S.C. § 2000bb et seq.**

11 123. Plaintiff incorporates by reference all preceding paragraphs.

12 124. Under RFRA, “Government shall not substantially burden a person’s exercise of  
13 religion” unless it satisfies strict scrutiny. 42 U.S.C. § 2000bb-1(a)-(b). RFRA broadly de-  
14 fines the “exercise of religion” to include “any exercise of religion, whether or not com-  
15 pelled by, or central to, a system of religious belief.” *Id.* §§ 2000bb-2(4), 2000cc-5(7)(A).  
16 RFRA also defines the “exercise of religion” to include “[t]he use ... of real property” for  
17 religious exercise. *Id.* §§ 2000bb-2(4), 2000cc-5(7)(B).

18 125. Members of Apache Stronghold—including but not limited to Dr. Wendsler Nosie,  
19 Sr. and Naelyn Pike—exercise their religion by visiting and praying at Oak Flat, and par-  
20 ticipating in sacred ceremonies that are uniquely tied to Oak Flat and cannot be replicated  
21 elsewhere. These members intend to continue in their religious exercise at Oak Flat in on-  
22 going, imminent, active participation in ceremonies and religious observances at Oak Flat.

23 126. Defendants’ actions substantially burden the religious exercise of Apache Strong-  
24 hold’s members in several different ways.

25 127. The transfer and destruction of Oak Flat substantially burdens the religious exer-  
26 cise of Apache Stronghold’s members.

27 128. Denying access to Oak Flat substantially burdens the religious exercise of Apache  
Stronghold’s members.

1 129. Physically destroying Oak Flat substantially burdens the religious exercise of  
2 Apache Stronghold’s members.

3 130. Interfering with religious ceremonies at Oak Flat substantially burdens the reli-  
4 gious exercise of Apache Stronghold’s members.

5 131. Completely preventing the exercise of religion at Oak Flat substantially burdens  
6 the religious exercise of Apache Stronghold’s members.

7 132. Defendants’ actions are subject to strict scrutiny.

8 133. Strict scrutiny requires that the government “demonstrates that application of the  
9 burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is  
10 the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C.  
11 § 2000bb-1(b).

12 134. A compelling interest includes “only those interests of the highest order.” *Wiscon-*  
13 *sin v. Yoder*, 406 U.S. 205, 215 (1972). And the least-restrictive-means standard is “excep-  
14 tionally demanding.” *Burwell v. Hobby Lobby, Inc.*, 573 U.S. 682, 728 (2014). To pass the  
15 least-restrictive-means test, the government must show “that it lacks other means of achiev-  
16 ing its desired goal without imposing a substantial burden on the exercise of religion” by  
17 the religious objector. *Id.*

18 135. Defendants cannot satisfy strict scrutiny.

19 136. To the extent this claim may be barred by *Apache Stronghold v. United States*, 101  
20 F.4th 1036 (2024) (en banc), that decision should be overruled.

21 **COUNT II**

22 **Violation of the Religious Freedom Restoration Act:**  
23 **Coercion, Discrimination, Penalties, and Denial of Equal Treatment**  
24 **42 U.S.C. § 2000bb et seq.**

25 137. Plaintiff incorporates by reference all preceding paragraphs.

26 138. Under *Apache Stronghold*’s interpretation of RFRA, “a disposition of government  
27 real property” substantially burdens a person’s religious exercise if it has a “tendency to  
coerce individuals into acting contrary to their religious beliefs,” “discriminate[s] against

1 religious adherents,” “penalize[s]’ them,” or “den[ies] them ‘an equal share of the rights,  
2 benefits, and privileges enjoyed by other citizens.’” *Apache Stronghold*, 101 F.4th at 1044.

3 139. Defendants’ actions and disposition of property have a tendency to coerce Apache  
4 Stronghold and its members into acting contrary to their religious beliefs.

5 140. Defendants’ actions and disposition of property discriminate against religious ad-  
6 herents—namely, Apache Stronghold and its members.

7 141. Defendants’ actions and disposition of property penalize Apache Stronghold and  
8 its members.

9 142. Defendants’ actions and disposition of property deny Apache Stronghold and its  
10 members the rights, benefits, and privileges enjoyed by other citizens.

