



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

P.O. Box 0, San Carlos, Arizona 85550
Phone (928) 475-1600 ❖ Fax (928) 475-2567

Tao Etpison
Vice-Chairman

July 12, 2022

Via email: hrc-sr-freedomofreligion@un.org

The Honorable Jose Francisco “Pancho” Cali Tzay
United Nations Special Rapporteur on the Rights of Indigenous Peoples
United Nations Human Rights Council

Re: Indigenous Peoples and the right to freedom of religion or belief – GA report of the Special Rapporteur on freedom of religion or belief

Dear Special Rapporteur Cali Tzay:

On behalf of the nearly 17,000 members of the San Carlos Apache Tribe (“Tribe”), I thank you for the opportunity to provide comments and respond to some of the key questions identifying both existing and emerging obstacles to the enjoyment of the right of freedom of religion or belief of indigenous peoples. It is my understanding that you are tasked with examining trends, incidents and governmental actions that are incompatible with the right to freedom of religion or belief.

I would like to take this opportunity to describe some of the facts and obstacles the Tribe has confronted in its decades-long effort to preserve a site which is sacred to the Western Apache people and other American Indian tribes in the Southwestern United States. The tribal sacred area of *Chi’chil Bildagoteel*, known as Oak Flat, is on U.S. Forest Service lands.

The Oak Flat area overlies a deep underground copper ore body. Resolution Copper and its parent companies, Rio Tinto and BHP, have attempted to trade widely dispersed lands owned

Special Rapporteur Calí Tzay

Re: Oak Flat sacred area

July 12, 2022

Page 2 of 5

by Rio Tinto or BHP in exchange for lands on the Tonto National Forest, which covers the copper ore body.

The Tribe, other affected tribes, together with conservation, recreational, religious and other allies, have successfully blocked repeated legislative attempts to exchange the Oak Flat area and give title to Resolution Copper. For almost a decade, the Tribe and our indigenous and non-indigenous allies played by the “rules”. The Tribe and our allies have spent thousands of dollars engaging in lobbying, engaging expert witnesses, testifying, preparing evidence and otherwise participating in the political process to block legislative efforts by Rio Tinto, BHP and other mining connected interests to get Congress to pass a land exchange act.

At 7,000 feet underground, the ore deposit is exceptionally deep and Resolution proposes to use a mining technique called block cave mining. This mining technique will eventually create an enormous crater up to two miles wide and 1,000 feet deep at the surface which will destroy Oak Flat. This area will be permanently off-limits to humans, even centuries after the mine is closed. The site will be eternally poisoned by toxic metals and contaminated ground and surface waters. Additionally, hundreds of acres of Forest Service public lands will be permanently inaccessible to the public as auxiliary lands needed for pipelines, roads and other essential mining uses.

The Southeast Arizona Land Exchange Act was a piece of federal legislation forced into the Fiscal Year 2015 National Defense Authorization Act (“NDAA”). The NDAA is an exceptional piece of legislative wrangling since it is not subject to amendment. The legislation must be passed by the Congress as finally drafted and presented for voting. The NDAA, as the result of back room deals subverting the will of the majority of members of Congress, transfers Oak Flat to Resolution Copper Mining through the Southeast Arizona Land Exchange Act.

Covering 4,309 acres, the Oak Flat area lies within the traditional territory of the *T’iis Tsebán* (the “cottonwood trees gray among rocks people”), also known as the “Pinal Band” of Apaches, and is closely associated with the related *Tsé Binesti’é* (the “surrounded by rocks people”), also known as the Aravaipa Band. At least eight Apache clans have direct ties to this area. Tribal members continue to visit *Chi’chil Bildagoteel* for prayer and a wide range of traditional needs and practices. An ethnographic and ethnohistoric study of the area surrounding Oak Flat, conducted by Anthropological Research, LLC, at the request of the Tonto National Forest, identified 404 traditional cultural properties of at least nine tribes with traditional ties to the area.

Chi’chil Bildagoteel (pronounced Chi Chill Bił Dah Go Tell, or “a broad flat of Emory oak trees”), is a culturally and geographically defined landscape within the Tonto National Forest whose ecological integrity is vital to the continuation of Western Apache cultural practices, particularly to many members of the San Carlos Apache Tribe. Since time immemorial, indigenous people have gone to Oak Flat to participate in ceremonies, to pray, to gather

Special Rapporteur Calí Tzay

Re: *Oak Flat* sacred area

July 12, 2022

Page 3 of 5

medicines foods and ceremonial items, and to seek and obtain peace and personal cleansing. *Chi'chil Bildagoteel* is registered on the National Register of Historic Places as a Traditional Cultural Property. An extensive ethnographic study was prepared for Forest Service which documented the unique religious, cultural and traditional connections of at least nine federally recognized Indian tribes to the Oak Flat area.

