

**Testimony of Wendsler Nosie Sr.  
Chairman of the San Carlos Apache Tribe**

**Before the U.S. House Natural Resources Committee  
Subcommittee on National Parks, Forests and Public Lands**

**Concerning the Southeast Arizona Land Exchange and Conservation Act of 2007  
H.R. 3301**

**November 1, 2007**

My name is Wendsler Nosie Sr. I am Chairman of the San Carlos Apache Tribe. Thank you for the opportunity to submit testimony to the Subcommittee on National Parks, Forests and Public Lands concerning the Southeast Arizona Land Exchange and Conservation Act of 2007 (H.R. 3301)

The Tribe is submitting this testimony to express its strong opposition to the legislative land exchange proposed by H.R. 3301, which would allow foreign owned mining giants, Rio Tinto PLC (UK) and BHP Billiton Ltd (Australia), to desecrate the aboriginal homeland of the Apache People and acquire and mine approximately 3,025 acres of public lands near Superior, Arizona. H.R. 3301 would also bypass the "hard look" required by the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq* (NEPA) and other important environmental and cultural resource protection laws.

The lands to be acquired and mined by Rio Tinto and BHP Billiton under H.R. 3301 are referred to by non-Indians as Oak Flat and Apache Leap. These lands are sacred and holy places. So too is the nearby area known as Devil's Canyon which also will be desecrated if this legislative land exchange is approved. The Apache People, as well as other Native Nations in Arizona and elsewhere, including the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Tonto Apache Tribe, the Hopi Tribe, the Hualapai Tribe, and the Mescalero Apache Tribe in New Mexico, are compelled to oppose H.R. 3301, not only for our People, but for all of the people who pray that the unique features and habitat of Oak Flat, Apache Leap, and Devil's Canyon will continue to be preserved for future generations.

**The Holy and Sacred Sites of Oak Flat, Apache Leap and Devil's Canyon**

Well before Oak Flat, Apache Leap, and Devil's Canyon were appreciated for their unique habitat and features by hikers, bird watchers, off-road enthusiasts, and rock climbers, these Lands were home to the Apache People. In our native language Oak Flat is called Chich'il Bildagoteel, and it lies in the heart of T'is Tseban country. The Oak Flat area is bounded in the east by Gan Bikoh or Crown Dancers Canyon, and in the north by Gan Diszin or Crowndancer Standing. These canyons are called "Devil's Canyon" and "Queen Creek Canyon" by non-Indians.

For as long as may be recalled, our People have come together here. We gather the acorns and plants that these lands provide, which we use for ceremonies, medicinal purposes, and for other cultural reasons. We have lived throughout these lands, and the Apache People still come together at Oak Flats and Apache Leap to conduct religious ceremonies and to pray or take rest under the shade of the ancient oak trees that grow in the area. The importance of these lands has not changed. These are holy, sacred, and consecrated lands which remain central to our identity as Apache People.

In the nearby area called Devil's Canyon, we have placed marks, which are symbols of life on Earth, on the steep ledges and canyon walls that rise high above the stream that has carved deep into the Canyon, and we buried our ancestors in the Canyon's heart. The escarpment of Apache Leap, which towers above nearby Superior, is also sacred and consecrated ground for our People for a number of reasons, many of which are not appropriate to discuss here. You should know, however, that at least seventy-five of our People sacrificed their lives at Apache Leap during the winter of 1870 to protect their land, their principles, and their freedom when faced with overwhelming military force from the U.S. Cavalry which would have required them to surrender as prisoners of war.

The traditional cultural significance of these lands, as well as the presence of other historic sites on the lands of Oak Flat and Apache Leap, and in Devil's Canyon, render these landscapes and sites eligible for inclusion on the National Register of Historic Places under the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* (NHPA). Yet, allowing Rio Tinto and BHP Billiton to acquire and mine these lands through the legislative land exchange proposed by H.R. 3301 would destroy the cultural and historical significance of these lands under the NHPA, and desecrate this place of profound religious importance for our People. Rio Tinto and BHP Billiton ask Congress to approve this exchange for the single-minded purpose of providing the best possible profit to the shareholders of two foreign mining companies, which have no identity or loyalty to the United States, and which will suffer no adverse consequences for their profit.

The Apache People cannot, under any circumstances, support this result, especially where the devastating impacts from the mining activities to be conducted on, around, and deep underneath this sacred place will be felt forever once the mining is finished, leaving our future generations to suffer the legacy of damage left behind.

If enacted, H.R. 3301 would bypass the laws enacted by Congress for federal land exchanges. Congress has insisted that the normal administrative land exchange process must include Tribal consultation, meaningful public input, and close scrutiny of the proposed exchange and mining project under NEPA and other environmental and cultural resource protection laws, including, but not limited to, the NHPA, the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* (ESA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.* (NAGPRA), the Archaeological Resources Protection Act, 16 U.S.C. § 470aa *et seq.* (ARPA), and the American Indian Religious Freedom Act, 42 U.S.C. § 1996 *et seq.* (AIRFA). In addition, the federal decision makers would have to consider less harmful and environmentally damaging

alternatives. The rationale and justification for this special legislative land exchange has never been explained by the supporters of H.R. 3301.

**The Unique Environments of Oak Flat, Apache Leap, and Devil's Canyon Are An Important Refuge for Plants and Animals and a Place of Peace and Solitude for Its Visitors**

Since time immemorial, our People have understood the unique beauty and importance of Oak Flat, Apache Leap, and Devil's Canyon. In more recent history, the importance of these lands has been recognized by scientists, biologists, and outdoor enthusiasts. Tourists from Arizona, and indeed, all over the world, travel to this unique region of Arizona to see and experience the beauty of these places.

Deep pools of water are captured at the bottom of Devil's Canyon as it slices through the high desert on its way to Mineral Creek and eventually to the Gila River. These pools provide a cool and safe home for a diverse number of plants and animals. The region, like all of Arizona, is suffering under a long period of drought. The water which still courses through Devil's Canyon has become a precious ribbon of life. The Canyon provides some of the last suitable habitat for a large number of animal and plant species – species that can no longer find refuge in other riparian areas in Arizona, as these areas can no longer be counted on to provide the most important element of life for all beings – water.

The flows in Devil's Canyon and throughout the region, will be depleted and subject to contamination if Rio Tinto and BHP Billiton acquire the lands of Oak Flat and Apache Leap through the land exchange proposed by H.R. 3301. Given the fragile state of Arizona's water supply, certainly these concerns should be subjected to close scrutiny through the normal environmental review process established by Congress in NEPA and other environmental laws. These protections would be bypassed by H.R. 3301.

Oak Flat and Apache Leap sit at an approximate elevation of 4,200 to 4,600 feet above sea level, making it a cool respite for travelers from Phoenix who visit the area as Highway 60 skirts Oak Flat Campground before running through Devil's Canyon. The campground and picnic area at Oak Flat are surrounded by large boulders and towering outcrops, while in the campground and picnic area below, ancient oak trees provide shade for hikers, campers and picnicking families, and give crucial sanctuary for many important bird species – a fact that has been well documented by local Audubon societies.

The unique and sensitive ecosystem of Oak Flat is not only fertile ground for medicinal plants and herbs essential to the cultural and religious practice of the Apache People, but the endangered Arizona Hedgehog cactus (*Echinocereus triglochidiatus var arizonicus*), which is listed under the Endangered Species Act, also inhabits the Oak Flat area. Other threatened and endangered species are known to be in the area as well, including the Lessor long-nosed bat and the Chiricahua leopard frog. Under H.R. 3301, however, the land exchange and resulting mining project could be constructed and operated without compliance with the federal consultation requirements required by the Endangered Species Act.

The importance of Oak Flat was recognized in 1955 when, through the efforts of the Eisenhower Administration, 760 acres of Oak Flat, known as "Oak Flat Campground", were withdrawn from all forms of appropriation, **including mining**, under the public land laws through Public Land Order 1229 (PLO 1229). This was done despite the fact that Oak Flat Campground was already located in the heart of an active mining district. Since this time, mining interests have attempted to push back or set aside the protections for Oak Flat found in PLO 1229 on several occasions. Despite strong pressure, federal decision makers have consistently rejected such attempts, choosing instead to preserve the important values of Oak Flat for future generations. There is no justification for Congress to abandon its responsibility to protect these treasured lands today.

The protections for Oak Flat mandated by PLO 1229 remain just as valid today as when they were first issued in the 1950s. If these lands are exchanged by H.R. 3301, and acquired by Rio Tinto and BHP Billiton for their mining purposes, the unique values of Oak Flat will be destroyed forever. Despite this fact, H.R. 3301 fails to provide any legal basis or justification for Congress to override the legal authority of this important public land order.

### **Overview of the Resolution Mining Project to Be Facilitated by H.R. 3301**

The details of Rio Tinto's and BHP Billiton's plans to mine the Oak Flat and Apache Leap Area are not fully known. Although a mining plan would **normally** be required if the exchange was conducted pursuant to the requirements of an administrative land exchange and the Federal Land Policy Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), such a plan has not been publicly released. In addition, the exact location of the proposed project footprint and the lands to be acquired by Rio Tinto and BHP Billiton have never been disclosed.

H.R. 3301 references a map titled "Southeast Arizona Land Exchange and Conservation Act - Federal Parcel - Oak Flat" dated January 2005, as the description of the approximately 3,025 acres of land located in Pinal County, that Rio Tinto and BHP Billiton would acquire from the Tonto National Forest for their mining operations, which includes the 760 acres of Oak Flat Campground, as withdrawn by Public Order No. 1229. *See* H.R. 3301, §3(3). It is significant that Rio Tinto and BHP Billiton have not made the legal description or map of the lands which they are asking Congress to give them through H.R. 3301 readily available for public review. To the knowledge of the Apache Tribe, these companies also have not made the legal description or map of these lands readily available to Congress along with the proposed legislation.

In addition, H.R. 3301 describes a 695 acre "conservation easement" area for Apache Leap, within the 3,025 acres of federal land that would be acquired by Rio Tinto and BHP Billiton, as depicted on a map titled "Apache Leap Conservation Easement Area," dated November 2006. Again, the companies have not made this map or the legal description of the 695 acres of lands in this conservation easement area readily available to the Apache Tribe or public, and quite possibly Congress. While the Apache Tribe objects to this "Apache Leap Conservation Easement Area" because it will not in fact protect this sacred and holy place of the Apache People, we also object because both the Tribe and the public have not been provided full disclosure of the boundaries and location of these lands.

Although (a) the precise location of the lands to be acquired and mined are unknown; and (b) the details of Rio Tinto's and BHP Billiton's mining plans for Oak Flat and Apache Leap have not been disclosed, the following aspects of the project seem clear, based upon the limited explanations of the project recently made available on the website of Resolution Copper, Resolution Copper Mining, LLC (Resolution Copper) (the named joint venture of Rio Tinto and BHP Billiton) *see* [www.resolutioncopper.com](http://www.resolutioncopper.com), (last visited 10/25/2007), as well as a review of certain permit application documents submitted to Arizona Department of Environmental Quality (ADEQ) by Resolution Copper:

- Resolution Copper is a joint venture of Rio Tinto and BHP Billiton. Resolution Copper is the successor in interest to Magma Copper Company (and certain earlier mining interests) which previously conducted copper mining in the area proposed for the Resolution Copper project, including in the area just west of Oak Flat and near Superior, Arizona. While a large mine shaft (known as Shaft No 9) was drilled in 1973 after a massive copper ore deposit was discovered approximately 7,000 feet below the surface of the ground, the large copper ore deposit was never developed
- After Resolution Copper was formed by Rio Tinto and BHP Billiton, the foreign mining giants turned their attention to whether, and by what means, the massive copper ore body located somewhere below Oak Flat could be extracted from deep within the earth. Despite the incredible opportunity for profit the ore body represents, they quickly settled on one of the **oldest, cheapest, most dangerous, and environmentally damaging mining methods available in the industry today**. This method is known as block-caving. By using this method, Resolution Copper's own website reveals that they could extract up to 600,000 metric tonnes of saleable copper from the mine every year for at least 40 years before the ore body would be exhausted.
- **Under today's copper prices, listed on the London Metal Exchange on 10/25/2007, the saleable copper extracted from these public lands (if these lands are exchanged to Rio Tinto and BHP Billiton), would have a value of around \$185.6 Billion Dollars.** The appraisal requirements of H.R. 3301 do not adequately ensure that the public will receive fair value for these minerals.
- Through block-caving, Resolution Copper would develop a series of tunnels deep below these sacred lands, and directly below the massive ore body, which is located, in part, underneath Oak Flat and Apache Leap. Using blasting and other techniques over the 40+ years of the mine, Resolution will break up and remove the ore body from the ground for further processing, creating an enormous void in the Earth that will eventually collapse in on itself, causing significant surface subsidence throughout the project area, including at Oak Flat and Apache Leap, and possibly Devil's Canyon, Highway 60, and elsewhere. It is unknown if closure plans for the project have been prepared for the Resolution Copper Project

**The Resolution Copper Mining Project Will Result in Massive Surface Subsidence and the Desecration and Destruction of the Oak Flat Area, Apache Leap, and Devil's Canyon Despite the Proposed "Conservation Easement" Inserted in H.R. 3301**

Under the normal requirements for a land exchange in accordance with NEPA and FLPMA, Congress would require federal decision makers to conduct interdisciplinary studies and closely scrutinize the inevitable surface impacts of the mining project on Oak Flat, Apache Leap, and nearby Devil's Canyon. They would be required to consult with the Apache Tribe and interested members of the public throughout the process, and would have to consider the impact of the surface subsidence on the many eligible sites and landscapes found in this area as required by the NHPA and other laws. They would also be required to evaluate the effect of surface subsidence on the traditional cultural and religious elements of this landscape for the Apache People. Rio Tinto and BHP Billiton seek to have Congress exempt them from all of these important requirements of the law through H.R. 3301.

The Apache People do not accept the purported "conservation easement" found in Sec. 6 of the proposed legislation as a substitute for the complete protection of Oak Flat, Apache Leap, and Devil's Canyon. The holy and consecrated nature of these places are not embodied solely in the physical feature known as Apache Leap. Oak Flat and nearby Devil's Canyon are also holy, sacred and consecrated grounds. They are all in their place in a unique and irreplaceable region. The traditional cultural and religious values of these places for the Apache People, and the collective integrity of the entire area as a whole, will be destroyed by the surface subsidence and other aspects of the mining proposed by Resolution Copper.

Even if Apache Leap was protected from subsidence by the proposed conservation easement (which it is not), this important cultural, religious and historic site would eventually be surrounded by 2,330 acres of land that will be irretrievably damaged and defiled by the proposed mining project. This includes the lands of Oak Flat and nearby Devil's Canyon. This would be akin to leaving the sanctuary of a church intact, but allowing for the desecration and destruction of the rest of the church, which destroys, in itself, the purpose of the church as community gathering place and place of worship.

While H.R. 3301 would purport to prohibit "commercial mineral extraction" from under the proposed conservation easement, it does not prohibit Resolution Copper from tunneling under Apache Leap or from conducting other below ground operations directly below the escarpment. In addition, nothing in H.R. 3301 would **require** Resolution Copper to cease its mining operations and block-caving activities in the surrounding area should these operations and activities show signs of damaging or desecrating Apache Leap. Indeed, under Sec. 6, the responsibility of maintaining and preserving Apache Leap would be shifted to the grantee of the conservation easement. Resolution Copper would be relieved of any obligation to change its mining plan or operations to avoid harming this sacred place.

These serious problems are multiplied by the fact that H.R. 3301 would bypass the normal federal requirements of NEPA and other federal laws enacted by Congress – laws that would

normally require Resolution Copper to perform adequate studies and conduct modeling in order to predict how their mining activities will impact surrounding surface features. Under H.R. 3301, impacts to Apache Leap would only be known when and if they occur. By then it will be too late.

Furthermore, while Rio Tinto and BHP Billiton “promise” today that they will change their mining methods if Apache Leap is threatened, their promises ring hollow to us. The risks of massive surface subsidence presented by block caving are well documented. Once these lands are in the private hands of Rio Tinto/BHP Billiton, it will be too late for the government, the Apache Tribe, or the public to do anything if these foreign mining companies break their promise or discover that their hopeful predictions are wrong.

In addition, the foul environmental track record and history of shameful treatment of indigenous people by Rio Tinto and BHP Billiton are well known. Their record speaks volumes.

Both companies’ operations over the years have left a wake of environmental destruction, human rights complaints, and lawsuits filed worldwide. Here in the United States, the Greens Creek Mine in Alaska (owned by Rio Tinto and two other companies) is alleged to be that state’s second largest discharger of toxic waste, releasing 59 million pounds of toxic chemicals in one year, and violating the Clean Water Act 391 times. In the United Kingdom, Rio Tinto’s Capper Pass smelter dropped an estimated 13 pounds of lead and other emissions on area residents each week during its operation, leading to a settlement agreement with hundreds of claimants in which the company refused to accept blame, but provided compensation to those with cancer and other illnesses.

On the other side of the world, current and former residents of Papua New Guinea were compelled to file suit in United States federal court against Rio Tinto, alleging violations of international law, including war crimes and crimes against humanity in Rio Tinto’s operation of a large scale mine in that country. In relation to another mining operation in Papua New Guinea, villagers sued BHP Billiton for more than \$4 Billion in damages for the destruction of the Ningerum people’s traditional lands in which they have lived since time immemorial. BHP Billiton eventually was forced to abandon the destructive mining project after studies showed that the operation was causing great environmental harms, but the company is accused of failing to see that the project was properly managed upon its departure. Villagers are no longer able to safely eat locally harvested fish or food grown from their own gardens. **It is estimated that it will take 300 years to clean up the area of the contamination which the mining operation caused.**

It is often stated that history is prophesy. In this case, the historical conduct of Rio Tinto and BHP Billiton provide no assurances that these companies will keep their promise to protect Apache Leap, or for that matter, to protect the environment and respect the traditional culture and religious values of the Apache People.

Finally, the conservation easement proposed by H.R. 3301 for Apache Leap does nothing to address the impacts of the mine to the surface and groundwater supply in the region. It also fails to address the imminent threat of environmental contamination to the surrounding soils and sediments, and the surface and groundwater presented by this massive mining project. These are extremely serious consequences which, under H.R. 3301, would not be studied or modeled by Rio Tinto and BHP Billiton.

### **The Resolution Copper Mining Project Will Dangerously Deplete Groundwater and Surface Water Supplies Throughout the Region**

The massive mining operation to be facilitated by H.R. 3301 threatens to dangerously deplete surface and groundwater supplies throughout the region – water supplies that are already relied upon and desperately needed by others in Arizona. H.R. 3301 does not require Resolution Copper to perform any modeling or proper studies of the impact of their project on the regional water supply and hydrology. To date it is unknown if such work has been undertaken. That which is known is briefly summarized below.

- The copper ore body is estimated at its highest point to be located 7,000 feet below the surface; however, because the actual surface of the Earth at Oak Flat and Apache Leap already sits between 4,100 feet and 4,600 feet above sea level, **the top of the massive ore body appears to be actually located at approximately 3,000 feet below sea level.**
- Given the depth of the ore body, as well as its immense size, throughout the 40+ year life of the mining project, Resolution Copper will have to aggressively conduct extensive “dewatering” activities in order to continually pump and remove the surface water and groundwater which will increasingly migrate into the enormous cavity created by the removed ore and waste rock (and the extensive tunnel system needed for the mine), nearly all of which will be located **well below** the elevation of the streams in the region, and will cut through the region’s groundwater aquifers.
- This depletion of the regional groundwater supply can be described as a “bathtub effect”, in which surface water, tributary groundwater, and aquifers located above, beside, and beneath the excavated ore body and mining tunnels (on the outside edges of the bathtub) constantly migrate to and from the bottom of the bathtub (the vacant ore body and mining tunnels). **As this process continues over the 40+ year life of the project, the mine will deplete many billions of gallons of water from the surface water and groundwater throughout the region, including depleting (and/or contaminating) springs sacred to the Apache People.** Neither Rio Tinto nor BHP Billiton have the legal right to disrupt, deplete or contaminate this water under any law.



- Finally, the alteration of both the subsurface and the surface geological structure of this area as the result of the block-caving process and imminent surface subsidence (which will take place as gravity and the weight of the Earth above the enormous cave created by this mine cause the cave to collapse in on itself) will alter the natural state of the aquifers and surface drainage of the watersheds throughout the region forever.

A microcosm of the dangers to the regional water supply presented by a mine of this magnitude has already been realized by Resolution Copper as it struggles to dewater the deep mine shaft known as Shaft No. 9, located just west of Oak Flat. Shaft No. 9 was drilled by Resolution Copper's predecessor in interest in 1973. According to permit application documents filed by Resolution Copper with the Arizona Department of Environmental Quality, Shaft No. 9 was drilled to an approximate depth of 800 feet below sea level. Shaft No. 9 was originally pumped free of water through of process called mine "dewatering." However, when the dewatering process was stopped, surface and groundwater flooded the Shaft.

Resolution Copper estimates in its permit application documents that it will take at least 18 months to 2 years to pump all of the migrating surface and groundwater out of Shaft No. 9, in order to facilitate mining operations. To do this, Resolution Copper predicts it would be required to pump at a rate of 2,500 gallons per minute (for 18 months to 2 years) just to initially dewater the Shaft. To keep Shaft No. 9 dry after initial dewatering, Resolution Copper estimates it would then have to remove water from the Shaft at a rate of 300 to 800 gallons per minute throughout the 15 year life of the Shaft. If Shaft No. 9 is kept dry for the 15 year life of the Shaft, this single mine shaft, by itself, will permanently remove and deplete over 8 billion gallons of water from the regional water supply. This would be enough to supply at least 46,900 Arizona homes for an entire year.

**The problem of depletion to the regional water supply demonstrated in microcosm by Resolution Copper's Shaft No. 9 represents a very small fraction of the total depletion to the water supply which will be caused by the "bathtub effect" created by Resolution Copper's tunnels and shafts, and the removal of the copper ore body itself, which is located at least 3,000 feet below sea level.** This problem will increase over the 40+ year life of the project, and it will continue forever after Rio Tinto and BHP Billiton remove and sell the copper and other metals from the mine and wire their profits to locations outside the United States. We Americans will be left with an ever increasing toxic stew of hazardous mine wastes, contaminated water, and the inevitable collapse of the area. Indeed, the water found in Shaft No. 9 has already been shown to be contaminated by Arsenic, Nickel and Beryllium. Even if these heavy metals are removed through treatment, the water from Shaft No. 9 is likely to be unsafe to discharge into nearby Queen Creek because of dangerously high levels of pH and Total Dissolved Solids. It also cannot safely be used for irrigation without first being blended with water of a better quality.

The threat to the regional water supply created by dewatering the mine will also be multiplied by the construction of stormwater retention and impoundment features and other small dams and

diversion channels, which are designed to temporarily detain any rainfall or other sources of water (such as streams and washes) within the footprint of the project to avoid any discharge of contaminated water into adjacent or nearby creeks and streams. Migration to these water sources, however, will nevertheless happen over time. In addition, the mining process itself will consume enormous amounts of water. As noted above, Resolution Copper does not have the legal right to this water.

The serious depletion problems also cannot be solved by the use of Central Arizona Project Water, as Resolution Copper may suggest. The bulk of CAP water is already dedicated and committed to other uses and users in Arizona, including for use in future Arizona Indian water rights settlements. There simply is not enough CAP water to meet Resolution Copper's demand for this giant mining project. In addition, the "banking" of CAP water that is purportedly being undertaken by Resolution Copper, will not eliminate the burden of this mining operation on the regional water supply, as CAP water is banked at locations near Phoenix, Arizona, for later withdrawal in the Phoenix Active Management Area. This is, of course, far from the area of the proposed mining project near Superior, Arizona. Therefore, there is no enhancement to the local water supply by virtue of Resolution Copper's "banking" CAP water. Any inference by Resolution Copper that there will be sufficient water under the legal control of Resolution through its CAP banking to conduct its mining operations would be false.

The dangerous limits to Arizona's water supply are well known. The demands on this finite water supply only increase under the continued pressure of drought, a fast growing population, and other additional demands from development and mining. **The impacts on the regional water supply presented by the Resolution Project have not been studied or subjected to public review and scrutiny. Under the legislative land exchange proposed by H.R. 3301, such studies and mandatory public review would not be required.** It is clear that the impacts to the regional water supply will be real and substantial. It would be a dangerous leap of faith to facilitate this land exchange without studying this matter in great detail and providing the results of such studies to the public for review.

#### **The Project Threatens to Contaminate the Surface and Groundwater and Sediments and Soils of the Region**

Resolution Copper has not prepared, or at least has not made publicly available, a mining plan or mine closure plan for this massive mining project. If they have performed studies or other assessments regarding the project's potential to contaminate the surrounding area, we have not seen them, and we seriously doubt that Congress has seen them. We also have not seen the details of the environmental protections (if any) that Resolution Copper may intend to put in place if Congress allows them to circumvent federal law to acquire and mine these lands. Certainly, the protections do not appear in H.R. 3301.