11 143. Defendants’ actions and disposition of property have the tendency and effect of,  
12 among other things:

- 13 a. Coercing Apache Stronghold and its members to stop engaging in their  
14 religious practices and to act contrary to their religious beliefs;
- 15 b. Exposing Apache Stronghold and its members to force, violence, and  
16 threats of force and violence that have coerced them to stop and intimi-  
17 dated and deterred them from continuing their religious practices;
- 18 c. Subjecting Apache Stronghold and its members to penalties on or for their  
19 religious exercise, including but not limited to, excessive fees, financial  
20 penalties, trespassing citations, civil liability, and criminal liability;
- 21 d. Depriving and Apache Stronghold and its members of the protection they  
22 previously had for their religious exercise and the protection some other  
23 members of the public still enjoy for activities at Oak Flat;
- 24 e. Abrogating rights, benefits, and privileges enjoyed by other citizens in  
25 the use of government-controlled (and formerly government-controlled)  
26 property, including Oak Flat;
- 27

1 f. Discriminating against Apache worshippers including Apache Strong-  
2 hold and its members and devaluing their religious beliefs, practices, and  
3 sites; and

4 g. Causing other harms and substantial burdens on Apache Stronghold and  
5 its members’ religious exercise.

6 144. Because these actions constitute a substantial burden even under the standard ar-  
7 ticulated by the en banc Ninth Circuit in *Apache Stronghold*, they can be maintained only  
8 if they satisfy strict scrutiny.

9 145. Strict scrutiny requires that the government “demonstrates that application of the  
10 burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is  
11 the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C.  
12 § 2000bb-1(b).

13 146. A compelling interest includes “only those interests of the highest order.” *Yoder*,  
14 406 U.S. at 215. And the least-restrictive-means standard is “exceptionally demanding.”  
15 *Hobby Lobby*, 573 U.S. at 728. To pass the least-restrictive-means test, the government  
16 must show “that it lacks other means of achieving its desired goal without imposing a sub-  
17 stantial burden on the exercise of religion” by the religious objector. *Id.*

18 147. Defendants cannot satisfy strict scrutiny.

19 148. Because Defendants cannot satisfy strict scrutiny, their actions violate RFRA.

20 **COUNT III**  
21 **Violation of the First Amendment to the U.S. Constitution**  
22 **Free Exercise Clause**  
23 **Neutrality and General Applicability**

24 149. Plaintiff incorporates by reference all preceding paragraphs.

25 150. The First Amendment provides that “Congress shall make no law respecting an  
26 establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.

27 151. Under the Free Exercise Clause, government action that burdens religion must sur-  
vive strict scrutiny unless it constitutes a valid and neutral law of general applicability.

1 152. Failing either the neutrality or general applicability test is sufficient to trigger strict  
2 scrutiny.

3 153. As explained above, Defendants’ actions here burden the religious exercise of  
4 Apache Stronghold and of Apache Stronghold’s members.

5 154. Defendants’ actions here are neither neutral nor generally applicable.

6 155. Defendants’ actions are not neutral or generally applicable because they dispro-  
7 portionately affect the religious exercise of Native Americans—including Apache Strong-  
8 hold’s members—and almost no others, and because they were undertaken with hostility  
9 toward Apache religious exercise at Oak Flat.

10 156. Defendants’ actions are not neutral or generally applicable because they involve  
11 calculated, discretionary, and individualized decisions about a single piece of land, and  
12 they intentionally favor the secular use of copper mining over religious use by Apaches.

13 157. Defendants’ actions cannot satisfy strict scrutiny.

14 158. To the extent this claim may be barred by *Apache Stronghold v. United States*, 101  
15 F.4th 1036 (2024) (en banc), *Employment Division v. Smith*, 494 U.S. 872 (1990), or *Lyng*  
16 *v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439 (1988), those decisions  
17 should be overruled.

18 **COUNT IV**  
19 **Violation of the First Amendment to the U.S. Constitution**  
20 **Free Exercise Clause**

21 **Interference with the Right to Direct the Religious Upbringing of Children**

22 159. Plaintiff incorporates by reference all preceding paragraphs.

23 160. Defendants’ actions are subject to strict scrutiny under the Free Exercise Clause  
24 when they “substantially interfer[e] with the religious development” of children. *Mahmoud*  
*v. Taylor*, 606 U.S. 522, 556 (2025) (quoting *Yoder*, 406 U.S. at 218).

25 161. When the government’s actions impose an “objective danger,” or a “very real  
26 threat of undermining” parents’ religious exercise, they impose a burden on religious ex-  
27 ercise. *Id.* at 543, 553.

1 162. Members of Apache Stronghold who are parents exercise their religion by raising  
2 their children in accordance with their Apache religious beliefs, which includes worship,  
3 prayer, gathering medicine, and holding religious ceremonies at Oak Flat.

4 163. By transferring and destroying Oak Flat, Defendants are cutting off Apache par-  
5 ents from ever engaging in core religious practices that are essential to their children’s  
6 religious development. This not only poses an “objective danger” or “very real threat of  
7 undermining” Plaintiff’s religious exercise, but also renders it altogether physically impos-  
8 sible. *Id.*

9 164. Defendants’ actions cannot satisfy strict scrutiny.

10 **COUNT V**  
11 **Violation of Treaty with the Apaches (July 1, 1852)**  
12 **Treaty of Santa Fe**

13 165. Plaintiff incorporates by reference all preceding paragraphs.

14 166. The Treaty of Santa Fe, like all Indian treaties, impliedly reserves to the Apaches  
15 everything they did not explicitly grant thereby to the United States. *See United States v.*  
16 *Winans*, 198 U.S. 371, 381 (1905); *accord Nw. Band of Shoshone Nation v. Wooten*, 83  
17 F.4th 1205, 1212 (9th Cir. 2023).

18 167. This Treaty, like all Indian treaties, is to be construed as its Indian signatories  
19 would have understood it. *See United States v. Washington*, 853 F.3d 946, 963 (9th Cir.  
20 2017); *accord Herrera v. Wyoming*, 587 U.S. 329, 344-45 (2019).

21 168. Through the Treaty, the United States promised the Apaches that it would “desig-  
22 nate, settle, and adjust [the Apaches’] territorial boundaries” and “pass and execute laws”  
23 protecting “the prosperity and happiness of” the Apaches on their ancestral homeland.  
24 Treaty with the Apache, Apache Nation-U.S., July 1, 1852, 10 Stat. 979 (“Treaty of Santa  
25 Fe”), arts. 9, 11.  
26  
27

1 169. The Treaty further provides that it should be given a “liberal construction ... as to  
2 secure the permanent prosperity and happiness of [the Apaches].” Treaty of Santa Fe, art.  
3 11.

4 170. There is no indication that the Apaches understood the Treaty of Santa Fe to ter-  
5 minate their usufructuary, religious-use, and other rights to use their territory for its accus-  
6 tomed purposes, including to worship at Oak Flat.

7 171. This language obligates the United States to preserve traditional Apache religious  
8 and other practices on their ancestral homeland. *See Menominee Tribe of Indians v. United*  
9 *States*, 391 U.S. 404, 406 (1968); *Herrera*, 587 U.S. at 349-350.

10 172. Although the United States Congress failed to enact formal boundary lines, the  
11 earliest map prepared by the U.S. Department of the Interior Bureau of American Ethnol-  
12 ogy in 1899 confirms that Oak Flat is within the Apaches’ historical territories.

13 173. The EIS concedes that the “Oak Flat Federal Parcel” is within “the traditional ter-  
14 ritories of the Western Apache,” 2-EIS-776 (2021), who were “forced onto reservations”  
15 but “continued to use the vicinity of the project area into the twentieth century,” 2-EIS-776  
16 (2021).

17 174. Congress has not expressly abrogated the Treaty of Santa Fe. *See Shoshone-Ban-*  
18 *nock Tribes v. DOI*, 153 F.4th 748, 765 (9th Cir. 2025).

19 175. No other federal action purporting to touch the land at Oak Flat has extinguished  
20 the Apaches’ rights and interests in Oak Flat, including their usufructuary, religious-use,  
21 and other rights to worship there as they have for centuries.

22 176. The United States has never gained all rights or interests in Oak Flat from the  
23 Apaches, nor extinguished the Apaches’ rights or interests in Oak Flat.

24 177. The United States’ land patent, a quitclaim deed, did not transfer to Resolution  
25 Copper the Apaches’ usufructuary, religious-use, or other rights in Oak Flat.

26  
27

1 178. By purporting to transfer all interest in Oak Flat to Resolution Copper for destruc-  
2 tion, the United States violated its treaty promise to protect the Apaches’ prosperity and  
3 happiness within their historical territories.

4 179. The Treaty obligations are enforceable by individual Tribe members whose indi-  
5 vidual personal interests are affected by violation of the Tribe’s treaty and trust rights.

6 180. The membership of Apache Stronghold includes members of the San Carlos  
7 Apache Tribe and Apache members of other present-day tribes included under the Treaty  
8 of Santa Fe.

9 181. The United States’ ongoing violation of its Treaty promise has harmed and will  
10 continue to harm Apache Stronghold’s members, including by preventing them from exer-  
11 cising their religion at Oak Flat ever again.

12 **COUNT VI**  
13 **Violation of Trust Obligation and Fiduciary Duties**

14 182. Plaintiff incorporates by reference all preceding paragraphs.

15 183. The Treaty of Santa Fe created an enforceable trust between the United States and  
16 the Apaches. *See United States v. Mitchell*, 463 U.S. 206, 225 (1983).

17 184. The Treaty places a specific duty upon the United States: to “designate, settle, and  
18 adjust [the Apaches’] territorial boundaries” and “pass and execute ... laws” protecting  
19 “the prosperity and happiness of” the Apaches on their ancestral homeland. Treaty of Santa  
20 Fe, arts. 9, 11; *see Arizona v. Navajo Nation*, 599 U.S. 555, 563 (2023).

21 185. There is a trustee, the United States; a beneficiary, the Apache; and a trust corpus,  
22 the reserved rights and interests of the Apache in and to their historical territory. *See Inter*  
23 *Tribal Council of Ariz. v. Babbitt*, 51 F.3d 199, 203 (9th Cir. 1995).

24 186. This trust relationship is judicially enforceable because it is coupled with “a sub-  
25 stantive source of law”—the Treaty of Santa Fe—“that establishes specific fiduciary or  
26 other duties.” *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003).

27

1 187. When the government assumes such “treaty obligations with the Indian tribes,” the  
2 government is “judged by the most exacting fiduciary standards” in light of the “moral  
3 obligations of the highest responsibility and trust” it has assumed. *Seminole Nation v.*  
4 *United States*, 316 U.S. 286, 296-97 (1942).

5 188. The Treaty itself dictates the terms of its own interpretation, directing a “liberal  
6 construction ... as to secure the permanent prosperity and happiness” of the Apaches.

7 189. Congress has not abrogated the United States’s trust obligations under the Treaty.

8 190. By purporting to transfer Oak Flat to Resolution Copper for destruction, thereby  
9 ending Apache religious practices, the United States violated its trust obligation and fidu-  
10 ciary duty to protect the Apaches’ prosperity and happiness within their historical territo-  
11 ries, including in preserving their rights in interests in, and so their ability to worship at,  
12 Oak Flat.

13 191. The membership of Apache Stronghold includes members of the San Carlos  
14 Apache Tribe.

15 192. The trust obligations are enforceable by individual tribal members whose individ-  
16 ual personal interests are affected by violation of the Treaty and trust rights.

17 193. The United States’ violation of its trust obligations and fiduciary duties has harmed  
18 and will continue to harm Apache Stronghold’s members, including by preventing them  
19 from exercising their religion at Oak Flat ever again.

20 **COUNT VII**  
21 **Violation of Executive Order 13007**  
22 **Executive Order 13007; 16 U.S.C. § 539p; and 5 U.S.C. §§ 701-706**

23 194. Plaintiff incorporates by reference all preceding paragraphs.

24 195. Executive Order 13007, “Indian Sacred Sites,” 61 Fed. Reg. 26,771 (May 24,  
25 1996), provides that “[i]n managing Federal lands,” federal agencies “shall, to the extent  
26 practicable, permitted by law, and not clearly inconsistent with essential agency functions,  
27

1 (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious  
2 practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.”

3 196. The land-transfer statute mirrors Executive Order 13007 by requiring that the EIS  
4 “assess the effects of the mining and related activities ... on the cultural and archeological  
5 resources that may be located on the Federal land.” 16 U.S.C. § 539p(c)(9)(C)(i); *see, e.g.,*  
6 *Te-Moak Tribe of W. Shoshone Indians of Nev. v. DOI*, 565 F. App’x 665, 667 (9th Cir.  
7 2014); *S. Fork Band Council of W. Shoshone of Nev. v. DOI*, 588 F.3d 718, 724 (9th Cir.  
8 2009).