Members of my Tribe utilize the Oak Flat area for traditional ceremonies, such as the Sunrise Dance, where we celebrate the event of a girl's maturation from puberty over four days, through dance, drumming, song and prayer, and the visitation of Crown Dancers. It is a place where Apache Holy Ground rituals occur, where we commune with and sing to our Creator God, and celebrate our holy spirits, including our mountain spirits, the *Ga'an*. It is a place filled with rock paintings and petroglyphs, what some may describe as the footprints and the very spirit of our ancestors, hallmarks akin to the art found in gothic cathedrals and temples, like the Western Wall in Jerusalem, St. Peter's Basilica, in Vatican City, or Angkor Wat in Cambodia. This is why I call Oak Flat the Sistine Chapel of Apache religion.

Oak Flat is also a burial ground, a holy cemetery. Recently, using cadaver dogs, an effort which was not done with the approval of the tribes, the Forest Service found the remains of up to 100 bodies, many of whom were most likely our Apache Ancestors.

Oak Flat is also a place where our members conduct traditional harvesting of plants important to our diet, such as acorns from Emory oaks, and healing medicines for a wide range of ailments.

Oak Flat is a pristine, bucolic oasis of many varied plants and animals that depend on Oak Flat's waters. Water is very scarce in Arizona. Pinal County predicts an 8.1 million acre foot deficit in its water supply. And yet, Oak Flat is a place of water, what Apaches call *tu*, where seeps, some 46 springs, and a number of streams and ponds form an integral part of the region's weather system and the formation of ancient aquifers, like the Apache Tuff, which lies below the town of Superior and supplies the town's municipal water system.

The area surrounding Superior, Arizona, as well as Oak Flat, Apache Leap and *Ga'an* Canyon, was also the area where mining interests and the popular press ignited vigilante, genocidal and military campaigns between 1859 and 1874 that killed over 380 Pinal Apaches – including many women and children – and resulted in the confining of survivors in a prisoner of war camp known as Old San Carlos.

For these reasons and other factors, Oak Flat was listed in the U.S. National Register of Historic Places. Yet, if it becomes operational, the Resolution Copper Mine will swallow up and completely destroy Oak Flat in its entirety – all of the historic, cultural properties, our burial ground, our place of worship, our church. Rio Tinto, BHP Billiton and the Forest each admit this wholesale destruction will occur.

Special Rapporteur Calí Tzay

Re: Oak Flat sacred area

July 12, 2022

Page 4 of 5

Ironically, the Forest was established in 1905 principally to protect the region's watershed. However, the Southeast Arizona Land Exchange Act and the 1872 Mining Act eliminates these protections. According to federal records, the block cave mining technique was chosen by Resolution Copper because it was the most economical method to extract copper ore over 1 mile below the surface. In the process, the Oak Flat area will subside or cave-in starting in year six after the mining begins, ultimately collapsing an area approximately 2 miles in diameter of the earth's surface and swallowing and destroying Oak Flat. The mine will also consume 680,000 acre-feet of water, enough water to supply 168,000 homes over 40 years, and result in mining waste that will eventually be stockpiled over an area encompassing six square miles and 500 feet high. Imagine one-quarter of Manhattan, from Canal Street through Wall Street and down to the Staten Island Ferry buried in up to 50 stories of rubble and waste rock. Just imagine the environmental disaster this stockpile of mining waste will create for the whole area, including the San Carlos Apache Reservation which stands only 14 miles away.

In 40 years, when the copper runs out if Resolution Copper is allowed to mine, the quality of life, especially the elimination and pollution of scant water supplies will affect not just Apaches, but all humans that live in the surrounding areas. Clearly and without question, this mine will put Apache children, grandchildren and those not born at risk. Without water, I fear for the very survival and existence of Apache life, culture and religion.

There are some who may say that the indigenous peoples of the United States have protections which other indigenous peoples in other countries do not have. This is undoubtedly true but it does not mean that my people and other indigenous peoples in the United States are not exploited by corporate greed or government machinations. My people are still poor. My people suffer disproportionately from the deprivation of all manner of government services ranging from health care, education, public safety, etc. simply because the funding is not available. And, after the degradation to aquifers, streams, air and the land which will be visited upon the Oak Flat and other areas by Resolution Copper Mining, the needs of my people for government services will only be greater.

The Tribe has connected with the aboriginal peoples of Australia in the last several years. This occurrence was serendipitous and arose because of our common concern for the damages wrought by Rio Tinto and BHP in Australia. Sacred and traditional sites thousands of years old were recently destroyed by Rio Tinto. We have found common cause with our brothers and sisters in Australia in our antipathy to Rio Tinto's and BHP's disregard for the sacred and cultural values of indigenous people.

It is my hope and prayer that the indigenous people of Australia will have submitted a comment to you for this important work you do. I will be happy to assist in making any necessary introductions.

Special Rapporteur Calí Tzay

Re: Oak Flat sacred area

July 12, 2022

Page 5 of 5

My staff and departments of the Tribe have literally thousands of pages of documentation which may assist you in the preparation of your report. The Tribe will gladly assist you in any manner we can. Simply let me know.

As we say in our Apache language, Ahi'yi'é (thank you) in advance for your consideration of the Tribe's efforts to protect our religious beliefs and practices.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman