

Terry Rambler, Chairman, San Carlos Apache Tribe
Testimony before the Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
Legislative Hearing on S. 339
Southeast Arizona Land Exchange and Conservation Act of 2013
November 20, 2013

My name is Terry Rambler. I am the Chairman of the San Carlos Apache Tribe (“Tribe”), representing 15,000 tribal members. The San Carlos Apache Reservation (“Reservation”) is located within part of our aboriginal territory, and spans 1.8 million acres in southeastern Arizona. I am also President of the Inter Tribal Council of Arizona (“ITCA”), a non-profit organization representing 20 federally recognized Indian tribes. Thank you for the opportunity to testify about the Tribe’s views on S. 339, the Southeast Arizona Land Exchange and Conservation Act of 2013. The Tribe strongly opposes S. 339 and its companion bill, H.R. 687, and respectfully urges Members of the Subcommittee to oppose this bill for the reasons set forth below. Also, ITCA has submitted written testimony expressing its strong opposition to S. 339.

Summary of Objections to S. 339

S. 339 would direct the Secretary of Agriculture to convey 2,422 acres of U.S. Forest Service lands in an area called Oak Flat and the copper ore body underneath it into the private ownership of Resolution Copper Mining, LLC (“Resolution Copper” or “Resolution”) – a subsidiary of foreign mining giants Rio Tinto (United Kingdom) and BHP Billiton, Ltd. (Australia) for block cave mining. Section 4(h) mandates that the land will be subject only to applicable laws “pertaining to mining and related activities on land in private ownership.” Section 4(i) mandates that the Oak Flat area be transferred to Resolution Copper within *one* year of enactment – period. And Section 4(j) limits application of National Environmental Policy Act (“NEPA”) to one subparagraph of the Act – which could be questioned in light of Section 4(h), which limits application of federal laws to “land in private ownership.”

In the decade since this project has been in development, Resolution Copper has consistently refused to provide details regarding the environmental, financial, and economic impacts of the project. S. 339 would give the Oak Flat area to Resolution Copper for a bare fraction of its actual value. Once the land is privatized under S. 339, federal laws and policies that currently protect the area and tribal rights would no longer apply or have limited application.

Since 2005, the San Carlos Apache Tribe has opposed this legislation in its various forms. As details about the impacts of this legislation have emerged, public opposition has grown. Many tribes and national tribal organizations have joined us in opposing this bill, because of the dangerous precedent that it would set in transferring a known tribal sacred area located on federal land to a foreign-owned mining company for activities that will ultimately destroy the area while circumventing meaningful government-to-government consultation between the U.S. and Indian tribes.

Tribal opposition to S. 339 includes: the National Congress of American Indians, the National Indian Gaming Association, the Inter Tribal Council of Nevada, the United South and

Eastern Tribes, the Midwest Alliance of Sovereign Tribes, the Great Plains Tribal Chairman's Association, the Affiliated Tribes of Northwest Indians, the Eight Northern Indian Pueblos Council, the All Indian Pueblo Council, the California Association of Tribal Governments, the Coalition of Large Tribes, and many tribes and other tribal and non-tribal organizations.

Local communities near the Oak Flat area have either expressed opposition to this legislation or have raised serious concerns about it. The Town of Superior, which is the town located closest to the proposed mining project, opposes the bill.¹ The City of Globe, located near the project, tabled its support for the project. Other groups that oppose this bill include: the Concerned Citizens and Retired Miners Coalition in Superior, AZ, the Arizona Mining Reform Coalition, the Arizona Mountaineering Club, the Arizona Native Plant Society, the Arizona Wildlife Federation, Environment Arizona, the Sierra Club, the Audubon Society, the Natural Resources Defense Council, the Access Fund, the Queen Valley Homeowners Association, the Progressive National Baptist Convention, the Friends Committee on National Legislation, the Religion and Human Rights Forum for the Preservation of Native American Sacred Sites and Rights, and many others. Attached to this testimony is a detailed list of tribes, tribal organizations, and other organizations opposing S. 339 / H.R. 687.