9 197. The land-transfer statute additionally requires that the EIS “identify measures that  
10 may be taken, to the extent practicable, to minimize potential adverse impacts on those  
11 resources.” 16 U.S.C. § 539p(c)(9)(C)(ii).

12 198. The EIS repeatedly invokes Executive Order 13007 and lists it as an applicable  
13 legal authority underpinning the document’s cultural resources impacts analysis.

14 199. Nonetheless, the EIS failed to properly analyze the effects and minimization  
15 measures of the land transfer under Executive Order 13007, as incorporated by the land-  
16 transfer statute.

17 200. The EIS and Decision Notice also failed to comply with Executive Order 13007,  
18 as incorporated by the land-transfer statute, as Defendants, “to the extent practicable,”  
19 failed to “avoid adversely affecting the physical integrity” of Oak Flat. 61 Fed. Reg. at  
20 26,771.

21 201. The land-exchange conveyances by the government also violated Executive Order  
22 13007, as incorporated by the land-transfer statute, as Defendants, “to the extent practica-  
23 ble,” failed to “avoid adversely affecting the physical integrity” of Oak Flat. 61 Fed. Reg.  
24 at 26,771.

25 202. Thus, because the EIS and the land-exchange conveyances violate Executive Or-  
26 der 13007, they are “arbitrary and capricious” under the APA. *Cmtys. Against Runway*  
27 *Expansion, Inc. v. F.A.A.*, 355 F.3d 678, 688-89 (D.C. Cir. 2004).

**COUNT VIII**

**Violation of the National Environmental Policy Act**

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203. Plaintiff incorporates by reference all preceding paragraphs.

204. The National Environmental Policy Act, 42 U.S.C. §§ 4321–4370, is designed to ensure that the government’s actions are consistent with the “broad national commitment to protecting and promoting environmental quality.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989).

205. NEPA realizes its “sweeping policy goals” “through a set of ‘action-forcing’ procedures that require that agencies take a “hard look” at environmental consequences” before engaging in certain projects. *Id.* at 350 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

206. The land-transfer statute instructs the government to “carry out the land exchange in accordance with the requirements of the National Environmental Policy Act” in “a single environmental impact statement.” § 3003(c)(9)(A)-(B), 128 Stat. 3735.

207. By expressly incorporating NEPA, Congress indicated that the government must take a hard look at the intended land transfer’s environmental consequences and then show its work in a “reasonable and reasonably explained” EIS. *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 180 (2025).

208. In 2023, Congress amended NEPA through the BUILDER Act, Pub. L. 118-5, div. C, tit. III, § 321, 137 Stat. 38, which sets a default rule that an EIS “shall not exceed 150 pages.” 42 U.S.C. § 4336a(e)(1)(A); accord *Seven Cnty.*, 605 U.S. at 181 n.3.

209. For projects of “extraordinary complexity,” an EIS “shall not exceed 300 pages.” 42 U.S.C. § 4336a(e)(1)(B).

210. The EIS in this case is subject to NEPA’s page limits.

211. The EIS in this case is over 1,000 pages. It also includes appendices adding approximately 1,400 more pages. Thus, the EIS exceeds NEPA’s length limitation.

1 212. NEPA further requires that agencies “include in every recommendation or report  
2 on ... major Federal actions significantly affecting the quality of the human environment,  
3 a detailed statement by the responsible official on ... a reasonable range of alternatives to  
4 the proposed agency action, including an analysis of any negative environmental impacts  
5 of not implementing the proposed agency action in the case of a no action alternative, that  
6 are technically and economically feasible, and meet the purpose and need of the proposal.”  
7 42 U.S.C. § 4332(C).

8 213. NEPA also requires that agencies “study, develop, and describe technically and  
9 economically feasible alternatives” to proposed plans. 42 U.S.C. § 4332(F).

10 214. The EIS and Decision Notice here do not comply with NEPA’s requirement to  
11 consider reasonable alternatives. Instead, the EIS admits that “alternative underground  
12 mining methods” “could physically be applied” to recover the copper without disturbing  
13 the surface, surface-supporting geology, perched aquifers, and surface waters of Oak Flat,  
14 but declines to even consider them based on Resolution Copper’s claim that these alterna-  
15 tives would have “higher operational costs” and “reduce the amount of ore that could be  
16 profitably mined.” 4-EIS-F-3. The failure to consider reasonable alternatives violates  
17 NEPA.

