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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Apache Stronghold,

Plaintiff,

v.

United States of America, *et al.*,

Defendants.

Resolution Copper Mining, LLC,

Defendant-Intervenor.

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

**DEFENDANT-INTERVENOR  
RESOLUTION COPPER'S BRIEF  
IN OPPOSITION TO PLAINTIFF'S  
EMERGENCY MOTION FOR LIFT  
OF STAY AND FOR INJUNCTION  
PENDING APPEAL**

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## INTRODUCTION

Plaintiff Apache Stronghold’s Emergency Motion for Lift of Stay and for Injunction Pending Appeal, ECF 150, asks this Court to enjoin a land exchange that Congress directed the Secretary of Agriculture to “expedite” more than a decade ago. 16 U.S.C. § 539p(a). Both this Court and the Ninth Circuit already denied Plaintiff the same relief it seeks now. This Court found that “Plaintiff has not identified a likelihood of success on, or serious questions going to, the merits of its claims.” ECF 57 at 3, 23. The *en banc* Ninth Circuit affirmed in all respects. *Apache Stronghold v. United States*, 101 F. 4th 1036, 1055 (9th Cir. 2024). Those rulings were correct when made, and they remain correct now.

Plaintiff suggests the close Ninth Circuit vote and the length of that court’s opinions reveal “serious questions” that require this Court to reverse course and issue an injunction. But Plaintiff made the same “serious questions” argument to the Court of Appeals, which rejected it and affirmed this Court’s holding that Plaintiff had shown neither a likelihood of success nor serious questions. That holding remains binding on this Court.

Unable to show likelihood of success or serious questions, Plaintiff is left to argue that the Supreme Court *might* yet grant a writ of certiorari and *might* reverse on the merits. But mere hope is insufficient for the “extraordinary remedy” of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). And Plaintiff cannot show any need for immediate relief: Nothing will happen until at least June 16—plenty of time for the Supreme Court to decide whether to grant review. Until then, Plaintiff’s claims fail under binding Ninth Circuit law. There is no sound basis for this Court to intervene now based on pure speculation about what the Supreme Court might eventually do.<sup>1</sup>

Even if Plaintiff could demonstrate likelihood of success or serious questions—the tests it failed before in both this Court and the Ninth Circuit—Plaintiff’s request still must be denied. To obtain an injunction pending appeal, Plaintiff must prove the alleged harm

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<sup>1</sup> The Forest Service on April 17 provided notice that it plans to proceed with the land exchange if the Supreme Court has denied review by June 16, but “may reevaluate” its plans should Plaintiff’s petition be granted or remain pending. ECF 148 at 1.

1 will occur “during the pendency of the appeal.” *Doe #1 v. Trump*, 957 F.3d 1050, 1070 (9th  
 2 Cir. 2020). Plaintiff cannot make that showing, since its alleged harms are overwhelmingly  
 3 premised on events that would not occur until long after the exchange.

4 Plaintiff’s most dramatic claim is that the mine will destroy Oak Flat and with it the  
 5 Apache religion. But it is undisputed that, even following the land exchange, there will be  
 6 no subsidence in Oak Flat for many years while Resolution conducts other field work. Less  
 7 dramatically, Plaintiff complains that conveyance of title to Oak Flat will limit its access to  
 8 the area. But under the Exchange Act, Resolution must preserve public access to Oak Flat  
 9 Campground for as long as safely possible—most likely decades. Resolution will similarly  
 10 preserve public access to the parcel for many activities consistent with the status quo.

11 Plaintiff also fails to explain why the Court should second-guess Congress’s  
 12 judgment that the land exchange is in the public interest. As Congress and multiple  
 13 presidential administrations have determined, development of domestic copper resources is  
 14 essential to the American economy and national security. The Department of Justice under  
 15 both President Biden and President Trump has opposed Plaintiff’s legal claims and  
 16 supported the land exchange. Most recently, President Trump determined that accelerated  
 17 approval of the Resolution project itself is in the public interest, adding an exclamation  
 18 point to Congress’s findings made more than a decade ago.

19 An injunction would only further delay Resolution’s development of these critical  
 20 resources—which Congress commanded the Executive to “expedite” more than 10 years  
 21 ago—at significant cost to Resolution and to the public. Plaintiff’s fourth bite at the same  
 22 apple should not be a vehicle for thwarting the expressed will of the elected branches.

## 23 BACKGROUND

### 24 I. Procedural History.

25 In January 2021, the Forest Service published its Final Environmental Impact  
 26 Statement (“FEIS”) and draft Record of Decision (“ROD”) for the project. *See* U.S. Dep’t  
 27 of Agric., Press Release, *Tonto National Forest Releases Final Environmental Impact*  
 28 *Statement, Draft Decision for Resolution Copper Project and Land Exchange* (Jan. 15,

2021), <https://tinyurl.com/25yrw2vp>. Just before the Forest Service published the FEIS, Plaintiff sued the federal government to enjoin the land exchange, claiming violations of the 1852 Treaty of Santa Fe, the First Amendment, the Due Process Clause, and the Religious Freedom Restoration Act (“RFRA”). ECF 1 at 23–30.

Following publication of the FEIS, Plaintiff moved for a temporary restraining order and preliminary injunction. ECF 7 at 2. This Court denied the TRO, finding no “immediate and irreparable injury” as “sale of the land at issue (and the subsequent mining project) is the action that will allegedly harm Plaintiff, not the publication of the FEIS.” ECF 13 at 3. After a hearing, the Court also denied a preliminary injunction because Plaintiff failed to “demonstrate[] a likelihood of success on, or serious questions going to, the merits of its claims.” ECF 57 at 3. The Court declined to address the other *Winter* factors. *Id.* at 23.

Plaintiff sought an emergency injunction pending appeal. ECF 61 at 2. This Court denied Plaintiff’s request for the same reasons it denied a preliminary injunction: “Plaintiff is not entitled to a Rule 62(d) injunction pending appeal because it has not demonstrated a likelihood of success on, or serious questions going to, the merits of its claims.” ECF 64 at 2. Plaintiff then sought emergency relief from the Ninth Circuit Court of Appeals. *See* Plf.’s Emergency Motion for Injunction Pending Appeal under Circuit Rule 27-3, *Apache Stronghold v. United States*, No. 21-15295 (9th Cir. Feb. 23, 2021), ECF 6. The court denied Plaintiff’s request because, in the interim, the Forest Service rescinded the FEIS to allow time to more “fully understand concerns raised by Tribes and the public.” U.S. Dep’t of Agric., *Project Update* (Mar. 1, 2021), <https://perma.cc/W348XUKH>; Order, *Apache Stronghold*, No. 21-15295 (9th Cir. Mar. 5, 2021), ECF 26 at 1–2. After that, this Court granted a joint motion by Plaintiff and the government to stay the case. *See* ECF 81.

In 2022, a three-judge panel of the Ninth Circuit affirmed this Court’s order denying a preliminary injunction. *Apache Stronghold v. United States*, 38 F.4th 742 (9th Cir. 2022). On rehearing before an eleven-judge, *en banc* panel, the Court again affirmed, holding that “a disposition of government real property does not impose a substantial burden on religious exercise when it has ‘no tendency to coerce individuals into acting contrary to their religious

beliefs,’ does not ‘discriminate’ against religious adherents, does not ‘penalize’ them, and does not deny them ‘an equal share of the rights, benefits, and privileges enjoyed by other citizens.’” *Apache Stronghold*, 101 F.4th at 1043 (citations omitted). The Ninth Circuit majority explained why that holding follows directly from the Supreme Court’s decision in *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 450 (1988). Plaintiff petitioned for rehearing before the full *en banc* Ninth Circuit, but none of that court’s 29 judges called for a vote. *See Apache Stronghold*, 101 F.4th at 1043. Plaintiff then filed a petition for writ of certiorari in the Supreme Court in September 2024. The Court has not yet ruled on the petition.

On April 17, 2025, consistent with this Court’s earlier order (ECF 81 at 2), the Forest Service gave notice of its intent to re-publish the FEIS and draft ROD “no earlier than 60 days from the date” of the notice. ECF 148 at 1. But the Forest Service noted that if Plaintiff’s certiorari petition remains pending or has been granted by the end of the 60 days, then it may “reevaluate how to proceed.” *Id.* Plaintiff thereafter filed this request for an emergency injunction pending appeal. ECF 150.

## **II. The Exchange Act.**

Over ten years ago, Congress enacted and President Obama signed into law the Southeast Arizona Land Exchange and Conservation Act (“Exchange Act”), codified at 16 U.S.C. § 539p. Its express purpose: “to authorize, direct, facilitate, and expedite the exchange of” one of the world’s largest copper deposits held by the United States for high-priority conservation lands held by Resolution. 16 U.S.C. § 539p(a).

The Exchange Act requires the Secretary of Agriculture to exchange 2,422 acres of copper-rich Forest Service land for 5,460 acres of Resolution-owned conservation land across Arizona. *Id.* § 539p(c)(1). The Forest Service lands include the “Oak Flat Parcel,” which is a combination of the Oak Flat Withdrawal Area and other federal lands overlying Resolution’s 185 unpatented mining claims. *See* Declaration of Victoria Peacey (“Peacey Decl.”) ¶¶ 11, 14 (attached as Exhibit A); 16 U.S.C. § 539p(b)(2), (6). Once conveyed, the Oak Flat Parcel will be available to Resolution “for mining and related activities subject to

1 and in accordance with all applicable Federal, State and local laws pertaining to mining and  
2 related activities on land in private ownership.” 16 U.S.C. § 539p(c)(8).

3 In exchange, the United States will gain 5,460 acres of valuable conservation lands  
4 for the public trust. 16 U.S.C. § 539p(d)(1); Peacey Decl. ¶¶ 58–59. Among them are rare  
5 wetlands, proposed critical habitat for the threatened Mexican spotted owl, one of the  
6 Southwest’s largest mesquite bogs, migratory bird flyways, rock climbing areas, and  
7 archaeological sites. Peacey Decl. ¶ 59; U.S. Dep’t of Agric., *Final Environmental Impact*  
8 *Statement: Resolution Copper Project and Land Exchange* at 51–53 (Jan. 2021) (“2021  
9 FEIS”), <https://tinyurl.com/v8pd7mpk>. The United States also will receive 140 acres of  
10 private land to protect Apache Leap—an area of religious significance to the Apache  
11 people. Peacey Decl. ¶¶ 19–22; see U.S. Dep’t of Agric., *Apache Leap Special Management*  
12 *Area Management Plan* at 11–12 (Dec. 2017), <https://www.apacheleapsma.us/>.

### 13 **III. The Planned Mine.**

14 Resolution plans to extract 1.4 billion tons of ore from beneath the Oak Flat Parcel  
15 by reengaging the Magma Mine, which first opened over 114 years ago. 2021 FEIS at ES-  
16 1, ES-3, *supra*. To that end, since acquiring the site, Resolution has diligently reclaimed  
17 areas impacted by the prior Magma operations. Peacey Decl. ¶ 13. Resolution will use an  
18 underground mining technique known as panel caving to access the ore body from below,  
19 rather than mining directly on the surface of Oak Flat or surrounding areas. *See* Declaration  
20 of Matthew Pierce (“Pierce Decl.”) ¶ 16 (attached as Exhibit B). Over time, as Resolution  
21 extracts ore from the ore body by caving, the land surface above the ore body will gradually  
22 move downward or subside. *Id.* at ¶ 17.

23 Following the land exchange, Resolution will continue its underground exploration  
24 of the target ore body to assess its mineral potential, a process that should cause no surface  
25 disturbance. *Id.* at ¶¶ 14–15. At least several months after the exchange, Resolution may  
26 install new drill pads, ancillary roads, and a helipad to support exploration activities. Peacey  
27 Decl. ¶ 52. These activities will cause, at most, negligible surface impacts. *Id.* Incremental  
28

1 subsidence at the site is not expected to begin until the sixth year of mine operations, which  
2 will start only after several years of further exploration. Pierce Decl. ¶¶ 20–22.

3 **IV. Mitigation.**

4 Resolution has worked for years to reduce the project’s cultural and environmental  
5 impacts. It voluntarily has undertaken extensive mitigation and cultural preservation efforts,  
6 above and beyond what state and federal law require. *See* Peacey Decl. ¶¶ 19–28, 36–64;  
7 2021 FEIS at ES-30, *supra*. For example, Resolution commissioned an ethnographic study  
8 of traditional cultural properties that involved literature reviews, oral interviews, and field  
9 visits. Peacey Decl. ¶¶ 23–28; 2021 FEIS at 826, 1007, <https://tinyurl.com/3k5ynuk5>.

10 Resolution also has committed significant funds to a Forest Service-hosted Tribal  
11 Monitor program to identify places, artifacts, and natural areas of importance at the site.  
12 Peacey Decl. ¶ 26. And it has tailored its mine plan to prevent impacts on culturally  
13 significant sites, even though doing so will require it to leave over half a billion tons of ore  
14 in place. *Id.* at ¶ 28; 2021 FEIS at 173, 188, *supra*. Separately, Resolution has committed a  
15 total of \$53.5 million to support various programs aimed at tribal preservation, protection,  
16 recognition, cultural heritage, and education. Peacey Decl. ¶ 56.

17 For the surrounding communities, Resolution will commit a total of \$5 million to  
18 addressing effects of the mine on historic properties and community infrastructure within  
19 the towns of Superior, Miami, Globe, Kearny, Hayden, and Winkelman. *Id.* at ¶ 62. It has  
20 also committed \$2 million to the State of Arizona to support cultural preservation. *Id.* at  
21 ¶ 63. These measures complement Resolution’s other efforts to serve the local communities  
22 by, for example, providing \$18 million between 2013 and 2024 for emergency services,  
23 education, health, economic development, and cultural heritage. *Id.* at ¶ 67.