Our opposition to S. 339 is based upon the following points, among others:

(1) The bill would desecrate and destroy an area of religious and sacred significance to the Apache and Yavapai people in contravention of federal laws and policies governing meaningful consultation with Indian tribes and protection and preservation of sacred sites;

(2) The bill mandates, in direct violation of NEPA, the transfer of the Oak Flat area to Resolution Copper without *first* informing the public about the adverse impacts on the quality and quantity of the region's precious water supply, the environment, and the potential health and safety risks to the public; and

(3) The bill constitutes a multi-billion dollar giveaway to a foreign-owned mining company that is partnering with the Iran Foreign Investment Company ("IFIC"), which is controlled by the Islamic Republic of Iran, in a uranium mine in Namibia.

In considering S. 339, I respectfully request that you question the merits of this legislation and closely examine whom actually benefits by its passage. This legislation is a special interest give-away of unprecedented proportions to a foreign owned entity with no attachment to our nation. The legislation fails to protect Indians, Arizonans and Americans. Simply put, the American public cannot afford this deal.

Status of H.R. 687, Companion Bill to S. 339, in the House

Last Wednesday, on November 13th, the U.S. House of Representatives unexpectedly scheduled H.R. 687 for House floor consideration, and then abruptly pulled the bill as Members were waiting on the floor to cast remaining votes on the bill. This was the same day that San

¹ The Town of Superior's resolution dated March 15, 2013, opposing this bill is attached to my testimony.

Carlos tribal leadership and the leadership of over 550 other tribes from across the United States were in Washington, D.C., to meet with the President to discuss important issues facing Indian country and to honor the government-to-government relationship between the United States and Indian tribes.

This is the second time in two months that House Republican leaders pulled this bill from the House floor schedule. On September 26, 2013, the House completed debate on H.R. 687 and amendments to the bill. However, the House pulled the bill due to concerns that the bill did not have enough votes for passage due to tribal opposition and growing opposition by House Members. Remaining as unfinished business on H.R. 687 are a vote on an amendment by Rep. Ben Ray Luján (D-NM) to protect sacred and cultural areas and a vote on the underlying bill.

The San Carlos Apache Tribe is deeply appreciative of the tremendous efforts of tribes across the country and Members of Congress from both sides of the aisle uniting to oppose this bill. The swift mobilization of Indian country and the outspoken opposition of congressional tribal champions were critical in stopping House advancement of this bill last week. The opposition of tribes against this bill will continue to grow. Indian country is strongly united in opposition to H.R. 687. Many tribal sacred areas are located on federal lands because these lands were once our ancestral homelands. Tribal connections to these lands have not been extinguished despite changes in title.

The Oak Flat Region is a Sacred Site

The 2,422 acres of lands to be conveyed pursuant to S. 339 are located in the Tonto National Forest and include the 740 acres of the Oak Flat Withdrawal where the Oak Flat Campground is located and the surrounding area (collectively referred to as the “Oak Flat area”). The San Carlos Apache Reservation is bordered to the west by the Tonto National Forest. The Forest is named after the Tonto Band of Apaches who lived in the area along with other Apache bands until the U.S. Calvary forcibly removed them in the 1880’s to nearby reservations. The Oak Flat area is located 15 miles from our Reservation. The Forest and the Oak Flat area are part of our and other Western Apaches’ aboriginal lands and it has always played an essential role in Apache religion, traditions, and culture. In the late 1800’s, the U.S. Army forcibly removed Apaches from our lands, including the Oak Flat area, to the San Carlos Apache Reservation. We were made prisoners of war there until the early 1900’s. In fact, U.S. military forces were stationed on the Reservation until 1900, almost 30 years after the conclusion of the Western Apache wars and at Ft. Apache until 1920. Even though we were removed at gunpoint by the United States from the Oak Flat region, we still have a unique and sacred connection to this land.

Oak Flat has played an essential role in the Apache religion, traditions, and culture for centuries. In Apache, our word for the Oak Flat area is *Chich’il Bildagoteel* (a “Flat with Acorn Trees”). Oak Flat is an Apache holy and sacred site and traditional cultural property with deep religious, cultural, archaeological, historical and environmental significance to Apaches, Yavapais and other tribes.