The United States' short term experience with mines of this type does not provide it with adequate information to evaluate the long-term and irreparable impacts of such a large scale block-caving operation conducted deep in the Earth -- impacts that may take many centuries to

manifest. In fact, the United States' experience with any mining technique is just a little over 200 years old. Yet, we are only now experiencing some of the disastrous results of early Spanish, Mexican, and American mining practices in the west, which will compound over time

Mining operations, especially large scale copper mines like the block-caving operation proposed by Resolution Copper, eventually result in the contamination of the surface and groundwater (and sediments and soils), not only in the immediate area of operation, but often, throughout the adjoining and related aquifers. It is simply not a matter of "if", but "when". For example, groundwater is frequently contaminated when water from the mining project containing heavy metals and other contaminants migrates from the project into surrounding aquifers. Surface water is contaminated when liners leak, pipes burst, or stormwater impoundments fail. These problems also result in contamination to the sediments and soils of the region. We have experienced these dangerous events with unfortunate frequency in Arizona and New Mexico

The threat of significant environmental contamination presented by the Resolution Project, coupled with the cumulative environmental effects of other significant historic and future mining activities in the region, must not be lightly cast aside by Congress, or others who may be blinded by Resolution Copper's promise of short term economic gain and employment. The dangers of environmental contamination presented by this massive mining project are very real. H.R. 3301 would bypass the requirement that these dangerous impacts be studied or considered and subject to public scrutiny. H.R. 3301 would also foreclose the possibility that less dangerous alternatives be considered. This is not acceptable to the Apache People, and it should not be acceptable to Congress, as the representative of the American People.

#### **No Justifiable Rationale Exists for Avoiding the Normal Administrative Land Exchange Process in Favor of H.R. 3301**

Rio Tinto and BHP Billiton have failed to provide any meaningful reason why the legislative land exchange proposed by H.R. 3301 is justified. They have not explained why the "hard look" required by NEPA and other important environmental and cultural resource protection laws should be bypassed through H.R. 3301. For the Apache People, there is no reason.

The primary justification relied upon by Rio Tinto and BHP Billiton to support this massive mining project appears to be its potential to create jobs for the local community of Superior, Arizona, and its neighbors.

While it is correct that the construction and operation of the Resolution Copper mine will create jobs in the short term (numbers vary considerably on the estimated total amount of jobs, type of job, and terms of employment), the truth is that the jobs created by this mine will not be filled by people from the local Superior community or even neighboring towns.

Resolution Copper, like other mining companies such as Phelps Dodge Corporation (now owned by Freeport McMoRan Copper & Gold Inc.), Teryl Resources, and others, are developing and expanding their copper mining operations throughout Arizona due to increased copper prices

Hundreds of job openings for these mining operations have yet to be filled by these companies, who are now finding that they must recruit employees from as far away as Phoenix or Tucson, and in some instances, from outside the State. Hefty signing bonuses are being offered for some jobs, and some mining companies, like Freeport McMoRan, have created programs which would allow employees who have homes in Phoenix and elsewhere to live at the mine during the week and return to their families on the weekends. If local job creation is one of the primary justifications for the Resolution Copper project, than it would seem that this need has already been met by other mining companies in the area.

Finally, it should be noted that by Resolution Copper's own accounts, it is only in the "Pre-feasibility" phase of development for the mining project. See [www.resolutioncopper.com/res/whoware/project\\_development\\_steps.pdf](http://www.resolutioncopper.com/res/whoware/project_development_steps.pdf) (last visited 10/26/2007). In fact, **Resolution Copper does not intend to begin mine construction until the year 2013.**

Quite simply, there is no urgent need for Congress to act on the legislative land exchange proposed in H.R. 3301. If Rio Tinto and BHP Billiton desire to acquire Oak Flat and Apache Leap for their mining project (which the Apache Tribe urges should never be allowed), sufficient time exists for these foreign mining giants to follow the established federal administrative land exchange process (which all Americans normally must follow), which would require a "hard look" at this project under NEPA and other laws, and consideration of the profound concerns that the Apache People and members of the public maintain about this project.

The Apache Tribe understands the role that mining has played in Arizona's brief history as a State. However, **there are some places in the world that simply should not be destroyed or desecrated under any terms or for any reasons.** Oak Flat, Apache Leap, and Devils Canyon are some of these places. On behalf of the Apache Tribe, and the Native Nation's named earlier, we urge you not to support H.R. 3301 in any form, and to take all actions within your power to protect these holy, sacred, and consecrated lands from harm.