24 Regarding access to Oak Flat, “[a]s a condition of conveyance of the Federal Land,”  
25 Resolution is required to “provide access to the surface of Oak Flat Campground”—a site  
26 sometimes used for religious ceremonies conducted by Plaintiff’s members, *see id.* at ¶ 51;  
27 *Apache Stronghold*, 38 F.4th at 749—“to members of the public, including Indian tribes, to  
28 the maximum extent practicable, consistent with health and safety requirements, until such



time as the operation of the mine precludes continued public access[.]” 16 U.S.C. § 539p(i)(3). The result is that Plaintiff and the public are expected to be able to continue to access Oak Flat Campground for at least a few decades. Peacey Decl. ¶ 50. Resolution also is committed to preserving, for about a decade, the status quo for public access to much of the Oak Flat Parcel beyond the campground, including for religious ceremonies, Emory oak harvesting, grazing, climbing, off-roading, and crossing the land for hunting. *Id.* at ¶¶ 36–49, 52–54.

### LEGAL STANDARD

Injunctions are “extraordinary and drastic reme[dies]” that should be granted only in exceptional circumstances. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). “In evaluating a motion for an injunction pending appeal, [this] Court considers the same *Winter* factors considered for” a preliminary injunction motion. ECF 64 at 1. Thus, the moving party must make a “clear showing” that “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter*, 555 U.S. at 20, 22.

The moving party also must prove that the alleged harm will occur “during the pendency of the appeal,” *Doe*, 957 F.3d at 1070, and that the requested injunction is “narrowly tailored to remedy the specific harm shown,” *E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019) (cleaned up). This is an “exacting standard[.]” *Poder in Action v. City of Phoenix*, 481 F. Supp. 3d 962, 967 (D. Ariz. 2020).

### ARGUMENT

Plaintiff’s latest injunction motion is materially identical to its prior requests to this Court and the Ninth Circuit—all of which were correctly denied because Plaintiff cannot show a likelihood of success on the merits or even serious questions going to them. Plaintiff cannot demonstrate a cognizable burden under either RFRA or the First Amendment. Nor does Plaintiff meaningfully address the other *Winter* factors necessary for an injunction. Plaintiff cannot show that it is likely to suffer irreparable harm during the appeal absent an



injunction, nor does it attempt to prove that its requested injunction is narrowly tailored to the harms it asserts. Likewise, Plaintiff fails to show that the balance of equities tips sharply in its favor, or that an injunction is in the public interest.

Just as this Court did in 2021 and the Ninth Circuit did in 2022, the Court should deny Plaintiff's request to enjoin the statutorily mandated land exchange.

**I. As this Court and the Ninth Circuit already have determined, Plaintiff will not prevail on the merits.**

“‘[L]ikelihood of success on the merits is the most important factor’” to consider in deciding whether to grant an injunction. *Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1038 (9th Cir. 2024) (citation omitted). As it stands, there can be no question about the merits of this case: The Ninth Circuit *en banc* has affirmed this Court's ruling that Plaintiff *cannot* succeed on the merits. Plaintiff offers no legal basis for issuing an injunction despite those rulings.

**A. Plaintiff's request is precluded by the Ninth Circuit's decision.**

The Ninth Circuit *en banc* held that Plaintiff cannot demonstrate “a ‘likelihood of success on, or serious questions going to, the merits’ of its claims.” *Apache Stronghold*, 101 F.4th at 1048–49 (quoting ECF 57 at 3). Plaintiff asks this Court to disregard its own prior ruling *and* the Ninth Circuit's mandate that Plaintiff “cannot show that it is entitled to preliminary injunctive relief.” *Id.* at 1065. That request ignores the reality that once a case has been decided by an appellate court, the District Court must treat the issues decided on appeal “as finally settled.” *United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007). This Court thus should decline both Plaintiff's invitation (at 11–14) to “intermeddle” with the Ninth Circuit's disposition of the issues here and its plea (at 2–3) for “further relief” that is inconsistent with the appellate court's mandate. *Thrasher*, 483 F.3d at 981.

Conceding it cannot prove it is likely to succeed on the merits, Plaintiff instead urges the Court to find that it has satisfied the lesser burden of raising “serious questions” about the merits of its claims. *See* Mot. at 11, 13–14. Yet this Court and the Ninth Circuit ruled Plaintiff could not meet that lesser burden, either. This Court's 2021 order—which the

1 Ninth Circuit affirmed in all respects, *see Apache Stronghold*, 101 F.4th at 1065—expressly  
2 rejected Plaintiff’s contentions under both standards. *See* ECF 57 at 3. Plaintiff urged the  
3 Ninth Circuit to reverse this Court’s ruling on both grounds, but again the Ninth Circuit  
4 declined. *See* Plf.-App.’s Opening Brief at 45, *Apache Stronghold v. United States*, No. 21-  
5 15295 (9th Cir. Mar. 18, 2021), ECF 33 (asserting “serious questions”).

6 Further, Plaintiff’s contention (at 11) that its appellate losses were narrow does not  
7 demonstrate a “serious question” about the merits of its claims. A 6-5 *en banc* Ninth Circuit  
8 decision is no less fully binding on this Court than a unanimous one. Anyway, the “‘less  
9 demanding’ [serious questions] standard requires serious *factual* questions” that “‘cannot  
10 be resolved one way or the other at the hearing on the injunction because they require more  
11 deliberative investigation.’” *Assurance Wireless*, 100 F.4th at 1031 (emphasis added;  
12 citations omitted); *see, e.g., Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98  
13 F.4th 1180, 1192 (9th Cir. 2024) (finding “serious questions” based on a “genuine scientific  
14 and factual debate” about whether trapping regulations would cause “the unlawful ‘take’ of  
15 grizzly bears”). “[A] ‘serious question’ does not exist where the plaintiff’s claim is ‘merely  
16 plausible’ or just because there are legal questions not directly answered by past precedent,”  
17 although even that’s not the case here. *All. for the Wild Rockies v. Petrick*, 68 F.4th 475,  
18 497 (9th Cir. 2023) (citation omitted). Since Plaintiff “fail[s] to show a likelihood of success  
19 or serious questions on the merits, [it] cannot obtain injunctive relief—regardless of [any]  
20 irreparable harm [it may] face.” *Assurance Wireless*, 100 F.4th at 1039.

21 Nor does the pendency of Plaintiff’s petition for writ of certiorari indicate there are  
22 serious questions on the merits of its claims. It is the Ninth Circuit’s mandate that currently  
23 binds this Court, and Plaintiff offers no authority suggesting that the Supreme Court’s mere  
24 consideration of whether to accept discretionary review improves its likelihood of success.  
25 Plaintiff’s suggestion (at 5) that the Supreme Court’s multiple relists indicate the Court is  
26 “actively considering” the petition is thus irrelevant. In any event, the Supreme Court  
27 routinely relists cases multiple times before denying certiorari. 63% of cases relisted five or  
28 more times are denied. *See* Ralph Mayrell & John Elwood, *The Statistics of Relists Over*

1 *the Past Five Terms*, SCOTUSblog (Jan. 4, 2022), <https://tinyurl.com/mr4y69bv>. Just last  
 2 year, the Supreme Court denied certiorari in *74 Pinehurst LLC v. New York* after eleven  
 3 relists. *See* 218 L.Ed.2d 66 (U.S. 2024).

4 In short, the injunction that Plaintiff seeks is foreclosed by the Ninth Circuit’s  
 5 unequivocal ruling.

6 **B. Plaintiff cannot demonstrate a cognizable burden.**

7 Notwithstanding the prior rulings on this very issue by this Court and the Ninth  
 8 Circuit, if this Court were inclined to start its analysis of the law from scratch, it still would  
 9 have to conclude that Plaintiff cannot show it is likely to succeed on the merits or has raised  
 10 serious questions sufficient to support an injunction.

11 For one thing, RFRA cannot negate a land exchange expressly mandated by a  
 12 subsequent Act of Congress. Although RFRA generally applies to later-enacted statutes  
 13 “unless [they] explicitly exclude[] such application,” 42 U.S.C. § 2000bb-3(b), Congress  
 14 “remains free” to exempt later statutes “either expressly or by implication as it chooses.”  
 15 *Dorsey v. United States*, 567 U.S. 260, 274 (2012).

16 The Exchange Act is a textbook example of exemption by implication. *See Apache*  
 17 *Stronghold*, 101 F.4th at 1089 (Bea, J., concurring). Based on nearly a decade of study,  
 18 Congress understood the Exchange Act could affect Native American religious practices.  
 19 *See, e.g., Resolution Copper: Hearing Before the S. Comm. on Nat. Res.*, 112th Cong. 68–  
 20 69 (2012) (statement of Terry Rambler, Chairman, San Carlos Apache Tribe),  
 21 <https://tinyurl.com/yc656kyj>. And it expressly accommodated such concerns by requiring  
 22 “consultation with affected Indian tribes” to “minimize the adverse effects,” 16 U.S.C.  
 23 § 539p(c)(3), yet unequivocally ordered that the exchange “*must occur* if the preconditions  
 24 are met.” *Apache Stronghold*, 101 F.4th at 1090 (Bea, J., concurring) (emphasis added).  
 25 Thus, Plaintiff’s requested relief—halting the land exchange—is irreconcilable with the  
 26 “one thing” the Exchange Act “clearly requires.” *Id.* Where two statutes “simply and clearly  
 27 contradict[]” each other, “the later enactment”—in this case, the Exchange Act—governs.  
 28 *Lockhart v. United States*, 546 U.S. 142, 148–49 (2005) (Scalia, J., concurring).

Further, and contrary to Plaintiff’s suggestion (at 12–13), the Ninth Circuit correctly held the Supreme Court’s decision in *Lyng* forecloses Plaintiff’s claims. In *Lyng*, the Court held that “incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs,” are not a “substantial burden” under the Free Exercise Clause. 485 U.S. at 450. The Ninth Circuit here observed that the “project challenged . . . is indistinguishable from that in *Lyng*,” so “[u]nder *Lyng*, Apache Stronghold’s Free Exercise Clause claim must be rejected.” *Apache Stronghold*, 101 F. 4th at 1052. The RFRA claim fares no better, as RFRA did not displace *Lyng*. *See id.* at 1056.

## **II. Plaintiff will not suffer irreparable harm during its appeal.**

Plaintiff also cannot show that it is “likely to suffer irreparable harm” during the pendency of its appeal. *Winter*, 555 U.S. at 20; *Doe*, 957 F.3d at 1070. When “[m]ultiple contingencies must occur before” a plaintiff’s asserted injuries may “ripen into concrete harms,” it has not shown irreparable harm sufficient for an injunction. *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 675 (9th Cir. 1988). That is precisely the situation here: None of the harms Plaintiff alleges will result from the land exchange, but depend on uncertain and unlikely future events. As a result, the injunction Plaintiff seeks is not “narrowly tailored” to the “specific harm[s]” it asserts. *Barr*, 934 F.3d at 1029. Its request should, therefore, be denied.<sup>2</sup>

Plaintiff contends (at 14–15) that if the land exchange moves forward during its appeal, it will face the “permanent, physical destruction of Oak Flat” and the possibility that Resolution may exclude Plaintiff’s members from Oak Flat or restrict the religious ceremonies held there. But it is primarily “the ultimate completion of the mine”—not the land exchange—that Plaintiff believes will irreparably harm Oak Flat. Mot. at 14. And before any mining can begin, myriad other permitting, regulatory, and business hurdles

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<sup>2</sup> Plaintiff’s overbroad demand is exacerbated by its inexplicable request that the requested injunction remain in place for 21 days after any denial of certiorari—the point at which even Plaintiff must concede it has zero chance of prevailing on the merits.

1 must be cleared. *See* 2021 FEIS at 27–30 tbl. 1.5.6-1, *supra* (listing outstanding permits,  
2 licenses, and approvals). It will take years before those contingencies are resolved.

3 Relatedly, Resolution has much technical work to do before it can extract any ore.  
4 For example, Resolution must complete additional exploratory activities on the Oak Flat  
5 Parcel, which will require several years and cause, at most, negligible surface disturbance.  
6 *See* Pierce Decl. ¶¶ 14–15; Peacey Decl. ¶¶ 52–53. And even after panel caving begins,  
7 subsidence impacts are not expected to begin to appear until the sixth year of mining  
8 operations. Pierce Decl. ¶¶ 20–22. Conveyance of title will not cause any immediate  
9 destruction of Oak Flat necessitating the injunction Plaintiff seeks.

10 Plaintiff argues (at 14) that “immediately” following the land exchange, “preparatory  
11 activities”—such as the construction of “new roads,” “a water treatment plant,” “an admin  
12 building,” and “substations”—will “cause irreparable damage.” Plaintiff fails to mention,  
13 however, that the Oak Flat Parcel already is traversed by numerous Forest Service roads  
14 and other surface infrastructure, including camping pads, outdoor toilets, picnic sites, and  
15 more. *See* Peacey Decl. ¶ 53 & Ex. C. Regardless, the portion of the FEIS that Plaintiff cites  
16 clearly states that “construction of new facilities” will not begin for at least one year—that  
17 is, mid-2026 at the earliest. 2021 FEIS at 56 & fig. 2.2.2-3, *supra*. And most of those new  
18 facilities will be constructed on private land that Resolution already owns. Peacey Decl.  
19 ¶ 53. Any potential surface disturbance to the Oak Flat Parcel is at least several months  
20 away and will be minimal, impacting less than 0.4% of the parcel’s surface area. *Id.* at ¶ 52.  
21 As a result, none of Resolution’s early construction activities are expected to affect its  
22 commitments to maintain existing public access to the Oak Flat Parcel. *Id.* at ¶ 54.

23 Plaintiff also selectively quotes (at 14) the FEIS to suggest *future mining activity*  
24 would cause destruction that is “immediate, permanent, and large in scale.” But again,  
25 Plaintiff fails to connect this statement to the action it asks this Court to enjoin—the land  
26 exchange. The Court should decline Plaintiff’s overbroad and unnecessary request.

27 Moreover, Plaintiff will not experience irreparable harm caused by any loss of access  
28 to the Oak Flat Parcel due to the land exchange. *Cf.* Mot. at 14–15. Under the Exchange

Act, Resolution must preserve public access to Oak Flat Campground for as long as safely possible. 16 U.S.C. § 539p(i)(3). This access will likely continue for decades. Peacey Decl. ¶ 50. And with respect to the remainder of the Oak Flat Parcel, Resolution is committed to maintaining public access according to the status quo—including for Emory oak harvesting, rock climbing and bouldering, and off-road recreation—for about a decade. *Id.* at ¶¶ 36–49.

Accordingly, for the foreseeable future, public access to the Oak Flat Parcel for religious ceremonies will remain as it is now. *Id.* at ¶¶ 50–54. So, to the extent Plaintiff may experience any harm from the land exchange itself, or from the broader mine project, those harms depend on “[m]ultiple contingencies” that are not certain to occur. *Caribbean Marine Servs. Co.*, 844 F.2d at 675. In fact, they are virtually guaranteed not to occur during the pendency of the appeal, as Resolution is required by statute to preserve access to Oak Flat Campground for as long as safety considerations allow. *See* 16 U.S.C. § 539p(i)(3).

Plaintiff also suggests that “[i]rreparable harm is relatively easy to establish in a First Amendment case.” Mot. at 14 (citation omitted). But “the mere assertion of First Amendment rights does not automatically require a finding of irreparable injury.” *CTIA—The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019). This isn’t a typical First Amendment case where the government seeks to restrict expressive conduct, and the loss of that freedom (even briefly) constitutes irreparable harm. *E.g.*, *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 973 (9th Cir. 2002). Instead, Plaintiff claims that government action that facially has nothing to do with the First Amendment—a land exchange mandated by statute—will have downstream effects on religious exercise.<sup>3</sup> Yet Plaintiff cites no case

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<sup>3</sup> Plaintiff’s claim (at 4) that the land exchange will “end[] sacred Apache rituals” and destroy “the site of sacred ceremonies that cannot take place elsewhere” is a serious overstatement. As the Ninth Circuit noted, sunrise ceremonies routinely occur elsewhere; in 2014, Oak Flat hosted a ceremony “for just the second time in more than a hundred years.” *Apache Stronghold*, 38 F.4th at 749 (quotation marks omitted). Indeed, Plaintiff’s description of the “sacred” area has shifted dramatically throughout the litigation. The current iteration, which Plaintiff calls the “Central Sacred Area,” appeared for the first time in Plaintiff’s Ninth Circuit briefing, as compared to the “40-acre area” of “sacred Western Apache religious grounds” that Plaintiff claimed in this Court. *See* Respondent Resolution



1 subjecting such effects to a lower irreparable harm standard. And regardless, Plaintiff will  
2 suffer **no** negative effects during the pendency of its appeal.

3 Finally, there is no immediate harm here because the government has committed not  
4 to act on the FEIS until June 16 at the earliest. Plaintiff's entire theory of injury is predicated  
5 on its hope that the Supreme Court **might** grant certiorari and **might** reverse on the merits.  
6 But if the Court denies review or affirms the Ninth Circuit's judgment, Plaintiff's claims  
7 must fail. Before June 16, there are six additional conferences at which the Supreme Court  
8 could deny review (ending the case) or grant review (in which case the government "may  
9 reevaluate how to proceed," ECF 148 at 1). There is no basis for this Court to intervene  
10 **now** when Plaintiff's request could become moot at any time and when, even by Plaintiff's  
11 account, any harm is weeks (or even years) away.

12 As Plaintiff has failed to make a "clear showing" that it will experience irreparable  
13 harm during the pendency of its appeal, the Court should deny Plaintiff's motion.

14 **III. Plaintiff cannot demonstrate that enjoining the statutorily mandated land**  
15 **exchange is in the public interest.**

16 Plaintiff also fails to show "that the balance of equities tips in [Plaintiff's] favor and  
17 that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *see Nken v. Holder*,  
18 556 U.S. 418, 435 (2009) ("These factors merge when the Government is the opposing  
19 party."). On the contrary, an injunction would affirmatively harm the public interest and  
20 defy Congress's clear intent as expressed in the Exchange Act.

21 While Plaintiff suggests (at 16) there is "[no] question" that an injunction is in the  
22 public interest, Congress already weighed the equities and determined the **land exchange**  
23 "is quite clearly in the public interest." Hearing Before the S. Comm. on Nat. Res., 112th  
24 Cong. 11 (2012) (statement of Sen. Kyl), <https://tinyurl.com/yc656kyj>. The Exchange Act  
25 represents Congress's choice to support development of domestic copper resources while  
26 adding valuable conservation lands to the public trust. And when (as in this case) Congress

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27 Copper Mining LLC's Brief in Opp. at 29–32, *Apache Stronghold v. United States*, No. 24-  
28 291 (U.S. Oct. 22, 2024), <https://tinyurl.com/bdd8t856>; ECF 7 at 5.

1 acts pursuant to its plenary powers, “the public interest has been declared in terms well-  
2 nigh conclusive. In such cases [Congress], not the judiciary, is the main guardian” of the  
3 public interest. *Berman v. Parker*, 348 U.S. 26, 32 (1954); *see Kleppe v. New Mexico*, 426  
4 U.S. 529, 539 (1976) (recognizing that Congress’s authority over public lands is “without  
5 limitations”). This Court must not “ignore the judgment of Congress, deliberately expressed  
6 in legislation,” and so should find the land exchange is in the public interest. *United States*  
7 *v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 497 (2001).

8 Even setting aside Congress’s reasoned judgment, the land exchange is in the public  
9 interest because it will serve the nation’s demonstrated need for copper. Copper is “essential  
10 to electricity generation, distribution, and storage,” making it “the mineral most  
11 fundamental to the human future.” Lawrence Cathles & Adam Simon, Int’l Energy F.,  
12 *Copper Mining and Vehicle Electrification* (Apr. 2024), <https://tinyurl.com/bdfnyv45>.  
13 Electric vehicles, solar panels, wind turbines, nuclear reactors, geothermal and hydropower  
14 plants, and traditional power plants all require vast amounts of copper. *See The Future of*  
15 *Copper: Will the Looming Supply Gap Short-Circuit the Energy Transition*, S&P Global  
16 27, 33 (July 2022). As a result, “[t]he demand for copper is expected to increase by between  
17 275 and 350% by 2050.” Ayman Elshkaki et al., *Copper Demand, Supply, and Associated*  
18 *Energy Use to 2050*, 39 Glob. Env’t Change 305, 313 (2016).

19 Multiple administrations (across both major political parties) have recognized the  
20 need for domestic investment in critical materials. *See, e.g., Presidential Determination*  
21 *Pursuant to Section 303 of the Defense Production Act of 1950*, 87 Fed. Reg. 19775, 19775  
22 (Apr. 6, 2022); *President Donald J. Trump Signs Executive Order to Break Nation’s*  
23 *Dependent on Foreign Minerals and Strengthen our National Security*, U.S. Dep’t of the  
24 Interior (Dec. 20, 2017), <https://tinyurl.com/3fuxsje4>. Most recently, President Trump  
25 declared that “[c]opper is a critical material essential to the national security, economic  
26 strength, and industrial resilience of the United States.” Exec. Order No. 14220, § 1, 90 Fed.  
27 Reg. 11001 (Feb. 28, 2025). Thus, “[i]t is the policy of the United States to ensure a reliable,  
28 secure, and resilient domestic copper supply chain.” *Id.* Just this month, the White House



1 announced the Resolution project is one of ten “critical mineral production projects” the  
2 administration is advancing “to facilitate domestic production of America’s vast mineral  
3 resources to create jobs, fuel prosperity, and significantly reduce our reliance on foreign  
4 nations.” The White House, *Trump Administration Advances First Wave of Critical Mineral*  
5 *Production Projects* (Apr. 18, 2025), <https://tinyurl.com/35vru2fy>.

6 Resolution’s proposed mine—which is expected to supply up to 25% of the United  
7 States’ demand for copper—responds to this demand. Enjoining the land exchange would  
8 only further delay this critical project.

9 Congress also properly found that the exchange will serve the public interest given  
10 Resolution’s extensive environmental and cultural mitigation and economic impact. *Cf.*  
11 *Mot.* at 14–15. Resolution’s use of the Oak Flat Parcel for “mining and related activities”  
12 is “subject to” and must be “in accordance with applicable Federal, State, and local laws  
13 pertaining to mining and related activities on land in private ownership.” 16 U.S.C.  
14 § 539p(c)(8). Further, since Resolution is redeveloping a historic mine site, it is renovating  
15 existing equipment and reclaiming previously mined lands. *Peacey Decl.* ¶ 13. And beyond  
16 the requirements of the Exchange Act, Resolution has worked with the Forest Service and  
17 community stakeholders to develop comprehensive environmental and cultural mitigation  
18 efforts in the project area. *See id.* at ¶¶ 19–28, 36–64. Make no mistake, Resolution is  
19 committed to the public interest through environmental and cultural stewardship.

20 The mine also will have significant immediate and long-term benefits to Arizona’s  
21 work force and the state and national economies. *Id.* at ¶¶ 65–73. At peak capacity, it will  
22 directly employ approximately 1,500 people and indirectly create another 2,200 jobs. *Id.* at  
23 ¶ 70. The mine could generate up to 40 billion pounds of copper, \$61 billion in economic  
24 value for Arizona, and close to \$230 million in state, local, and federal tax revenue. *Id.* at  
25 ¶ 71. These considerations underscore the public interest in the land exchange.

26 Plaintiff insists, however, that “when a party ‘raises serious First Amendment  
27 questions, that alone compels a finding that the balance of hardships tips sharply in its  
28 favor.’” *Mot.* at 15 (citation omitted). But this argument assumes its conclusion. As this

1 Court and the Ninth Circuit (twice) have ruled, Plaintiff has shown no likely or impending  
2 violation of federal law, and thus no “serious questions” justifying an injunction.

3 For the same reason, Plaintiff’s reliance (at 16) on *Fellowship of Christian Athletes*  
4 is misplaced. There, the Ninth Circuit held that *if* the “balance of equities tips sharply” in a  
5 plaintiff’s favor, the plaintiff may obtain an injunction if it can make the “lesser showing”  
6 of “serious questions on the merits” (as opposed to likelihood of success). *Fellowship of*  
7 *Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir.  
8 2023) (quotation marks and citation omitted). But here, as discussed, this Court’s ruling and  
9 the Ninth Circuit’s affirmance foreclose any possibility that Plaintiff could prove either a  
10 likelihood of success or serious questions. And for all the reasons described, Congress  
11 correctly found that the balance of equities weighs in favor of completing this project with  
12 appropriate accommodations for religious exercise.

13 Finally, Plaintiff speculates (at 16) that its purportedly “narrow [and] temporary  
14 injunction” would cost Defendants no more than “days” in a “long, decidedly non-urgent”  
15 project. Not so. To date, Resolution has spent over \$2.7 billion on the project, and it also  
16 expends nearly \$11 million every month to maintain the mine in its present, non-operational  
17 state. *See* Declaration of Sterling Hundley ¶¶ 21–22 (attached as Exhibit C). Additional  
18 delay would only further scorn Congress’ directive to “expedite” the land exchange to  
19 support the nation’s copper needs. 16 U.S.C. § 539p(a).

20 That the balance of the equities tips so strongly in Defendants’ favor—both because  
21 Congress has already so decided and because the planned mine will serve the public’s  
22 interest—provides an independent basis for denying Plaintiff’s motion.

### 23 CONCLUSION

24 Just as it did four years ago, the Court should again deny Plaintiff’s request to enjoin  
25 the congressionally mandated land exchange.  
26  
27  
28

1 Dated: April 30, 2025

**HOLLAND & HART LLP**

2  
3 By: /s/ Christopher D. Thomas

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# EXHIBIT A

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Apache Stronghold,

Plaintiff,

v.

United States of America, et al.,

Defendants.

Resolution Copper Mining, LLC,

Defendant-Intervenor.

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

**DECLARATION OF VICTORIA  
PEACEY IN SUPPORT OF  
DEFENDANT-INTERVENOR'S  
BRIEF IN OPPOSITION TO  
PLAINTIFF'S EMERGENCY  
MOTION FOR LIFT OF STAY AND  
FOR INJUNCTION PENDING  
APPEAL**

1 I, Victoria Peacey, declare as follows:

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

5 **Background**

6 2. I am the President and General Manager of Resolution Copper Mining LLC  
7 (“Resolution”), responsible for overseeing all aspects of planning, development, and  
8 operations of the project.

9 3. I have spent approximately twenty years with Resolution or Rio Tinto. The  
10 lead joint venture partner in the Resolution Copper Project is a subsidiary of Rio Tinto.

11 4. My appointment as President and General Manager was effective March 14,  
12 2023. I had previously served as Acting Director since August 2022.

13 5. Previously, I was the Chief of Staff to the Chief Operating Officer for Rio  
14 Tinto Copper from July 2021 to July 2022, where I was accountable for implementing the  
15 strategic direction for copper, including operations, projects, and growth across the globe.  
16 Before that I worked as the Senior Business Partner – Community and Social Performance  
17 (CSP), Copper – America and Joint Ventures from February 2021 to July 2021. In that role,  
18 I lead the CSP teams at various Rio Tinto operations, including at Resolution, while also  
19 continuing to lead the federal permitting activities at Resolution.

20 6. From 2012-2021, when the LEX was negotiated, the mine plan of operations  
21 was submitted, the Draft Environmental Impact Statement (“Draft EIS”) was issued, and  
22 the Final Environmental Impact Statement (“Final EIS”) came out, I worked as the acting  
23 Vice President of External Affairs (July 2012-December 2012), the Senior Manager of  
24 Environment and Communities (January 2013-December 2015) and Senior Manager of  
25 Permitting and Approvals (January 2016-January 2021), in which I managed permitting  
26 processes at the federal, state, and local levels for Resolution.

27

28



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

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

7           **Resolution Copper: Overview of the Project**

8           9. Resolution is a joint venture owned by Rio Tinto and BHP.

9           10. Resolution is currently developing one of the world's largest untapped copper  
10 deposits. I will refer to this work as the "Project."

11           11. In 2004, Resolution acquired property and infrastructure associated with the  
12 historic Magma Copper Mine near Superior, Arizona, in an area that forms part of Arizona's  
13 Copper Triangle. Mining in the Superior area reportedly began in the late 1880s. Resolution  
14 holds approximately 185 unpatented federal mining claims within the area commonly  
15 known as Oak Flat or "Oak Flats," in Pinal County, Arizona ("the Claims").

16           12. Resolution or a predecessor in interest located the Claims between 1903 and  
17 2011 on lands the surface of which is administered by the Tonto National Forest ("TNF").

18           13. Resolution's Project work began in 2005, when it started reclamation work at  
19 the former Magma West Plant. That work lasted about 15 years and cost approximately \$75  
20 million. Resolution's reclamation efforts remediated the area and restored the West Plant  
21 area to state regulatory standards.

22           14. In December 2014, Congress passed the Southeast Arizona Land Exchange  
23 and Conservation Act, 16 USC § 539p ("the Act"), as part of the National Defense  
24 Authorization Act. The Act provides that the "Federal Land," as defined by the Act, shall  
25 be exchanged for non-federal lands held by Resolution. For purposes of the Act, "Federal  
26 Land" includes 760 acres of Oak Flat known as "Oak Flat Withdrawal Area" and a portion  
27 of the TNF lands where Resolution's Claims are located, together the TNF lands and the  
28

1 Oak Flat Withdrawal Area are known as the “Oak Flat Parcel.” A detailed map depicting  
2 the Claims relative to the boundaries of the Oak Flat Parcel is attached as Exhibit A.

3 15. Resolution’s parcels to be conveyed to the United States Forest Service  
4 (“Forest Service”) and Bureau of Land Management (“BLM”) include high-priority  
5 conservation lands that will be added to National Forests in Arizona, as well as lands that  
6 will be added to the San Pedro Riparian and Las Cienegas national conservation areas,  
7 managed by the BLM.<sup>1</sup>

8 16. Pursuant to the Act, Resolution has agreed to pay all costs that are associated  
9 with the land exchange, including any required environmental analyses.

10 17. Between 2014 and 2015, the San Carlos Apache Tribe lobbied to have part of  
11 Oak Flat listed on the National Register of Historic Places as a traditional cultural property  
12 (“TCP”) known as Chi’chil Bildagoteel.

13 18. On March 4, 2016, the National Park Service announced that Chi’chil  
14 Bildagoteel was listed on the National Register of Historic Places as a TCP. A depiction of  
15 the Claims relative to the approximate boundaries of the Chi’chil Bildagoteel TCP is  
16 attached as Exhibit B.

### 17 **Apache Leap Special Management Area**

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

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

25  
26 <sup>1</sup> Resolution’s conservation lands are described in the Final EIS. U.S. Dep’t of Agric.,  
27 *Final Environmental Impact Statement: Resolution Copper Project and Land Exchange*,  
28 Vol. 1 at ES-8, 13, 51–53 (Jan. 2021), *rescinded March 1, 2021* (“2021 FEIS”),  
<https://tinyurl.com/v8pd7mpk>.



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

5           22. Resolution will monitor Apache Leap to ensure that future mining-related  
6 activity does not impact it, and this monitoring will continue throughout construction,  
7 operation, closure, and reclamation of the mine.

8           **Early Consultation Efforts**

9           23. Since 2008, the Forest Service has participated in hundreds of consultations  
10 with communities and tribal nations.<sup>2</sup> As a result, Native American Tribes<sup>3</sup> have had  
11 considerable influence on various activities; including protecting traditional cultural  
12 properties; avoiding medicinal plants, springs, and ancestral sites for activities related to the  
13 project; completing a comprehensive ethnographic report; nominating the Oak Flat  
14 Traditional Cultural Property to the National Register of Historic Places; implementing a  
15 tribal monitoring program; and creating a program to protect and restore Emory oak groves.

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

19  
20  
21  
22           <sup>2</sup> See 2021 FEIS at App'x S (lists the consultation records between the TNF and the  
23 Tribes), <https://tinyurl.com/2za829ua>.

24           <sup>3</sup> See 2021 FEIS at 984 (provides list of participating Tribes),  
25 <https://tinyurl.com/3k5ynuk5>. The following tribes were involved in the consultation  
26 process: Fort McDowell Yavapai Nation, Gila River Indian Community, Hopi Tribe,  
27 Mescalero Apache Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community,  
28 San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai  
Apache Nation, Yavapai-Prescott Indian Tribe, Ak-Chin Indian Community, Fort Sill  
Apache Tribe, Pascua Yaqui Tribe, and Tohono O'odham Nation.

1           25. In 2015, the Forest Service completed, and Resolution funded a multi-year  
2 ethnographic and ethnohistoric study in partnership with consulting Native American  
3 Tribes to identify places, areas, artifacts, and natural features of importance.<sup>4</sup>

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

14           27. Resolution has taken direct action based on this consultation. For example,  
15 Apache Elders explained to Resolution and the Forest Service that the Emory oaks are  
16 culturally significant trees that produce acorns that are traditionally harvested and used as a  
17 food source for the Western Apache in Arizona. Grazing and other practices are preventing  
18 the growth of young trees and sustainable groves. In recognition of the cultural importance  
19 of this species, the Forest Service, in conjunction with the Arizona Western Apache tribes,  
20 Northern Arizona University, and Resolution are partnering in a multi-year program to  
21 study, protect, and conserve Emory oak groves across Arizona.

22           28. Resolution has made significant changes to the Project in response to tribal  
23 consultation, including:

- 24           • moving the proposed tailing facility from National Forest lands to Arizona  
25 state and private lands to avoid disturbance of National Forest resources,

26 \_\_\_\_\_  
27           <sup>4</sup> Hopkins, M.P., C. Colwell, T.J. Ferguson, and S.L. Hedquist. 2015. *Ethnographic*  
28 *and Ethnohistoric Study of the Superior Area, Arizona*. Prepared for TNF and Resolution.  
Tucson, Arizona: Anthropological Research LLC.



1 including seeps and springs identified as having cultural significance by  
2 Native American Tribes;

- 3 • developing the Oak Flat Access and Management Plan to ensure that current  
4 management continues and assuring Native American Tribes' access for  
5 traditional, cultural, and ceremonial purposes;
- 6 • rerouting power and pipeline infrastructure to avoid physical impacts to  
7 Devil's Canyon and Queen Creek to avoid resources identified as culturally  
8 important during tribal consultation;
- 9 • developing the subsidence monitoring plan to avoid impacts to cultural  
10 resources, including Devil's Canyon and the Apache Leap Special  
11 Management Area, and to manage continued access to Oak Flat and Oak Flat  
12 Campground;
- 13 • developing a monitoring and mitigation plan that will mitigate potential  
14 impacts to groundwater-dependent ecosystems; and
- 15 • allowing Native American Tribes to harvest select natural resources with  
16 cultural significance from the land exchange area, tailings pipeline corridor,  
17 and tailings storage facility.

### 18 **The Environmental Impact Statement Process**

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

24 30. The Forest Service thereafter began its official independent review of the  
25 proposed project required under the National Environmental Policy Act (NEPA), and  
26 initiated government to government consultation with Native American Tribes as required  
27 under 16 U.S.C. § 539p (c)(3)(A) on August 4, 2015.

28

1           31. Between 2016 and 2020, the Forest Service completed a host of tasks,  
2 including initiation of government-to-government consultation with Native American  
3 Tribes for development of the EIS; public scoping; federal, state, and local agency  
4 cooperation and consultation; consideration of approximately 160,000 public comments  
5 (between scoping and the Draft EIS), and publication of a Draft EIS.

6           32. The Forest Service published the Final EIS on January 15, 2021. The Final  
7 EIS—still available at <https://www.resolutionmineeis.us/documents/final-eis>—comprised  
8 6 volumes and approximately 2,700 pages, counting its 19 appendices. Nine federal and  
9 state agencies and 15 Native American Tribes acted as cooperating agencies or consulting  
10 parties. As of that time, the EIS and underlying baseline technical study work had cost  
11 Resolution approximately \$500 million.

12           33. Despite the massive effort, on March 1, 2021, the Forest Service rescinded  
13 the Final EIS “to provide an opportunity for the agency to conduct a thorough review, to  
14 ensure regulatory compliance of environmental, cultural, and archaeological analyses, and  
15 to provide time for the Forest Service to fully understand concerns raised by Tribes and the  
16 public and the project’s impact to these important resources.”<sup>5</sup> The Forest Service and  
17 plaintiffs agreed to a 60-day advance notification in three suits challenging the project filed  
18 in the District of Arizona. In each suit, the court memorialized the 60-day requirement and  
19 stayed the litigation.

20           34. From March 2021 on, the Forest Service reviewed the prior consultation  
21 efforts, reinitiated government-to-government consultation with the Tribes, reviewed “the  
22 consultation record, and environmental and other associated documents, to ensure  
23 compliance with applicable laws, regulations, and policies.”<sup>6</sup>

24  
25  
26           <sup>5</sup> USDA, *Project Update* (Mar. 1, 2021), <https://perma.cc/W348XUKH>; Order, *Apache Stronghold*, No. 21-15295 (9th Cir. Mar. 5, 2021).

27           <sup>6</sup> See Joint Status Report, *Apache Stronghold v. United States*, No. 2:21-cv-00050-  
28 SPL (D. Ariz. Nov. 27, 2024), ECF 140.



1           35. On April 17, 2025, the Forest Service announced that it intends to republish  
2 the Final EIS no earlier than June 16, 2025.

3           **Resolution's Plans for Management of the Oak Flat Parcel After the Exchange**

4           36. After the land exchange, Resolution will ensure existing public access is  
5 maintained within the Oak Flat Parcel, including the Oak Flat Campground, existing public  
6 roads, and climbing areas. This existing access will be maintained for approximately a  
7 decade.

8           37. Resolution published a detailed management plan on its website, showing  
9 how it will continue to operate the Campground consistent with the Forest Service's current  
10 management. The plan was submitted to the Forest Service and distributed to consulting  
11 Native American tribes for input.

12           38. Resolution expects input from community groups and Native American tribal  
13 representatives will continue to guide how the Oak Flat Campground is protected and  
14 managed, even after the land exchange.

15           39. Resolution intends to contract with 4 Winds Contracting, LLC, a local small  
16 business partially-owned by members of the San Carlos Apache Tribe, to maintain the  
17 campground areas, infrastructure, and access to recreation.

18           40. Consistent with Forest Service's management of the TNF, Resolution will  
19 permit grazing to continue on the Devil's Canyon Grazing Allotment, as it has for the last  
20 17 years.

21           41. Resolution will continue to permit harvesting of the Emory oak groves on the  
22 Oak Flat Parcel by individuals, or commercially through an authorization, and will  
23 administer the authorization process the same way the Forest Service previously managed  
24 the process for the TNF.

25           42. In coordination with the TNF Tribal Liaison, the tribes requested that a  
26 complete natural resources survey of the Oak Flat Parcel be conducted by the TNF Tribal  
27 Monitors using their Traditional Ecological Knowledge. Surveys were conducted between  
28 May and September 2020 and resulted in approximately 6,906 salvage locations within the

1 Oak Flat Parcel, which includes: 6,871 plant salvage locations, 9 animal salvage locations  
2 (animal carcasses and remains), and 26 mineral salvage locations. Resolution will continue  
3 to manage culturally significant natural resources on the Oak Flat Parcel and collaborate  
4 with Native American Tribes for harvesting and salvage as set forth in the Final EIS.

5 43. Cultural resources on the Oak Flat Parcel will be managed as provided in the  
6 approved Historic Preservation Treatment Plan (“HPTP”) developed in consultation with  
7 consulting Native American Tribes, the Archaeological Resources Protection Act  
8 (“ARPA”) permit issued by the Forest Service, the Native American Graves Protection and  
9 Repatriation Act (“NAGPRA”) Plan of Action and/or Arizona State Museum-issued Burial  
10 Agreement, the curation agreement with the Gila River Indian Community (“GRIC”)  
11 Huhugam Heritage Center, and the associated Resolution Copper Cultural Heritage  
12 Management Plan.

13 44. Any Euromerican and Non-Apache Native American historic properties  
14 identified on the Oak Flat Parcel will undergo full data recovery per the approved HPTP.  
15 Data recovery on identified sites will include the collection of surface artifacts, excavation  
16 and sampling of cultural features, archival research, and identification and respectful  
17 excavation of artifacts and or burials if present. All the resources collected will be curated  
18 at the GRIC curation facility or the Arizona State Museum.

19 45. As requested by the Apache Tribes, Apache historic properties will only  
20 involve surface recovery and repatriation to the GRIC curation facility. The majority of the  
21 Apache historic properties are located on bedrock where little if any soil resources. No  
22 excavation will occur on these sites.

23 46. The Final EIS includes a climbing access plan. Resolution will continue to  
24 permit climbing and bouldering on the Oak Flat Parcel. The Oak Flat Parcel and a number  
25 of adjacent areas, including TNF land, State Trust, and other land owned by Resolution,  
26 contain several climbing and bouldering resources, in what is collectively known as the  
27 Queen Creek Climbing Area. This area extends from Queen Creek Canyon, south along  
28 Apache Leap, and east across the Oak Flat Parcel to Devils Canyon. Resolution has an



1 agreement with a local climbing organization, the Queen Creek Coalition, to manage  
2 continued public access for climbing on Resolution's property that is part of the Queen  
3 Creek Climbing Area.<sup>7</sup>

4 47. The Oak Flat Parcel is frequently utilized by off-highway vehicles (OHV) and  
5 Resolution will continue to allow this use after it takes ownership. Existing approved roads  
6 for OHV users include FRs 315, 469, 2432, 2435, 2438, 2439 and 3153.

7 48. The Oak Flat Parcel is within Arizona Game and Fish Department's Game  
8 Management Unit 24A. To ensure the safety of Resolution employees and all members of  
9 the public using the property, as well as to prevent potential wildfires, hunting and shooting  
10 will be banned on the property. However, hunters will be allowed to travel through the Oak  
11 Flat Parcel to get to other hunting areas off the property. The same is true of other nearby  
12 Resolution private land properties, JI Ranch and Dripping Springs.

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

20 50. If Resolution proceeds to develop the Project, the Oak Flat Campground is  
21 expected to remain open for at least the next few decades

22 51. It is my understanding that the Oak Flat Campground is occasionally used for  
23 Sunrise Ceremonies and other ceremonies, and the TNF currently closes the Campground  
24 when it is used for those purposes.

25 52. After the land exchange any disturbance to the surface of the Oak Flat Parcel  
26 will begin slowly and initially be negligible. At least several months after the land exchange,  
27

28 <sup>7</sup> See 2021 FEIS at 617-19, 623, <https://tinyurl.com/2t7t6dz3>.

1 Resolution may install new drill pads, ancillary new roads, and an emergency helipad to  
2 support characterization and exploration activities on the Oak Flat Parcel. All together these  
3 features are expected to impact less than 10 acres of the surface area of the Oak Flat Parcel.  
4 This work will not impact the existing public access to the Oak Flat Parcel.

5 53. Construction of new surface facilities, such as a water treatment plant, an  
6 admin building, and substations, will not commence until at least one year after the land  
7 exchange. These new facilities will be built on Resolution's current private land holdings,  
8 which are miles away from the Oak Flat Campground. A map showing the location of the  
9 Oak Flat Campground in relation to the West Plant and East Plant is attached as Exhibit C.

10 54. Early mine construction activities are not expected to impact Resolution's  
11 commitments to maintain existing public access the Oak Flat Parcel.

12 **Measures to Address Concerns of Native American Tribes**

13 55. The Act directs the Forest Service to "consult with Resolution and seek to  
14 find mutually acceptable measures to—(i) address the concerns of the affected Indian tribes;  
15 and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and  
16 related activities on the federal land conveyed to Resolution under this section."<sup>8</sup> 16 U.S.C.  
17 § 539p (c)(3)(B).

18 56. To partially address effects on the Chi'chil Bildagoteel Historic District and  
19 other historic properties significant to Tribes, and as requested by consulting Tribes during  
20 government-to-government consultation per 16 USC § 539p (c)(3)(A), Resolution Copper  
21 has committed to deposit \$53.5 million dollars to an endowment fund, in two installments  
22 tied to Project milestones: (1) 60 days after the land exchange; and (2) six months after the  
23 Record of Decision is issued.

24  
25 <sup>8</sup> The tribes with traditional territorial claims to the general area in which the 2,422  
26 acres known as the Oak Flat Parcel are located—the Fort McDowell Yavapai Nation, the  
27 Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of  
28 Zuni, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the  
Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and  
the Yavapai-Prescott Indian Tribe—are described as a Tribe or Tribes.



1 57. Money in the endowment fund should be used to support the following:

- 2 • the Tribal Monitor employment program, the Emory Oak Collaborative
- 3 Tribal Restoration Initiative, and a Tribal Youth Program, to provide cultural
- 4 and/or educational opportunities to tribal youth.
- 5 • activities that further the receiving Tribe's preservation, protection,
- 6 recognition, or development of its culture or heritage. The concept of this fund
- 7 was developed through government-to-government consultation.
- 8 • Tribal K-12 educational initiatives as well as scholarships for tribal members
- 9 pursuing two-year and four-year courses of post-secondary education at an
- 10 accredited college, university, vocational school, or community college.

11 **Resolution's Conservation Lands**

12 58. The conservation value of the lands being conveyed to the United States has  
 13 been analyzed during the NEPA process. Each parcel was evaluated by Westland Resources  
 14 Inc., an independent engineering and environmental services consultant, for evidence of  
 15 special species, habitats, or cultural or historical significance. Westland's reports were  
 16 included in the EIS administrative record.

17 59. The conservation lands provide a range of benefits, as follows:

- 18 • *Apache Leap South End Parcel*. This land includes cultural, recreational, and
- 19 scenic resources that are important to Superior, Native American tribes, and
- 20 the general public. It is located above and below Apache Leap, an area of
- 21 sheer cliff faces, hoodoos, and buttresses that frames the town of Superior and
- 22 provides opportunities for hiking, rock climbing, and nature viewing.
- 23 Additionally, numerous cultural resource inventories have identified sites
- 24 representing prehistoric, protohistoric, and historic Native American
- 25 occupations and activities spanning several thousand years in the area within
- 26 the parcel and the surrounding Apache Leap Special Management Area. The
- 27 Apache Leap Special Management Area contains one of the most extensive
- 28 significant Western Apache cultural and historical sites in the Copper

1 Triangle. This land has already undergone a separate NEPA process, which  
2 resulted in a final Environmental Assessment in August 2017 and a final  
3 Decision Notice in December 2017. The Apache Leap Special Management  
4 plan excludes future grazing leases and limits construction and motorized  
5 vehicles to protect the area. Apache Leap South End Parcels are surrounded  
6 by Forest Service lands and would become part of the Apache Leap Special  
7 Management Area, administered by the TNF. Upon title exchange,  
8 Resolution will also surrender all mining claims and interests to the parcel.

- 9 • *Tangle Creek Parcel.* The Tangle Creek parcel is located in the heart of  
10 Bloody Basin, long known for its rugged, scenic terrain and abundant hiking,  
11 camping, and hunting opportunities. The parcel is adjacent to the Seven  
12 Springs Recreation Area, Cave Creek Campground and Trailhead, and the  
13 Civilian Conservation Corps Campground. It is bisected by Tangle Creek and  
14 features a variety of trees and shrubs, including netleaf hackberry, mesquite,  
15 ash, and sycamore trees, many of which are believed to be over 100 years old.  
16 The netleaf hackberry groves provide exceptional habitat for migratory and  
17 nesting songbirds. The Tangle Creek Parcel also has both prehistoric and  
18 historic value: it is believed that the property was farmed by Native  
19 Americans and homesteaded by the Babbitt family in the 1890s. Two of the  
20 previously cultivated farm fields are reverting to open woodlands or thickets  
21 of hackberry, mesquite, and cat-claw acacia. Reestablishment of these native  
22 plants will increase wildlife connectivity within the Bloody Basin by  
23 transforming the area into a migratory corridor with ideal habitat for various  
24 bird and mammal species.
- 25 • *Turkey Creek Parcel.* The Turkey Creek parcel is an inholding within the TNF  
26 about eight miles southeast of Pleasant Valley and is the site of a historic  
27 homestead dating back to the 1880s. Turkey Creek flows through the property  
28 and supports abundant and diverse wildlife, including elk, mule deer, bear,



1 and three species of native fish. It also provides potential habitat for bald  
2 eagles and the Chiricahua leopard frog, a threatened species. Additionally,  
3 Turkey Creek is within the proposed critical habitat for the Mexican spotted  
4 owl; the parcel has two Protected Activity Centers for this threatened species.  
5 Public acquisition of this parcel presents a significant opportunity to preserve  
6 alluvial surface (rare in the area) by reestablishing native cottonwood and  
7 sycamore trees. Preservation of historical resources from the homestead era,  
8 including the cabin site, hand-dug well, and fruit trees, is also a significant  
9 opportunity offered by the parcel.

- 10 • *Cave Creek Parcel.* Totally surrounded by the TNF, the property includes the  
11 lush Cave Creek riparian corridor. Wildlife present in the area include  
12 neotropical migratory songbirds, raptors, amphibians, javelinas, mule deer,  
13 and coyotes. The Cave Creek parcel is also home to numerous archaeological  
14 sites, including petroglyphs, structure ruins, and grinding sites. This land  
15 would help protect Cave Creek and its riparian area; protect the prehistoric  
16 ruins, petroglyphs, and agricultural sites scattered throughout the parcel;  
17 provide for the enhancement and expansion of the Forest Service's trail  
18 network and other recreational opportunities in the area; and help consolidate  
19 TNF lands.
- 20 • *East Clear Creek Parcel.* East Clear Creek, which extends more than two  
21 miles through the property, contains riparian and aquatic ecosystems that have  
22 long been recognized for their scarcity and overall contribution to wildlife  
23 diversity in the Coconino National Forest. The land has also been featured in  
24 *Arizona Highways* magazine. In 1993, a preliminary analysis was conducted  
25 to document a 25-mile portion of East Clear Creek (including the parcel) for  
26 a scenic designation under the Wild and Scenic Rivers Act. Acquisition of  
27 this parcel will help protect the Mogollon Rim area of the Coconino National  
28 Forest, which is known for its outstanding natural beauty and unique

landscapes. The parcel provides habitat for a variety of resident big game, such as Rocky Mountain elk, mule deer, turkey, black bear, and Coues white-tailed deer. It also supports a variety of smaller resident mammals, such as beavers, raccoons, and ringtails, as well as diverse amphibian, reptile, and bird species. East Clear Creek has become a notable fishery with sustained populations of both rainbow and brown trout. The upper ridges provide habitat for a variety of big game and are home to native fish species occurring within the East Clear Creek system, including bluehead suckers, Little Colorado suckers, speckled dace, roundtail chub, and the Colorado spinedace. The segment of East Clear Creek flowing through the property is a designated critical habitat for these species. The property provides suitable habitat for other federally-threatened, endangered, proposed, and sensitive species, including the southwestern willow flycatcher, bald eagle, Mexican spotted owl, Chiricahua leopard frog, peregrine falcon, northern goshawk, northern leopard frog, Arizona southwestern toad, and the narrow-headed garter snake.

- *Lower San Pedro River Parcel.* The San Pedro River is unique, as it is one of only two major rivers that flow north out of Mexico into the United States and is one of the few remaining free-flowing rivers in the Southwest. These qualities of the San Pedro River ecosystem have earned it The Nature Conservancy's designation as one of the "Last Great Places on Earth." Deep in the bosque that forms part of this parcel (believed to be one of the largest remaining in the Southwest), a free-flowing artesian spring creates a rare wetland populated by lowland leopard frogs and nesting birds. This area has also been recognized by the Tucson Audubon Society and BirdLife International as an "Important Bird Area." It contains habitat for various threatened, endangered, proposed, and candidate species, including the cactus ferruginous pygmy owl, the southwestern willow flycatcher, the yellow-billed cuckoo, and the Gila topminnow. The San Pedro corridor is one of the most



1 important riparian habitats in the Sonoran and Chihuahuan deserts, with more  
2 than 390 species of birds and a highly diversified mammal population. It also  
3 has a rich cultural history: a cultural resources inventory report performed by  
4 Westland in 2017 identified 59 archaeological sites within the parcel.

- 5 • *Appleton Ranch Parcel*. This property offers protection to land within the  
6 boundaries of the Appleton Whittell Research Ranch. The land acquired from  
7 the Appletons will eliminate non-federal lands that are intermingled with and  
8 adjacent to the Las Cienegas National Conservation Area established by  
9 Congress in December 2000. The mission of the Research Ranch is to  
10 formulate, test, and demonstrate methods to restore and safeguard the  
11 bioregion, and to assist citizens and policy makers in the protection and  
12 stewardship of our native ecosystems, natural resources, and quality of life.  
13 In 1980, The National Audubon Society assumed management of the  
14 Research Ranch, which is now a cooperative partnership among the National  
15 Audubon Society, Forest Service, Bureau of Land Management, and the  
16 Research Ranch Foundation. The dozens of ongoing projects at the ranch  
17 have a common goal of working toward preservation of the grassland  
18 ecosystems in the Southwest. More than 90 species of native grass and 480  
19 native plant species create a biologically rich plant community. Over 200  
20 species of birds use the ranch for wintering, breeding, or as a migratory habitat  
21 and more than 60 species of mammals have been found on the ranch,  
22 including pronghorn. The land is also suitable habitat for threatened,  
23 endangered, proposed, and sensitive species, including the Huachuca water  
24 umbel, Canelo Hills ladies' tresses, Gila chub, Gila topminnow, desert  
25 pupfish, Chiricahua leopard frog, Mexican spotted owl, bald eagle, western  
26 yellow-billed cuckoo, ocelot, jaguar, lesser long-nosed bat, Huachuca  
27 springsnail, northern Mexican gartersnake, and golden eagle.

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

#### **Additional Mitigation Efforts Associated with the Land Exchange**

60. *Oak Flat HPTP*. In consultation with Tribes, and in compliance with Section 106 of the National Historic Preservation Act, the Forest Service has completed preparation of an archaeological HPTP for the Oak Flat Parcel to resolve potential adverse effects on historic properties eligible for the National Register of Historic Places.

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

62. *Copper Triangle Community Development Fund*. Resolution has agreed that at various Project milestones it will place a total of \$5 million into a designated fund that will focus on the built environment located within the visual/atmospheric/socioeconomic and cumulative effects of the Area of Potential Effects. The primary purpose of the fund is to address effects on historic properties and other community infrastructure within the communities of Superior, Miami, Globe, Kearny, Hayden, and Winkelman. The monies in the fund will financially support a revolving loan program. Applications for use of monies from the Community Development Fund will be reviewed by a committee consisting of



1 representatives from the State Historic Preservation Office, the applicable administering  
2 organization, and the affected communities. Specific parameters for the Community  
3 Development Fund will be defined through consultation between Resolution Copper,  
4 applicable administering organization(s), and the State Historic Preservation Office and will  
5 be:

- 6 • available to municipalities, counties, non-profits, private citizens, and private  
7 organizations;
- 8 • prefer projects participating in other historic preservation incentive programs;  
9 and
- 10 • prefer projects agreeing to repay funds within 5 years of award, with  
11 extensions possible.

12 63. *State Cultural Heritage Funds.* Resolution has agreed that it will deposit \$2  
13 million, in installments, into a restricted fund for use by the State of Arizona for cultural  
14 heritage preservation.

15 64. *Castleberry Campground.* Resolution has agreed to establish an alternative  
16 campground site known as Castleberry to mitigate any future loss of Oak Flat Campground.  
17 The new Castleberry Campground will be located on private property owned by Resolution  
18 near the town of Superior that contains numerous prehistoric and historic-era properties. All  
19 efforts will be made to avoid effects on these properties when developing the campground  
20 facilities.

#### 21 **Resolution's Economic Impact**

22 65. Resolution's headcount varies by the level of activity at site. Currently, there  
23 are 181 full-time employees at Resolution: 160 live within a 40-mile radius of Superior,  
24 with the remaining 21 full-time employees residing in Arizona but outside the 40-mile  
25 radius. Counting contractors, a total of 416 people presently work at Resolution Copper;  
26 295 of them live within a 40-mile radius of Superior and another 96 live in Arizona, but  
27 further away.  
28

1           66. Resolution not only hires locally, but it also uses local vendors and  
2 contractors. Since 2004, approximately \$1.02 billion has been spent within a 40-mile radius  
3 of Superior because of Resolution's operations. On average, 45% of our vendor and supplier  
4 expenditures benefit organizations and workers located within a 40-mile radius of Superior.

5           67. Resolution has been a partner with local cities and towns in the Copper  
6 Triangle, with approximately \$18 million spent on social investment covering emergency  
7 services, education, health, economic development, environment and cultural heritage  
8 between 2013 and 2024. We've worked hard to keep our people safe and provide personal  
9 protective equipment to communities and emergency responders. We joined with United  
10 Food and other partners to distribute over 50,000 cans of drinking water and donate more  
11 than 233,000 meals to communities hard-hit by COVID-19. These funds have also been  
12 used to secure access to technology for students learning remotely, support domestic  
13 violence shelters, and provide small business grants to local entrepreneurs.

14           68. In 2019, Resolution committed to a four-year, \$1.2 million agreement with  
15 the Superior Unified School District, including providing support for STEM and robotics  
16 programs at local schools. We have awarded \$788,000 in scholarships over the last decade  
17 to local and Native American students.

18           69. Resolution has also established an Apprentice Program, which is training  
19 more local workers to fill needed positions with transferrable skills.

20           70. When the mine is fully operational, Resolution anticipates directly employing  
21 about 1,500 workers and paying around \$134 million per year in total compensation. The  
22 project will also generate approximately 2,200 indirect jobs, meaning it could support some  
23 3,700 jobs at full production. The project will result in the purchase of about \$546 million  
24 per year in goods and services from local businesses.

25           71. Studies show Resolution could produce up to \$61 billion in economic value  
26 for Arizona over the life of the project. Resolution will boost state and local tax revenues  
27 from \$88 to \$113 million per year, while the federal government could see an extra \$200  
28 million in tax revenues per year.

73. The Project has a holding cost of approximately \$130 million per year. This cost Resolution incurs to maintain the status quo, i.e., operate and maintain the current facilities while it waits for the approval to start characterization and exploration activities on the Oak Flat Parcel.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

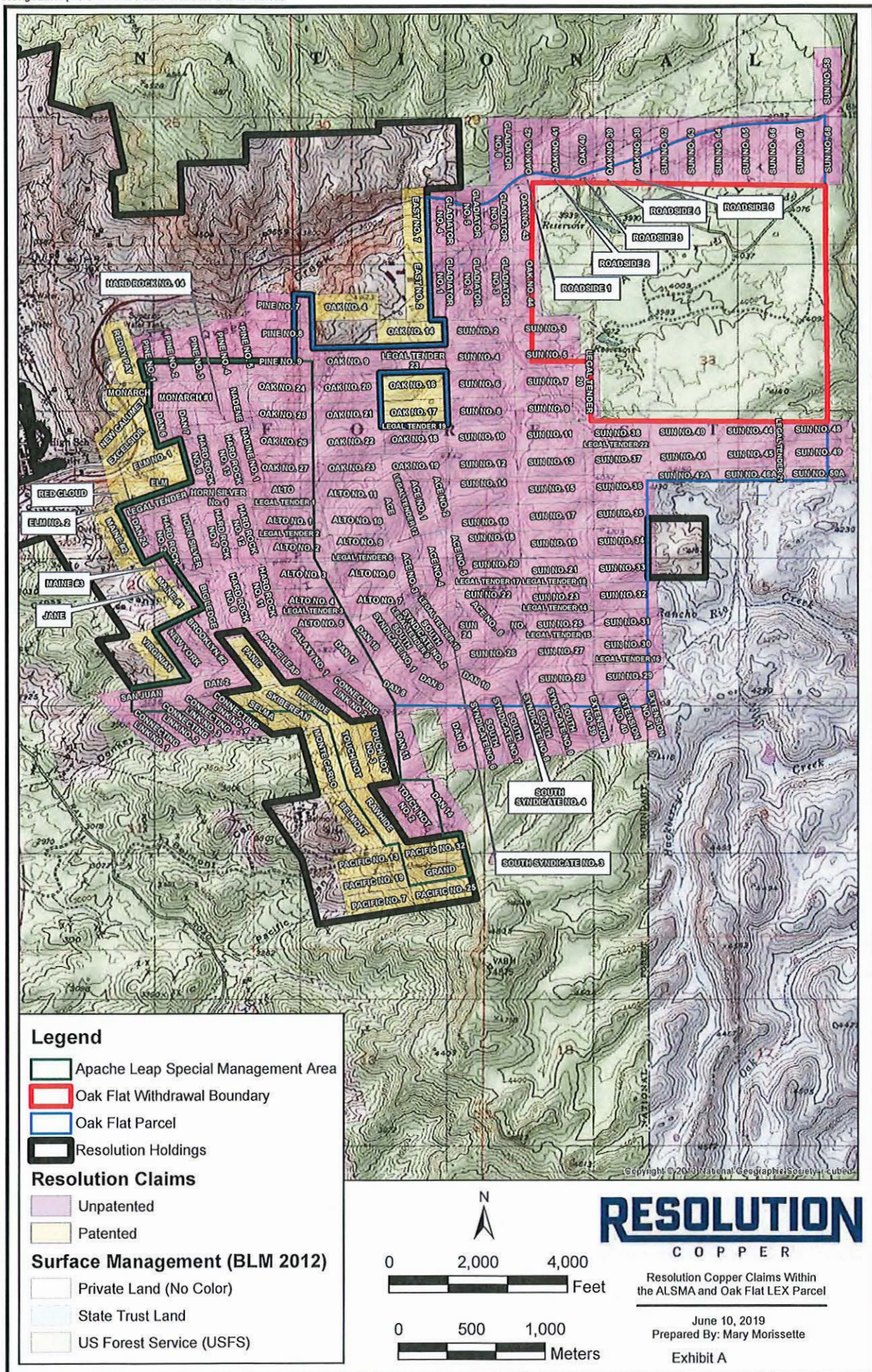
EXECUTED at SUPERIOR, AZ, this 30 day of April, 2025.

*Victoria Peacey*  
Victoria Peacey

# **EXHIBIT A**

## **to Peacey Declaration**



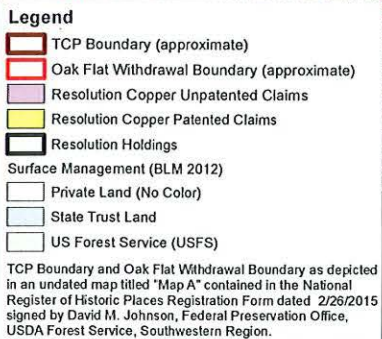




# **EXHIBIT B**

## **to Peacey Declaration**





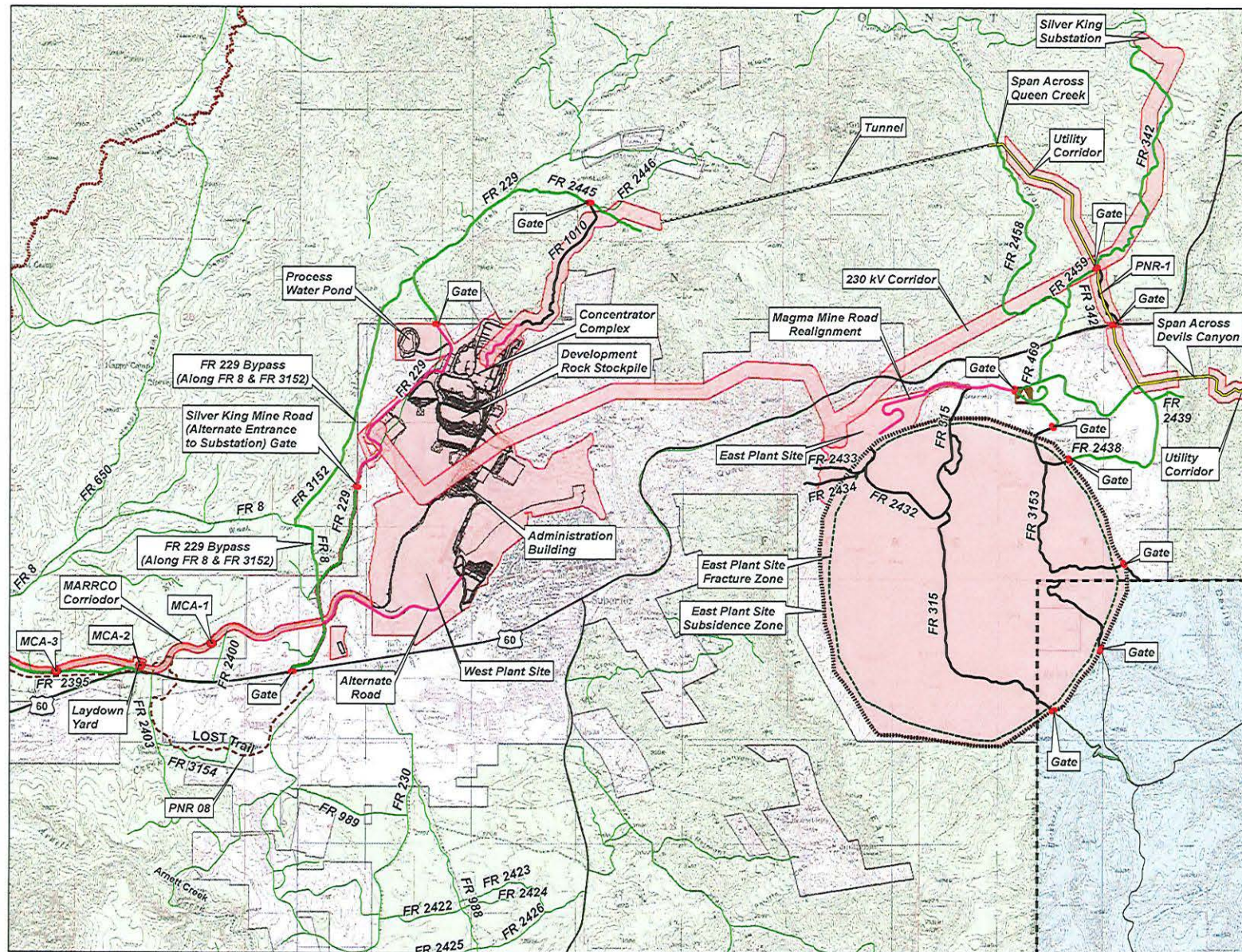


# **EXHIBIT C**

## **to Peacey Declaration**

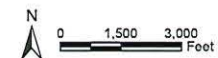


Path: M:\Jobs\0001\007176\ENV\RoadUsePlan\mcd\Fig4\_WPS\_FPS\_7\_9\_2020.mxd

**Legend**

- Gate
- MARRCO Corridor Access Point
- Campground
- Private Road
- Proposed New Road
- Existing Road To Be Decommissioned- Restricted from Public Access
- Existing Forest Road - Public Access To Be Maintained
- Lost Trail
- Arizona National Scenic Trail Polyline
- TNF Ranger District Boundary
- TNF Roads
- Subsidence Zone
- Fracture Zone
- Skunk Camp Tunnel, Spans and Trenchless Crossings
- Preferred Alternative
- Post Land Exchange Surface Management
  - Private Land (No Color)
  - State Trust Land
  - National Forest System

Note: Project area around disturbance area defined by modeled zone of continuous subsidence.  
 Data Sources:  
 Pinal County Open Space and Trails Master Plan, 2007  
 ALRIS AZ Roads, TIGER 2011  
 USFS Forest Maps and AZ Recreation Map  
 Arizona Trail Provided by Arizona Trail Association  
 aaron@aztrail.org  
 SWCA DEIS 8-20-2018  
 Subsidence and Fracture Zone 2017  
 West Plant Facilities  
 Provided by M3 Engineering, July 6, 2020  
 USDA Forest Service, Tonto National Forest Roads 6-9-2014  
 Post Land Exchange Surface Management, BLM, WRI Modified 2017,  
 SRP Powerline Data, 6-2020, and  
 Golder Associates, 5-2020  
 Image Source: Picketpost Mountain & Superior  
 USGS 7.5 Minute Quadrangles



**RESOLUTION COPPER**  
**General Plan of Operations**

WEST AND EAST PLANT SITES  
 Figure 4



# EXHIBIT B

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*Attorneys for Defendant-Intervenor  
Resolution Copper Mining, LLC*

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Apache Stronghold,  
  
Plaintiff,  
  
v.  
  
United States of America, *et al.*,  
  
Defendants.  
  
Resolution Copper Mining, LLC,  
  
Defendant-Intervenor.

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

**DECLARATION OF MATTHEW  
PIERCE IN SUPPORT OF  
DEFENDANT-INTERVENOR'S  
BRIEF IN OPPOSITION TO  
PLAINTIFF'S EMERGENCY  
MOTION FOR LIFT OF STAY AND  
FOR INJUNCTION PENDING  
APPEAL**

1 I, Matthew Pierce, declare as follows:

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

5 **Background**

6 2. I am currently the President at Pierce Mining Engineering, LLC. I have served  
7 in this role since 2016.

8 3. My work focuses on strength characterization of rock masses and  
9 geomechanical mine design. Through my involvement in a wide range of consulting and  
10 research projects over the last 30 years, I have pioneered methods for the estimation of rock  
11 mass properties and the analysis of caving and collapse potential, fragmentation,  
12 subsidence, draw/recovery and infrastructure stability for mining projects and operations. I  
13 help mining companies solve complex problems, build study teams, and conduct  
14 comprehensive project reviews, due diligence assessments, and independent peer reviews.  
15 My resume is attached as Exhibit A.

16 4. My experience spans various mining methodologies, including:

- 17 • **Cave Mining.** I have over 25 years of experience in sublevel, block, and panel  
18 caving, specializing in rock mass characterization, caveability and subsidence  
19 forecasting, fragmentation, recovery, and infrastructure stability.
- 20 • **Underground Mining.** I am an expert in open stoping, cut-and-fill, room-  
21 and-pillar, and longwall mining, including ground support, shaft stability, and  
22 liquefaction hazard assessment.
- 23 • **Surface Mining.** I have worked with open pit mines for over 20 years, where  
24 I focused on slope stability analysis and interactions between surface and  
25 underground mining.
- 26 • **Research.** I have authored or co-authored over 80 technical papers on various  
27 aspects of mining, including rock testing and cave mining mechanics.  
28



**Education**

5. I received my PhD in mining engineering from the University of Queensland in 2010; my thesis was titled “A Model for Gravity Flow of Fragmented Rock in Block Caving Mines.”

6. I also have an M.Sc. in Mining Engineering, which I received from Queen’s University in Canada in 1997.

7. My B.Sc. is in Geological Engineering, and I also received it from Queen’s University in Canada in 1995.

8. My work has been recognized with multiple awards, including:

- Rock Mechanics Award, Society for Mining, Metallurgy, and Exploration (2023).
- Manuel Rocha Medal, International Society of Rock Mechanics (2013).
- President’s Award, Itasca International, Inc. (2011).
- R. Samuel McLaughlin Fellowship, Queen’s University (1995).
- Medal in Geological Engineering, Queen’s University (1995).

**Professional History**

9. From 2016-2019, I served as a member of the Committee on Geotechnical and Geological Engineering for the National Academy of Engineering. The committee focuses on safe and responsible development, risk assessment and mitigation of natural and anthropogenic hazards, and provides a forum for discussion among academic and professional groups, government agencies, and private industry.

10. From February 2013-February 2019, I worked as an adjunct professor at the University of Toronto.

11. From 1998-2016, I worked for Itasca Consulting Group, Inc., first as a mining/geological engineer and then as a principal engineer. I served as a member of the board of directors for Itasca International, Inc. from 2009-2010 and 2013-2016.

12. From 2014-2015, I worked as the director of the Rio Tinto Center for Underground Mine Construction at the Centre for Excellence in Mining Innovation. There

1 I led the existing RTC-UMC research program with the specific objective of creating value  
2 through the innovative application of rock engineering principles in Rio Tinto's  
3 underground mines.

#### 4 **Project Development**

5 13. I initially started working with Resolution Copper to evaluate the potential  
6 drawdown of ore from panel caving. That initial engagement evolved into the analysis of  
7 the potential subsidence area. It is my understanding that this activity will take place on a  
8 "Federal Land Parcel" that Resolution expects to receive from the Secretary of Agriculture  
9 pursuant to a congressional land exchange.

10 14. Once title to the Federal Land Parcel is transferred, Resolution will need to  
11 characterize the Mineral Withdrawal Area and assess the mineral potential. To accomplish  
12 these tasks, Resolution will conduct further exploration activities over several years.

13 15. Initial activities will include the continuation of underground exploratory  
14 tunnel construction. During this time, there will be minimal impact to the exploration area,  
15 and none of these initial exploration activities will involve surface disturbance or cause  
16 subsidence.

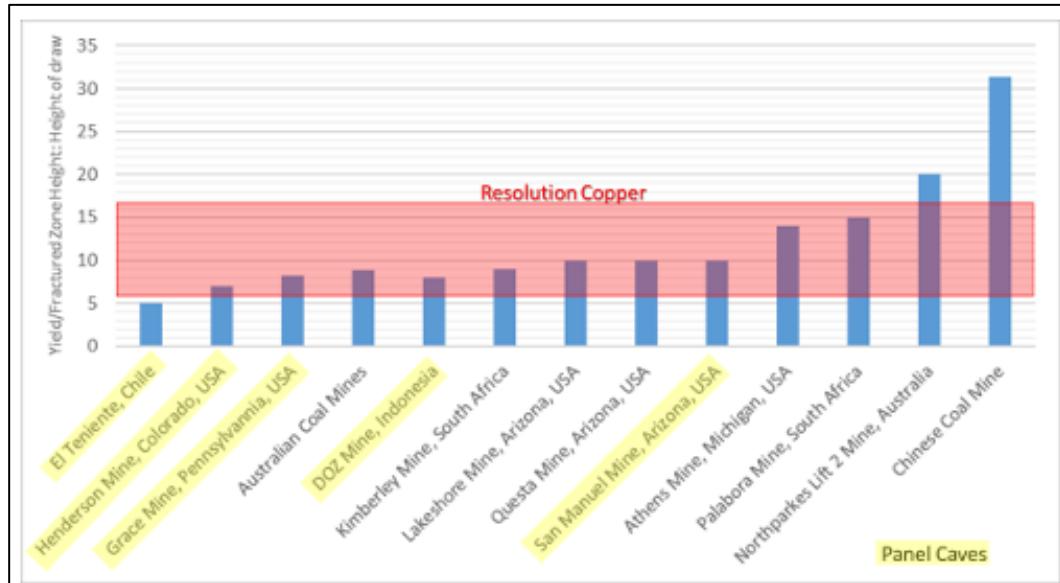
17 16. Resolution plans to use an underground mining technique known as panel  
18 caving. Resolution Copper would facilitate this process by constructing shafts from the  
19 ground surface and a network of tunnels near the base of the ore body. It would access the  
20 tunnels from vertical shafts in an area known as the East Plant Site.

21 17. The panel caving technique is initiated by fracturing the base of the ore body  
22 with explosives; Resolution extracts the ore from the base of this fractured zone, and gravity  
23 subsequently moves the overlying ore downward in a steady, incremental fashion. As the  
24 ore moves downward and is removed, the land surface above the ore body also eventually  
25 and gradually moves downward or "subsides."

26 18. In mining, the caving rate is defined by the height of the yielded/fractured  
27 zone limit relative to the height of draw (meters of equivalent solid rock pulled). The caving  
28 rate is affected by several factors, including the bulking potential of the rock mass, the

relative production rates (e.g., uniform draw results in less bulking and a faster caving rate), the presence of faults, rock mass brittleness, in situ stress and rock mass strength.

19. The caving rate at Resolution is predicted to lie somewhere between 5.8 and 16.8, as shown below in **Figure 1**.<sup>1</sup>



20. At these rates, the fracture limit would eventually impact the ground surface around Year 6 of mining operations, which means six years after Resolution has completed several years of exploratory activities, developed underground infrastructure, and started panel caving the ore body. This caving rate range is consistent with other reported caving rates around the world.

21. The subsidence will be gradual. Assuming extraction continues at a steady rate throughout the life of the mine, the area is expected to subside, at its deepest point,

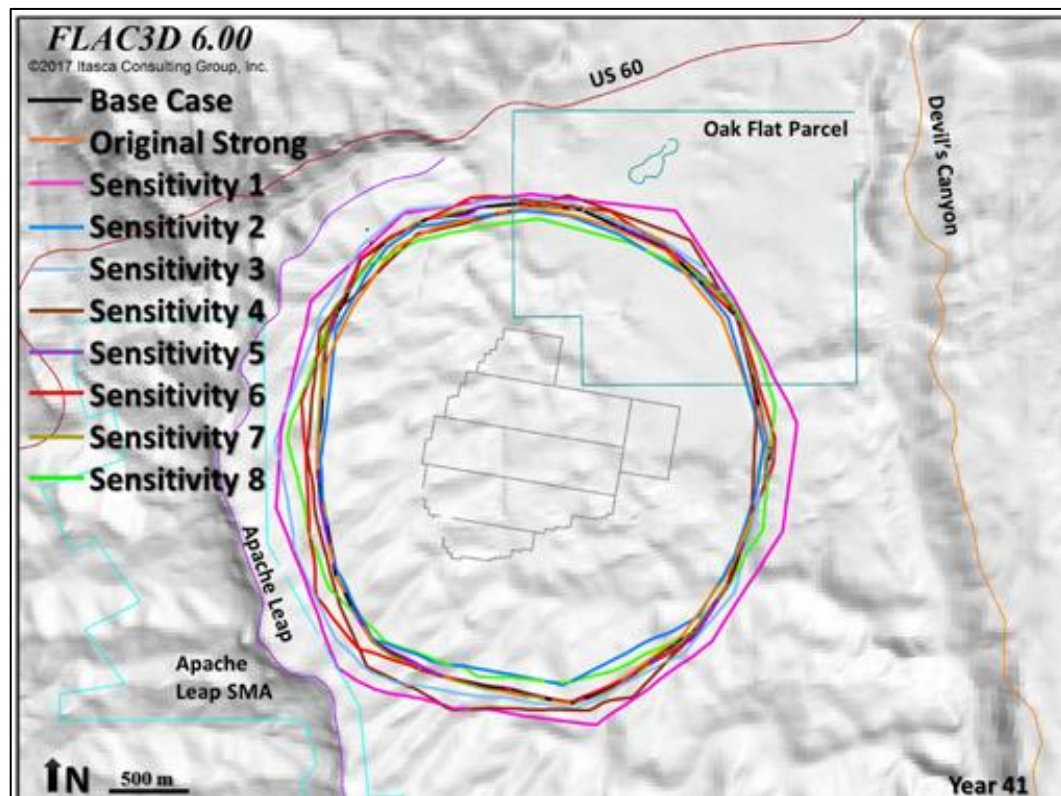
<sup>1</sup> The figure was taken from the Assessment of Surface Subsidence Associated with Caving Resolution Copper Mine Plan of Operations (see Figure 14 at page 16 of the report), which was prepared by Itasca Consulting Group, Inc. for Resolution Copper Mining, LLC. The full report is available at: <https://tinyurl.com/hvwmrm2j>. The subsidence impact model was run to support the mine plan of operations, which was submitted to the United States Forest Service (USFS) in November 2013 to initiate the comprehensive environmental review under the National Environmental Policy Act (NEPA) with the completion of an Environmental Impact Statement (EIS). The subsidence model was re-run to incorporate new geological data from drilling collected since 2011, including faults and geological spatial definition.

approximately 33 feet per year or 2.75 feet per month. Subsidence magnitudes decrease as you move away from the deepest point.

22. At its deepest point, subsidence will likely not be perceptible to the naked eye until after 7-10 years of mining operations.

23. The fracture limit delineates an area around the actual caved area in which the ground surface does not move substantially but could be broken with open tension cracks and is the outer limit of any potential large-scale surface cracking or fracturing.

24. The evolution of the fracture limit is typically forecast using numerical modeling, and its location during mining is established via open boreholes, Time Domain Reflectometer (TDR) cables, microseismic monitoring, smart markers, cave trackers, and field observations of stress redistribution and rock mass response.



25. In all cases we examined, no damage to the Apache Leap, Devil's Canyon, Oak Flat Campground, or to the serviceability of Highway US-60 was predicted, as



1 demonstrated above in **Figure 2**, which shows a comparison of predicted fracture limits for  
2 the base case and all sensitivities (Garza-Cruz and Pierce, 2018).<sup>2</sup>

3 26. The mine plan calls for the panel caving to occur in six discrete panels,  
4 described in detail in GPO section 3.2.9.1 (Resolution Copper 2016c). The phasing of these  
5 panels is to mine from east to west, or in other words, starting further from Apache Leap  
6 and working toward Apache Leap. In this manner, the results of subsidence monitoring  
7 from the initial panel caving would be available prior to any mining near Apache Leap. This  
8 would allow time for modifications to be made to the mine plan, if any were to be needed.