18 **COUNT IX**  
19 **Violation of the National Historic Preservation Act**

20 215. Plaintiff incorporates by reference all preceding paragraphs.

21 216. In 1966, Congress enacted the National Historic Preservation Act—now codified  
22 at 54 U.S.C. §§ 300101 et seq.—with the goal of identifying and protecting the nation’s  
23 historical treasures.

24 217. The NHPA requires federal agencies to consider the impact of any undertaking on  
25 properties of historical significance, including traditional religious and cultural importance  
26 to an Indian tribe.  
27

1           218. Section 106 of the NHPA requires that, prior to issuance of a federal permit or  
2 license, federal agencies shall take into consideration the effects of an “undertaking” on  
3 “historic propert[ies].” 54 U.S.C. § 306108. Agencies “must complete the section 106 pro-  
4 cess ‘prior to the approval of the expenditure of any Federal funds on the undertaking or  
5 prior to the issuance of any license.’” 36 C.F.R. § 800.1(c). The NHPA established the  
6 ACHP, an independent federal agency with the primary mission to encourage historic  
7 preservation in the government and across the nation.

8           219. The NHPA defines undertaking as “a project, activity, or program funded in whole  
9 or in part under the direct or indirect jurisdiction of a Federal agency, including – (1) those  
10 carried out by or on behalf of the Federal agency; (2) those carried out with Federal finan-  
11 cial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those  
12 subject to State or local regulation administered pursuant to a delegation or approval by a  
13 Federal agency.” 54 U.S.C. § 300320; 36 C.F.R. § 800.16(y).

14           220. The NHPA Section 106 process requires federal agencies involved in undertakings  
15 to make a reasonable and good faith effort to identify and disclose historic properties within  
16 affected areas, evaluate the potential adverse effects of the federal undertaking to the his-  
17 toric properties, “and seek ways to avoid, minimize or mitigate any adverse effects to the  
18 historic properties.” 36 C.F.R. §§ 8.001, 800.4-800.6.

19           221. The Section 106 process requires consultation with Indian Tribes on federal un-  
20 dertakings that potentially affect sites that are culturally significant to Indian Tribes. 36  
21 C.F.R. § 800.2(c)(2); 54 U.S.C. § 302706 (properties “of traditional religious and cultural  
22 importance to” a Tribe may be included on the National Register, and federal agencies  
23 “shall consult with any Indian Tribe ... that attaches religious and cultural significance” to  
24 such properties).

25           222. If the agency finds that historic properties are affected, it must provide notification  
26 to all consulting parties and invite their views to assess adverse effects. 36 C.F.R.  
27 § 800.2(c)(2). Any adverse effects to historic properties must be resolved, involving all

1 consulting parties and the public. *Id.* § 800.6. If adverse effects cannot be resolved, the  
2 process is elevated again to the ACHP and the head of the agency undertaking the action.  
3 *Id.* § 800.7. Until this process is complete, the action in question cannot go forward.

4 223. If adverse effects on historic sites are identified, the agency must continue consult-  
5 ing with the parties and avoid or mitigate any adverse effects.

6 224. If an agreement between the ACHP and the agencies cannot be reached as to a plan  
7 for mitigation, the agency “must make clear in the record that the ACHP’s comments were  
8 taken seriously.” *Friends of the Atglen-Susquehanna Trail v. Surface Transp. Bd.*, 252 F.3d  
9 246, 265 (3d Cir. 2001) (quoting *Concerned Citizens All., Inc. v. Slater*, 176 F.3d 686, 696  
10 (3d Cir. 1999)).

11 225. The government failed to coordinate with the ACHP before it issued the first EIS  
12 in 2021.

13 226. In 2025, before issuing the second EIS, the government purported to respond to  
14 the ACHP’s comments and advice suggesting mitigation efforts to preserve Oak Flat.

15 227. However, the agency’s response failed to seriously consider the ACHP’s recom-  
16 mendations and refused to avoid, minimize, or mitigate the harm to Oak Flat and other  
17 historic properties that will be destroyed by the mine, and failed to properly consult regard-  
18 ing resolution of the adverse effects to Oak Flat. 36 C.F.R. § 800.7. This violated the  
19 NHPA.

20 **COUNT X**  
21 **Violation of Appraisal Requirements**  
22 **16 U.S.C. § 539p; 5 U.S.C. §§ 701-706**

23 228. Plaintiff incorporates by reference all preceding paragraphs.