## SOURCES CITED

### **Public Land Order**

Pub. Land Order No. 1229, 20 Fed. Reg 7336 (1955) (withdrawing by executive order 760 acres in Central Arizona from appropriation under public land laws).

### **Arizona Department of Environmental Quality Documents**

Superior Mine Outfall 002 Aquifer Protection Permit Application for Resolution Copper, Prepared for Resolution Copper Company by CH2M HILL § 1.3 (2006)

Superior Mine Type 3 General Aquifer Protection Permit Notice of Intent and Supplemental Information for Resolution Copper, Prepared for Resolution Copper Company by CH2M HILL, § 2.2.1 (2006)

### **Resolution Copper Project Information**

Resolution Copper Mining, Block Cave Mining, available at <http://www.resolutioncopper.com/res/ourapproach/BlockCaveMining.pdf> (last visited October 29, 2007)

Resolution Copper Mining, Project Overview, available at <http://www.resolutioncopper.com/res/whoware/1.html> (last visited October 25, 2007)

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### **Newspaper Articles**

Martin Wainwright, *Fast Track to Pollution Compensation*, The Guardian, Jan. 30, 2002, available at [http://www.guardian.co.uk/uk\\_news/story/0,641658,00.html](http://www.guardian.co.uk/uk_news/story/0,641658,00.html) (last visited October 26, 2007)

Max Jarman, *High Prices for Metals Prompt Reopening of Long-Closed Pits*, The Arizona Republic, Sept. 23, 2007, available at <http://www.azcentral.com/arizonarepublic/business/articles/0923biz-miami0923.html> (last visited October 29, 2007).

*Villagers Sue BHP Billiton for \$5bn*, The Age, Jan. 20, 2007, available at <http://www.theage.com.au/news/business/villagers-sue-bhp-billiton-for-5bn/2007/01/19/1169095978975.html> (last visited October 29, 2007).

### Other Sources

Phelps Dodge Employment, Work Worth Doing..., *available at* <http://www.phelpsdodge.com/JobOpportunities> (last visited October 29, 2007).

*Sarei v Rio Tinto, PLC*, 487 F.3d 1193 (9<sup>th</sup> Cir. 2007)

Southeast Alaska Conservation Council, *High Stakes for the Fortress of the Bears on Admiralty Island National Monument/Greens Creek Mine Polluting a National Treasure*, *available at* <http://seacc.org/Publications/GreensCreekMine.pdf> (last visited October 29, 2007).

**DISCLOSURE REQUIREMENT**  
**Required by House Rule XI, clause 2(g)**  
**and Rules of the Committee on Resources**

**A. This part is to be completed by all witnesses:**

1. Name: **Chairman Wendsler Nosie, Sr.**
2. Business Address: **P.O. Box 0, San Carlos, Arizona 85550**
3. Business Phone Number: **(928) 475-2361**
4. Organization you are representing: **As the Chairman of the San Carlos Apache Tribe, San Carlos, Arizona, I represent a tribal government as described in Question 8, below.**
5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:

**N/A. See A.8 below. As a member of the San Carlos Apache Tribe, I am educated and have experience in the traditional cultural practices and religious matters discussed in my testimony submitted to the Sub Committee on behalf of the San Carlos Apache Tribe.**

6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:

**N/A. See A.5, above and A.8 below.**

7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

**N/A. See A.8 below**

8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:

**I am the Chairman of the San Carlos Apache Tribe, a federally recognized Indian Tribe pursuant to the Apache Treaty of 1852 (10 Stat. 979) and Section 16 of the Indian Reorganization Act of 1934 (48 Stat. 984).**

**B. To be completed by nongovernmental witnesses only:**

1. Any federal grants or contracts (including subgrants or subcontracts) from the Department of the Interior and Department of Agriculture which you have received since October 1, 2000, including the source and the amount of each grant or contract:

**As a federally recognized Indian Tribe, the San Carlos Apache Tribe has numerous federal grants and contracts originating from the Department of Interior [including possibly the Department of Agriculture,] which are too extensive to list here. Please contact the respective federal Departments for a comprehensive list of these grants and contracts.**

2. Any federal grants or contracts (including subgrants or subcontracts) the Department of the Interior and

Department of Agriculture which were received since October 1, 2000 by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:

*See B.1 above.*

3 Any other information you wish to convey which might aid the members of the Committee to better understand the context of your testimony:

**Please see testimony**