9 27. Apache Leap, Queen Creek Canyon, and the surface area above the planned  
10 underground mine are currently monitored (prior to mining) using LiDAR, Interferometry  
11 Synthetic Aperture Radar (InSAR), and select rock spires using digital tilt meters.

12 28. During mining, the surface area above the ore deposit would be subdivided  
13 into a no-go zone, consistent with the limit of the subsidence fracture zone (where no person  
14 may enter) and a restricted public access zone consistent with the continuous subsidence  
15 limit (where Resolution Copper personnel are permitted for geotechnical monitoring and  
16 inspections).

17 29. These zones would be reassessed during mining based on information  
18 collected from cave propagation monitoring. Surface subsidence will be monitored through  
19 the use of available industry best practice and demonstrated technology, including  
20 extensometer, tilt meters, survey prisms, and crack displacement monitors; Time Domain  
21 Reflectometer (TDR) cables; aerial photography; InSAR; microseismic monitoring system;  
22 and smart markers and cave trackers.

23 30. Post-mining monitoring would continue for at least 15 years. Resolution  
24 Copper would continue to monitor the impact of surface subsidence on key infrastructure:

- 25
  - Apache Leap, cliffs, and pillars,

26  
27 <sup>2</sup> This figure is taken from the Response to GS-5 Comments on Resolution Copper  
28 DEIS from Dr. Emerman (Subsidence and Uncertainty) (Figure 1 at 3), which is available  
at: <https://tinyurl.com/j6rnhcmw>.

- Queen Creek and Devil's Canyons,
- Highway U.S. 60,
- Oak Flat Campground, and
- The surface subsidence area.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

EXECUTED at St. Louis Park, MN, this 30th day of April, 2025.



---

Matthew Pierce

# **EXHIBIT A**

## **to Pierce Declaration**



# Matthew Pierce

[matt@piercemining.com](mailto:matt@piercemining.com); [www.piercemining.com](http://www.piercemining.com)

<b><i>Expertise</i></b>	Mining Engineering, Geological Engineering
<b><i>Education</i></b>	PhD, Mining Engineering, 2010 University of Queensland, Brisbane, Australia MSc, Mining Engineering, 1997 BSc, Geological Engineering, 1995 Queen's University, Canada
<b><i>Professional Affiliations</i></b>	Registered Professional Engineer, Ontario Committee on Geotechnical and Geological Engineering, National Academy of Engineering, 2016-2019 Commission on Underground Nuclear Power Plants, ISRM, 2013-2019 Society for Mining, Metallurgy and Exploration American Rock Mechanics Association
<b><i>Honors</i></b>	Rock Mechanics Award, Society for Mining, Metallurgy and Exploration, 2023 Manuel Rocha Medal, International Society of Rock Mechanics, 2013 President's Award, Itasca International, Inc., 2011 R. Samuel McLaughlin Fellowship, Queen's University, 1995 Medal in Geological Engineering, Queen's University, 1995
<b><i>Keynote Lectures</i></b>	55th U.S. Rock Mechanics/Geomechanics Symposium, Houston, 2021 EUROCK 2013 - ISRM International Symposium, Wroclaw, Poland, 2013 ISRM 12th International Congress on Rock Mechanics, Beijing, 2011
<b><i>Professional Experience</i></b>	
2016 – Present	Pierce Mining Engineering (Minneapolis, USA) -President
2014 – 2015	Rio Tinto Center for Underground Mine Construction (Sudbury, Canada) -Director
2013 – 2019	University of Toronto (Toronto, Canada) -Adjunct Professor
1998 – 2016	Itasca Consulting Group, Inc. (Minneapolis, USA) -Principal Engineer -Member, International Board of Directors -Mining/Geotechnical Engineer
1995 – 1997	Bawden Engineering Ltd. (Kingston, Canada) -Mining Engineer

### ***Skills and Experience***

*Cave Mining:* Over 25 years of experience in sublevel, block and panel caving mines from concept to feasibility and operations. Specialized in rock mass characterization, undercut and extraction-level design, draw scheduling, forecasting of caveability, fragmentation, recovery, infrastructure stability and surface subsidence and the assessment of hazards related to induced seismicity and inrushes. Caving consulting clients include Grasberg, Merdeka and Hu'u (Indonesia); Henderson and Resolution (United States); Oyu Tolgoi (Mongolia); Cadia, Northparkes and Ernest Henry (Australia); New Afton, Renard, Red Chris and Kemess (Canada); El Teniente and Chuquicamata (Chile); Kiruna and Malmberget (Sweden); Ghaghoo and Karowe (Botswana); Palabora and Cullinan (South Africa).

*Underground Mining:* Experience with open stoping, cut-and-fill, room-and-pillar and longwalling operations includes sequencing and dimensioning of excavations and pillars, stability analysis and design for shafts, access, and backfill, ground support design and the assessment of hazards related to induced seismicity, subsidence and liquefaction. Consulting clients include Jansen, Red Lake, Niobec, Westwood, Goldex and Eleonore (Canada); Montanore, Solvay, General Chemical, Tronox, Sage Creek and Twin Metals (United States); La Encantada (Mexico); Kittila (Finland); Osborne (Australia).

*Surface Mining:* Over 20 years of experience in open pit mining, specializing in rock mass characterization, inter-ramp and overall slope stability analysis, interaction with underground mining (including caving-induced instability) and sequencing. Open pit consulting clients include Victor (Canada); Bingham, Cresson, Lemont and McCook (United States); Kittila (Finland).

*Research:* Have pioneered tools, methods and workflows for rock testing, the estimation of rock mass properties and the forecasting of mining-induced rock mass yield, fragmentation, collapse and gravity flow from tunnel-scale to mine-scale. Involved in the industry-funded International Caving Study and Mass Mining Technology research consortia for over 15 years. Led and directed the Rio Tinto Center for Underground Mine Construction with the specific objective of creating value through the innovative application of rock engineering principles in Rio Tinto caving mines. Authored/co-authored over 80 technical papers.

# EXHIBIT C



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Andrea J. Driggs (#023633)  
Janet M. Howe (#034615)  
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*Attorneys for Defendant-Intervenor  
Resolution Copper Mining, LLC*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Apache Stronghold,

Plaintiff,

v.

United States of America, et al.,

Defendants.

Resolution Copper Mining, LLC,

Defendant-Intervenor.

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

**DECLARATION OF STERLING  
HUNDLEY IN SUPPORT OF  
DEFENDANT-INTERVENOR'S  
BRIEF IN OPPOSITION TO  
PLAINTIFF'S EMERGENCY  
MOTION FOR LIFT OF STAY  
AND FOR INJUNCTION  
PENDING APPEAL**

I, Sterling Hundley, declare as follows:

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

2. I am the Financial Operations Officer at Resolution Copper and have worked for Resolution since May 2006. In my current role, I am responsible for all financial operations and controls at Rio Tinto's Resolution Project in Arizona, where I provide short

1 and long-term strategic advice and analysis on local taxation and business opportunities. I  
2 manage economic models used for long-term investment analysis and am also responsible  
3 for maintaining compliance with Rio Tinto Group Accounting, Project Development, Risk  
4 Analysis, and other Rio Tinto standards. One of my responsibilities is to develop  
5 organizational internal controls and process flows.

6 3. From November 2009 through December 2011, I worked as the Controller  
7 for Resolution. In that role, I was responsible for all financial and commercial aspects of  
8 the Resolution Project, including accounting, treasury, procurement, and compliance and  
9 general reporting functions.

10 4. From May 2006 through October 2009, I was Resolution's Chief Accountant.  
11 In that role, I was responsible for all accounting, treasury, and reporting functions. This  
12 included shared service aspects of month-end close, account reconciliation, intercompany  
13 billing, accounts payable, and other shared service areas, as required. I also managed the  
14 external audit process relative to project spend.

15 5. Before joining Resolution, I was the Director of Financial Accounting, Risk  
16 Management, and Remediation at ConocoPhillips. I worked there from April 1997 through  
17 May 2006. In that role, I was responsible for financial management of a \$1 billion risk  
18 management and remediation reserve. I also developed, analyzed, and submitted reports  
19 related to environmental issues, cost containment initiatives, and acquisitions and mergers.

20 6. Prior to that, I was the Accounting Supervisor at the Circle K Corporation  
21 from February 1993 through April 1997. There, I planned, coordinated, and supervised  
22 diverse accounting and financial management programs for Circle K, as well as numerous  
23 corporate acquisitions. I was responsible for all aspects of financial statement preparation  
24 and external reporting. I also conducted in-depth analyses on store acquisitions, joint  
25 ventures, and company franchising opportunities throughout numerous states. Further, I  
26 developed and administered annual operating budgets and projections for long and short-  
27 term cash requirements.

28

1           7.     From September 1991 through February 1993, I worked as the Senior  
2 Accountant for the McLane Company. McLane is a grocery wholesaler to Wal-Mart and  
3 Circle K and has one of the largest distribution centers in the Southwest. There, I performed  
4 internal accounting and financial management for over \$300 million in annual distribution  
5 sales. I also conducted product and category analysis studies to determine the profitability  
6 of product lines.

7           8.     From May 1988 through September 1991, I was a Financial  
8 Analyst/Controller for T.E.N. Private Cable, a small cable company providing movie cable  
9 services to hotels and motels throughout the United States. In that role, I was involved in  
10 the coordination of financial, accounting, and operational management procedures for all  
11 aspects of the business. I also coordinated audit and review efforts with independent  
12 accounting firms.

13           9.     I hold a B.S. degree in finance from Arizona State University (1989) and have  
14 been a licensed CPA in the State of Arizona since 2000.

### 15           **Project Overview**

16           10.    Resolution Copper Mining, LLC is currently developing one of the world's  
17 largest untapped copper deposits, a project of significant national interest due to its potential  
18 to substantially contribute to U.S. copper supply.

19           11.    It is important for the US to have additional sources of domestic copper,  
20 which, for example, is widely used in wind turbines, solar panels, and electric vehicles. The  
21 World Bank estimates that global copper demand could rise by 200% by 2050. The project  
22 has the potential to produce up to 25% of the US copper demand—roughly 40 billion  
23 pounds of copper over the life of the mine.

24           12.    In December 2014, Congress enacted the Southeast Arizona Land Exchange  
25 and Conservation Act, 16 U.S.C. § 539p (the "Act"), mandating a land exchange between  
26 Resolution and the U.S. Forest Service.



1           13. The Act provides that Resolution shall agree to pay all costs that are  
2 associated with the land exchange and the associated environmental analysis. *Id.* at  
3 (c)(7)(A).

4           **Resolution's Economic Impact**

5           14. Resolution's headcount varies by the level of activity at site. Currently, there  
6 are 181 full-time employees at Resolution: 160 live within a 40-mile radius of Superior,  
7 with the remaining 21 full-time employees residing in Arizona but outside the 40-mile  
8 radius. Counting contractors, a total of 416 people presently work at Resolution Copper;  
9 295 of them live within a 40-mile radius of Superior and another 96 live in Arizona, but  
10 further away.

11           15. Resolution not only hires locally, but it also uses local vendors and  
12 contractors. Since 2004, approximately \$1.02 billion has been spent within a 40-mile radius  
13 of Superior because of Resolution's operations. On average, 45% of our vendor and supplier  
14 expenditures benefit organizations and workers located within a 40-mile radius of Superior.

15           16. Resolution has been a partner with local cities and towns in the Copper  
16 Triangle, with approximately \$18 million spent on social investment covering emergency  
17 services, education, health, economic development, environment and cultural heritage  
18 between 2013 and 2024. We've worked hard to keep our people safe and provide personal  
19 protective equipment to communities and emergency responders. We joined with United  
20 Food and other partners to distribute over 50,000 cans of drinking water and donate more  
21 than 233,000 meals to communities hard-hit by COVID-19. These funds have also been  
22 used to secure access to technology for students learning remotely, support domestic  
23 violence shelters, and provide small business grants to local entrepreneurs.

24           17. Resolution has provided \$1.2 million of funding between 2013-2024,  
25 supporting STEM and robotics programs at local schools. We have awarded \$788,000 in  
26 scholarships over the last decade to local and Native American students.

27           18. In 2024, we were proud to be named Provider of the Year by the Arizona  
28 Association for Economic Development (AAED), recognizing our commitment to

1 sustainability and economic diversification in Superior, Arizona. Through our Regional and  
2 Economic Development Strategy, we've empowered local businesses, provided workforce  
3 training, and enhanced community resilience, all while maintaining over 85% local  
4 employment. Our investments in salaries, partnerships, and community initiatives, along  
5 with strong collaboration with external partners, have been instrumental in driving  
6 economic growth and empowering our team.

7 19. When the mine is fully operational, Resolution anticipates directly employing  
8 about 1,500 workers and paying around \$134 million per year in total compensation. The  
9 project will also generate approximately 2,200 indirect jobs, meaning it could support some  
10 3,700 jobs at full production. The project will result in the purchase of about \$546 million  
11 per year in goods and services from local businesses.

12 20. Studies show Resolution Copper could produce up to \$61 billion in economic  
13 value for Arizona over the 60-year life of the project. Resolution will boost state and local  
14 tax revenues from \$88 to \$113 million per year, while the federal government could see an  
15 extra \$200 million in tax revenues per year.

16 21. To date, Resolution has invested approximately \$2.7 billion in the project.

17 22. The Project has a holding cost of approximately \$130 million per year. This  
18 is the cost Resolution incurs to maintain the status quo, i.e., operate and maintain the current  
19 facilities while it waits for the approval to start characterization and exploration activities  
20 in the Oak Flat Parcel.

21  
22 I declare under penalty of perjury, under the laws of the United States, that the foregoing is  
23 true and correct to the best of my knowledge.

24  
25 EXECUTED at Superior, AZ, this 30th day of April, 2025.

26  
27 Sterling Hundley  
28 Sterling Hundley