24 229. 16 U.S.C. § 539p sets out specific, non-discretionary requirements governing the  
25 appraisals of the federal and non-federal lands to be exchanged before the land transfer  
26 may legally proceed.  
27

1           230. The land transfer cannot occur until “the final appraised values of the Federal land  
2 and non-Federal land are determined and approved by the Secretary.” 16 U.S.C.  
3 § 539p(c)(4)(B)(ii).

4           231. The appraisals must be conducted “in compliance with the requirements of section  
5 254.9 of title 36, Code of Federal Regulations.” 16 U.S.C. § 539p(c)(4)(A).

6           232. The federal exchange and appraisal regulations at 36 C.F.R. § 254.9, as incorpo-  
7 rated by the land-transfer statute, require that all values of the exchanged lands be factored  
8 in, including minerals. *See* 36 C.F.R. § 254.9(b)(1).

9           233. An appraisal must provide “the market value of Federal and non-Federal properties  
10 involved in an exchange.” 36 C.F.R. § 254.9(a)(1). Market value means “the most probable  
11 price in cash, or terms equivalent to cash, which lands or interest in lands should bring in  
12 a competitive and open market under all conditions requisite to a fair sale, where the buyer  
13 and seller each acts prudently and knowledgeably, and the price is not affected by undue  
14 influence.” 36 C.F.R. § 254.2.

15           234. In addition to the requirements of 36 C.F.R. § 254.9, the appraisals must also be  
16 conducted “in accordance with nationally recognized appraisal standards, including (I) the  
17 Uniform Appraisal Standards for Federal Land Acquisitions [“UASFLA”], and (II) the  
18 Uniform Standards of Professional Appraisal Practice.” 16 U.S.C. § 539p(c)(4)(B).

19           235. The UASFLA likewise requires that “[t]he federal land [be] appraised as if in pri-  
20 vate ownership, to its highest and best use,” and that “the appraiser must avoid estimating  
21 a property-specific investment value to a particular owner instead of developing an opinion  
22 of the market value of the property if it were placed for sale on the open market.”

23           236. The land-transfer statute further requires that “[t]he value of the Federal land and  
24 non-Federal land to be exchanged under this section shall be equal or shall be equalized in  
25 accordance with this paragraph.” 16 U.S.C. § 539p(c)(5)(A). If the appraised value of the  
26 federal lands exceeds the value of the non-federal lands, Resolution Copper was required  
27

1 to convey additional non-federal land to the United States, make a cash payment, or both.  
2 16 U.S.C. § 539p(c)(5)(B)(i).

3 237. The Forest Service prepared two appraisals for the federal lands to be exchanged:  
4 one covering the 766-acre Mineral Withdrawal Area (“MWA”) parcel and one covering  
5 the 1,655-acre Mining Claim Zone (“MCZ”) parcel.

6 238. The appraisal for the MWA parcel assigned an estimated value for the approxi-  
7 mately 5 billion pounds of copper under the surface.

8 239. But the appraisal for the MCZ parcel valued the 35 billion pounds of copper be-  
9 neath the surface at zero dollars.

10 240. The decision to assign a \$0 value to the copper ore beneath the MCZ violates the  
11 land-transfer statute’s appraisal requirements.

12 241. The Secretary’s approval of the appraisals violates the land-transfer statute’s ap-  
13 praisal requirements.

14 242. The land conveyance violates the statute’s “Equal Value” requirements because  
15 the federal lands were more valuable than the non-federal lands. Resolution Copper was  
16 thus required to convey additional non-federal land to the United States, make a cash pay-  
17 ment, or both. 16 U.S.C. § 539p(c)(5)(B)(i). It failed to do so, and the government failed  
18 to require it as a necessary condition for the land exchange.

19 243. The Secretary’s acceptance, approval, and conveyance based on the unlawful ap-  
20 praisals, and as compounded by the illegal omission of the requirement of making an equal  
21 value exchange, is arbitrary, capricious, an abuse of discretion, not in accordance with the  
22 law, and contrary to the land-transfer statute itself. 5 U.S.C. §§ 701-706; 16 U.S.C. § 539p.

23 **COUNT XI**  
24 **Violation of Indian title**

25 244. Plaintiff incorporates by reference all preceding paragraphs.  
26  
27

1 245. As enrolled members and descendants of the Treaty of Santa Fe tribes, Apache  
2 members of Apache Stronghold have aboriginal rights under the law of Indian title to con-  
3 tinue to use and occupy Oak Flat for purposes of religious exercise.