At least eight Apache Clans and two Western Apache Bands have documented history in the area. Apache clans originated from this area and Apaches on the Reservation have ancestors

who came from the Oak Flat area before being forced to Old San Carlos. Tribal members' ancestors passed their knowledge to their descendants who are alive today. Our people lived, prayed, and died in the Oak Flat area for decades and centuries before this mining project was conceived.

For centuries, Apache religious ceremonies and traditional practices have been held at Oak Flat. Article 11 of the Apache Treaty of 1852 requires the United States to "so legislate and act to secure the permanent prosperity and happiness" of the Apache people. S. 339 would directly abrogate this promise. The Oak Flat area, as well as other nearby locations, is eligible for inclusion in and protection under the National Historic Preservation Act of 1966 and under other laws, executive orders and policies.

Today, the Oak Flat area continues to play a vital role in Apache religion, tradition, and culture. The ceremonies conducted at Oak Flat are part of a centuries-old continuum of ceremony and everyday life. The Oak Flat area is a place filled with power – a place where Apaches today go for prayer, to conduct ceremonies such as Holy Ground and the Sunrise Dance that celebrates a young woman's coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. The Oak Flat area and everything in it belongs to powerful *Diyin*, or Holy Beings, and is the home of a particular kind of *Gaan*, which are mighty Mountain Spirits and Holy Beings on whom we Apaches depend for our well-being.

Apache traditions and practices mean that we are responsible to respect and to take care of our relatives, which in our culture includes all living things. On my mother's side, I am *Túgain*, (Whitewater Clan). I am related to the eagles and hawks, yellow corn, and a plant called *iya'aiyé* (wild tarragon). On my father's side, I am *Nadots'osn* (Slender Peak Clan) and related to the roadrunner, side-oats grama grass, and black corn. These animals and plants thrive at Oak flat and elsewhere. Our lives are closely intertwined with these living things as the power of the Holy Beings provide the plants, corn and animals to sustain life and for use in our ceremonies and prayers. The Apache way of life is to take care of these relatives and their habitats. The Tonto National Forest's own website states that it works closely with tribes in the area to ensure that we can continue to practice our religious and traditional activities there and to protect tribal archeological, historical, and cultural areas.

Apache Elders tell us that mining on the Oak Flat area will adversely impact the integrity of the area as a holy and religious place. There is no possible mitigation for destroying Apache cultural resources even if Resolution Copper and/or the Forest Service were to have the best of intentions. Again, Oak Flat is home to *Gaan* and Holy People and the type of activities proposed would diminish the power of the place. Without the power of *Gaan*, the Apache people cannot conduct our ceremonies. Our Apache Elders and traditional medicine practitioners tell us that if mining occurs under or near the Oak Flat area, we will become vulnerable to a variety of illnesses and our spiritual existence will be threatened. There are no human actions or steps that could make this place whole again or restore it once lost.

Our Elders teach our youth from the earliest of ages the meaning and significance of our sacred places to the Apache people. I have appended to my testimony an account by Naelyn Pike, a fourteen-year old Apache young woman here with me today, who described her experiences and

the importance of Apache sacred sites to her. It is a moving description of the importance of Apache sacred sites to all of our people, young and old. I hope you read her account.

I have also attached to my testimony a picture from Ms. Pike's Sunrise Ceremony at Mt. Graham as well as two pictures from the Sunrise Ceremony of Ms. Shelby Pina with her Godmother Elaina Nosie and her Godfather Vansler Nosie at Oak Flat. Our Elders, Ms. Pike, Ms. Pina, their relatives, our other youth, and the rest of our community seek reassurance from the Committee that our sacred and cultural areas, including Oak Flat, will not be destroyed. We urge the Committee to protect these areas of tremendous significance to us for the future of our people.

The unique nature of the Oak Flat area has long been recognized and not just by the Apache. The Oak Flat Withdrawal was set aside from appropriation under the mining laws by President Eisenhower and reaffirmed by President Nixon.² U.S. Department of Agriculture (USDA) Secretary Tom Vilsack has acknowledged the Oak Flat area as a "special place" that should be protected from harm "for future generations." Protecting the Oak Flat area as a sacred site is consistent with the articles of the United Nations Declaration on the Rights of Indigenous Peoples ("Declaration"), which was adopted by the U.N. General Assembly in September of 2007, and for which President Obama announced U.S. support in December of 2012.³ The Obama Administration tied its support of the Declaration to the current federal policies of government-to-government consultations with Indian tribes and maintaining cultures and traditions of Native Peoples.⁴

The mining project proposed by Resolution Copper will destroy the Oak Flat area. The block cave mining technique will permanently ruin the surface of the area. As explained below, the water required for the project will forever alter the medicinal plants and trees in the area upon which our people rely for healing and prayer. The ore body that Resolution seeks lies 4,500 to 7,000 feet beneath the Oak Flat area. Resolution admits that the ore body is "technologically difficult" to mine, that it may take up to a decade to develop this technology, and that temperatures as high as 175 degrees Fahrenheit will be encountered.⁵ It also acknowledges that the land above the ore body, the Oak Flat Campground, will subside and cave in.⁶ The mine will destroy the nature of the land, its ecology, and its sacred powers forever.

Some of the bill's proponents claim that the mining would take place below ground and that the sacred and cultural areas at Oak Flat would be undisturbed. This is an absurd argument, considering that Resolution Copper admits there will be significant subsidence and considering the aftermath resulting from other block cave mines. The attachments to my testimony contain a

² Public Land Orders 1229 (1955) and 5132 (1971).

³ See <http://www.ohchr.org/english/issues/indigenous/declaration.htm>.

⁴ Available at <http://www.state.gov/s/tribalconsultation/declaration/index.htm>.

⁵ See S. Hrg. 110-572, p. 44 (July 9, 2008)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 3157 110th Cong.).

⁶ See Resolution Copper website available at <http://www.resolutioncopper.com/sdr/2011/environment>.

photograph of subsidence from a block cave mine that was also used on the House floor during the debate on H.R. 687 on September 26, 2013. This photo shows the destruction that results from block cave mining. Common sense dictates that removing millions of tons of earth directly below a sacred and cultural area will cause the surface to subside and collapse. There is not one guarantee in this bill that collapse of these areas would be prohibited. In addition, nothing in the bill holds Resolution Copper accountable for damages done to this place of worship, to our water supply, or to our environment. For my constituents and many other tribes, this alone is reason enough to oppose S. 339.

S. 339 Circumvents Federal Laws and Policies Designed to Protect Native American Religious and Sacred Areas

Indian tribes, including the San Carlos Apache Tribe, ceded and had taken from us hundreds of millions of acres of tribal homelands to help build this great nation. The United States has acknowledged that, despite the transfer in title of these lands to the U.S., Native people still maintain a connection to their former lands. The United States has an obligation to accommodate access to and ceremonial use of religious and sacred sites by Native Americans as well as a responsibility to protect tribal sacred areas. This solemn obligation is codified in a number of federal laws, regulations, and policies.⁷ A core aspect of each of these federal enactments is the requirement that the U.S. must conduct *meaningful* government-to-government consultation with affected Indian tribes *prior* to making a decision that will impact a Native sacred area.

Executive Order 13175 on tribal consultation requires federal agencies to conduct consultations with tribes when *proposed legislation* has substantial direct effects on one or more Indian tribes.⁸ USDA Secretary Vilsack acknowledged “it is important that [the Southeast Arizona Land Exchange] engage in a process of formal tribal consultation to ensure both tribal participation and the protection of this site.”⁹ President Obama stated in his 2009 Memorandum affirming and requiring agency implementation of E.O. 13175, that “[h]istory has shown that failure to include the voices of tribal officials in formulating policy affecting their tribal communities has all too often led to undesirable and, at times, devastating and tragic results.”¹⁰ I can attest with unequivocal certainty that the San Carlos Apache Tribe has never been consulted on this bill or any of its past iterations. No federal agency has ever reached out to the Tribe to consult on this land exchange despite the Tribe’s requests to do so.