4 246. The Treaty of Santa Fe tribes and their descendants, Apache members of Apache  
5 Stronghold, had actual, exclusive, and continuous use and occupancy of lands that included  
6 Oak Flat for a long time prior to the 1850s and thus established Indian title to Oak Flat.

7 247. A variety of evidence—archaeological, oral tradition, and other sources—shows  
8 the actual, exclusive, and continuous use and occupancy by Apaches of lands that included  
9 Oak Flat for a long time prior to the 1850s.

10 248. The Apache’s Indian title has not been extinguished by treaty, agreement, congres-  
11 sional action, or other authorized actions of the federal government.

12 249. The United States has never compensated the Treaty of Santa Fe tribes or any of  
13 their descendants as holders of Indian title for Oak Flat.

14 250. The Indian title of the Treaty of Santa Fe tribes and their descendants has not been  
15 extinguished by voluntary abandonment.

16 251. Individual Apache members of Apache Stronghold also hold individual Indian title  
17 to the use and occupancy of Oak Flat for purposes of religious exercise.

18 252. Individual Apache members of Apache Stronghold can show that their lineal an-  
19 cestors held, used, and occupied, as individuals, Oak Flat for purposes of religious worship,  
20 with the right and power to exclude all others, from time immemorial, until temporarily  
21 removed involuntarily.

22 253. Individual Apache members of Apache Stronghold can therefore show that they  
23 have Indian title to Oak Flat.

24 254. The title of individual Apache members of Oak Flat has not been extinguished by  
25 the government or by voluntary abandonment.

26 255. A notice of Lis Pendens is recorded in the property records of the Pinal County  
27 Recorder’s Office as of January 13, 2021. *See* Dkt. 58.

1 256. Resolution Copper's possession of Oak Flat is thus null, or subject to the Indian  
2 title of the Treaty of Santa Fe tribes and of individual Apache members of Apache Strong-  
3 hold, who are descendants of the Treaty of Santa Fe tribes.

4 257. Any permits for mining Oak Flat granted by the federal government are subject to  
5 and in violation of the Indian title of the Treaty of Santa Fe tribes and of individual Apache  
6 members of Apache Stronghold.

7 258. Activities supporting the physical destruction of Oak Flat are in violation of the  
8 Indian title of the Treaty of Santa Fe tribes and of individual Apache members of Apache  
9 Stronghold.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff respectfully request that the Court:

- 12 a. Declare that the transfer and destruction of Oak Flat violates and is invalid and void  
13 under federal law, the United States Constitution, the Treaty of Santa Fe, and other  
14 laws noted herein;
- 15 b. Declare that the Treaty of Santa Fe tribes and their descendants, including the rele-  
16 vant members of Apache Stronghold, have Indian title to Oak Flat;
- 17 c. Issue a permanent injunction prohibiting Defendants from conveying any right, title,  
18 or interest of the United States in Oak Flat to Resolution Copper or otherwise al-  
19 lowing or authorizing Resolution Copper to take any action affecting the surface or  
20 subsurface physical integrity of Oak Flat;
- 21 d. Issue a permanent injunction requiring the United States and Resolution Copper to  
22 restore the status quo that existed prior to the purported completion of the land ex-  
23 change in March 2026, including but not limited to reversing or rescinding the pur-  
24 ported land conveyance and remediating any damage to Oak Flat;
- 25 e. Set aside and vacate the United States' actions and the EIS and void any actions or  
26 decisions based on the EIS, including but not limited to the purported land convey-  
27 ance;

- 1 f. Award Plaintiff compensatory and nominal damages for the loss of their rights as
- 2 protected by the United States Constitution, the Treaty of Santa Fe, and federal law;
- 3 g. Award Plaintiff the costs of this action and reasonable attorney’s and expert witness
- 4 fees; and
- 5 h. Award such other and further relief as the Court deems equitable and just.

6 **JURY DEMAND**

7 Plaintiff requests a trial by jury on all issues so triable.

8 Respectfully submitted this 22nd day of April, 2026.

9  
10 Respectfully submitted,

11 /s/ Luke W. Goodrich

12 Luke W. Goodrich, *pro hac vice*

13 (DC Bar #977736)

14 Joseph C. Davis, *pro hac vice*

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