⁷ See the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.; the American Indian Religious Freedom Act, 42 U.S.C. 1996; the National Historic Preservation Act, 16 U.S.C. 470 et seq.; the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq.; Executive Order 13175: Consultation with Indian Tribal Governments (Nov. 6, 2000); and Executive Order 13007: Indian Sacred Sites (May 24, 1996).

⁸ 59 Fed. Reg. 22951 (April 29, 1994).

⁹ See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009).

¹⁰ 74 Fed. Reg. 57881 (Nov. 5, 2009).

To strengthen federal policies pertaining to Indian tribes, the Obama Administration recently acted to improve protections of Native religions and sacred areas. In December of 2012, the USDA released a report titled, “USDA and Forest Service: Sacred Sites Policy Review and Recommendations,” which provides a framework for how and why the United States, and specifically USDA and the Forest Service, is legally obligated to protect and preserve sacred areas located on federal lands. The Report acknowledges, “Like almost all public and private lands in the United States, all or part of every national forest is carved out of the ancestral lands of American Indian and Alaska Native people.” It affirms and lists the Administration’s federal legal obligations to protect and provide access to Indian sacred sites and to consult with tribes on *any federal actions* that will impact sacred sites.

On December 5, 2012, five federal agencies, including USDA, the Departments of the Interior, Defense, Energy, and the Advisory Council on Historic Preservation entered into a MOU to develop guidance for the management and treatment of Native sacred areas, to develop a public outreach plan to acknowledge the importance of maintaining the integrity of Native sacred areas and to protect and preserve such sites, and to establish practices to foster the collaborative stewardship of sacred sites, among other goals. On March 5, 2013, these federal agencies adopted an action plan to implement the MOU, which entails working to “improve the protection of and tribal access to Indian sacred sites, in accordance with Executive Order 13007 [on Indian Sacred Sites] and the MOU, through enhanced and improved interdepartmental coordination and collaboration and through consultation with Indian tribes.”

Section 4(c) of S. 339 provides for tribal consultation within thirty days of enactment of the Act “in accordance with applicable laws,” **BUT** the bill in Section 4(i) overrides Section 4(c) by mandating that the USDA Secretary transfer the Oak Flat area to Resolution Copper within 1 year of enactment of the Act to become private land where it would no longer be subject to federal laws.¹¹ As such, tribal consultations would be a mere formality with no meaningful effect. Without the government-to-government consultations *prior to enactment* as required by federal law and policy, S. 339 makes an end run around the legal and policy obligations to consult with tribes by transferring the Oak Flat area to Resolution Copper into private ownership. Again, once the lands are in private hands, the obligations to protect the Tribe’s religious and sacred areas and accommodate tribal access will have no force of law.

Proponents and sponsors of this bill claim that the Tribe has been consulted regarding Resolution Copper’s mine. Such a claim is misleading and disingenuous. Tonto National Forest has consulted with the Tribe in a piecemeal and compartmentalized manner regarding only limited pre-feasibility drilling tests conducted by Resolution Copper on lands outside of the Oak Flat area. The Tribe has never been consulted about the land subject to this exchange. The Tribe has never been consulted about the overall mining operation or its potential impacts. Indeed, Resolution only delivered its mining plan of operation for initial review to the Tonto National Forest last Friday, November 15, 2013.

¹¹ Section 4(i) of the bill states, “the land exchange directed by this Act *shall be* consummated not later than one year after the date of enactment of this Act.” (Emphasis added).

Further, despite federal mandates to consult with tribes on sacred areas and to protect and provide access to these areas as well as to protect and give back holy items taken from tribes, there are some who choose to dismiss Native American religious views. For example, the Smithsonian still refuses to repatriate Apache holy objects despite overwhelming evidence and support from tribes and academics.

In the context of S. 339, similar discriminatory views are being undertaken that ignore centuries of Apache practices, traditions, and customs. Proponents of the bill seek to subordinate our religious and cultural views so that this project can move forward. Would they have this same position if an ore body were to be located beneath their church, cathedral, the Vatican, Arlington National Cemetery, or Mt. Sinai and a company wanted to bulldoze or destroy it? Likely not.

Only when the mining plan of operations is made public (which it has not been to date) will the Tribe and the public have an opportunity to learn the most basic aspects of the proposed mining project. I can assure you Resolution will have painted the rosiest picture possible. Rigorous analysis and vetting of Resolution's plan of operations will reveal flaws that we already know exist and which I discuss in more detail below.

S. 339 Authorizes the Project to Move Forward without Informing the Public of the Adverse Impacts to the Region's Water, Environment, and Health and Human Safety

The Bill Circumvents NEPA and Public Interest Requirements

S. 339 undermines the National Environmental Policy Act (NEPA). NEPA requires an analysis of potential impacts, including providing public notice and an opportunity to comment *before* federal actions are taken. It is ironic that in the ten years that this or similar bills have been before Congress, the NEPA process for this land exchange could have been completed three to five times over depending on which agency estimates you use.

The bill fails to require an environmental review, including consideration of mitigation measures, or a public interest determination, before the land exchange is completed. The bill mandates that USDA convey the lands to Resolution Copper within one year of enactment. Once the lands are transferred to Resolution Copper, NEPA review will not have any real impact because the land would already be in private ownership. Because the bill is a mandatory transfer, the Secretary of Agriculture has no discretionary authority to determine under the Federal Land Policy Management Act (FLPMA) or other laws whether the exchange is a bad deal for the American taxpayer, the local residents, and the local economy, which would be the case if an administrative transfer were required.

Resolution Copper's lack of transparency regarding the land exchange manifests itself in other important aspects. In May 2007, the Forest Service published its "Technical Guide to Managing Groundwater Resources." The Technical Guide examined the Forest Service's compliance with FLPMA and NEPA.¹² The Guide references the Service's experience with the Carlota Mine also located in the Tonto National Forest.

¹² See Technical Guide to Managing Groundwater Resources, U.S. Forest Service, FS-88, pp. 20-22 (May 2007).

In the Carlota project, it was determined through the evaluative procedures of FLPMA and NEPA that Carlota Mine's groundwater pumping would impact the Tonto Forest's surface waters and the Service's appropriated water rights. The Carlota Mine was required to mitigate the impacts of its groundwater demands for the mining operation before the mine was permitted.

The Carlota project illustrates the necessity of NEPA review *before* this land exchange is completed. The surface waters and aquifers that were affected by the Carlota Mine are the same surface waters and aquifers that will be impacted by Resolution Copper's mine. Why enact a land exchange if a NEPA review would require mitigation efforts for Resolution's ground water demands? Because under S. 339, Resolution Copper will be able to evade this type of analysis and can ignore mitigation conditions as they would own the land privately and federal laws would no longer apply.

Resolution Copper has no intention of sharing any relevant information with the public prior to taking the lands in private ownership. Resolution's former Vice President Jon Cherry told the Senate Environment and Natural Resources Committee in February of 2012 that Resolution Copper "will be in a position to file our Mine Plan of Operations (MPO) which will begin the NEPA EIS process over the entire project area including the area of the subject exchange" by the "second quarter of 2012."¹³ As we now know, this statement was incorrect. Resolution's behavior begs the question whether the late filing of an MPO was for the purpose of influencing this bill.

Section 4(j)(1) of S. 339 requires only that Resolution Copper submit a MPO to the Secretary prior to commencing production in commercial quantities. There are no requirements to guarantee that the MPO will contain a complete description of mining activities or the measures Resolution Copper will take to protect environmental and cultural resources, as normally required by law. Indeed, this Section of the bill **excepts** from an MPO all "exploration and . . . development shafts, adits and tunnels needed to determine feasibility . . . of commercial production."

Regarding actual environmental review, Section 4(j)(2) of the bill requires only that the Secretary, within 3 years of receiving Resolution Copper's MPO, prepare an environmental review that must be conducted under the framework of 42 U.S.C. 4322(2) of NEPA. Again, this review will be conducted long *after* the lands are exchanged and in private ownership.

Section 4(h) of the bill makes clear that federal laws will not limit Resolution Copper's mining activities on the land after the mandated exchange. It provides that the lands conveyed "shall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership." As a result, the Secretary will have no discretion to exercise meaningful authority over the MPO or mining activities on private land after the exchange absent a federal nexus. There is no requirement in the bill for the Secretary to examine the direct, indirect and cumulative impacts of exploratory activities, pre-feasibility, feasibility operations, or mine facility construction that will be conducted after the exchange.

¹³ See S. Hrg. 112-486, pp. 28, 29 (Feb. 9, 2012) (Hearing Before the Committee on Energy and Natural Resources, United States Senate, 112th Congress).

Further, upon enactment of S. 339, Resolution Copper will almost immediately begin activities that will harm our sacred area and the region's water supply, again without any public disclosures of information. Section 4(f) mandates that the Secretary "shall" provide Resolution with a special use permit within 30 days of enactment to engage in mineral exploration activities at Oak Flat Withdrawal and, within 90 days, the Secretary is required to allow mineral exploration. The integrity of Oak Flat could be substantially harmed by exploratory activities *before* the limited environmental review requirements in Sec. 4(j)(2) are triggered. The limited environmental review of the MPO will have little or no benefit.

Under S. 339, the Secretary lacks any authority to propose alternatives to interim activities that might be necessary to protect water resources, landscape, plants, ecosystems or the integrity of Oak Flat as a traditional cultural property and sacred site. The immediate exploration of Oak Flat contemplated by Section 4(f) constitutes an "irretrievable commitment of resources" in contravention of NEPA.

Joel Holtrop, former Deputy Chief of the National Forest Service, stated that an MPO containing subsurface information is "essential in order to assess environmental impacts, including hydrological conditions, subsidence, and other related issues."¹⁴ Similar concerns were expressed by Forest Service Associate Chief Mary Wagner who noted that the Service could not support the bill given that it "limited the discretion" of the Service to develop a reasonable range of alternatives and lacked the opportunity for public comment on the proposal.¹⁵ Likewise, USDA Secretary Vilsack stated:

The purpose of a requirement that the agency prepare the EIS after the exchange, when the land is in private ownership, is unclear because *the bill provides the agency with no discretion to exercise after completing the EIS*. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency retains the discretion to apply what it learns in the EIS to its decision about the exchange. *It seems completion of the exchange prior to the EIS would negate the utility of the EIS.*¹⁶

Further, S. 339 strips the Secretary of authority to address the many concerns presented by the mining operation proposed for Oak Flat. The bill does not allow for a supplemental EIS document if additional review is needed to examine the direct, indirect and cumulative impacts of mining activities by Resolution. Section 4(j)(2) makes clear that the Secretary may only use the

¹⁴ See S. HRG. 111-65 (June 17, 2009) p. 41, Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate (S. 409 111th Cong.).

¹⁵ See S. HRG. 112-486 (June 14, 2011) p. 16, Hearing before the Committee on Energy and Natural Resources, United States Senate (H.R. 1904 & S. 409 112th Cong.).

¹⁶ See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009)(emphasis added).

single environmental review document prepared within 3 years of the submission of a MPO as the basis for *all* “decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations related to the proposed mine or plan of operations.” (Emphasis added).

Southeast Arizona’s Water Supply Cannot Sustain this Project

Resolution Copper has also not been transparent with the public or its neighbors in the Oak Flat area regarding the water needed for this project. In 2009, Resolution explained that it was purchasing water and reclaiming contaminated waters in order “to build the needed water supplies for mining activities that are a full decade or more away.” Resolution claimed to be “managing water by taking into account the needs of both current and future users of this precious resource.”¹⁷ Resolution claimed that it had purchased and “banked” over 120,000 acre feet of Central Arizona Project (“CAP”) water from 2006 through 2008 with Irrigation Districts near Phoenix, enough to operate the mine for six years at a projected use of 20,000 acre feet per year.¹⁸ Resolution further reported in 2008 that it “installed several hydrology wells to assist in developing models that will determine if mining may affect the regional aquifers, and . . . what mitigation options are viable.”¹⁹ Nevertheless, in an exceptional moment of candor, the East Valley Tribune reported former Resolution Copper President David Salisbury as admitting that groundwater will be needed for operation of the new mine.²⁰

Arizona and the west have been in the throes of a decade long drought. Recently, the Bureau of Reclamation announced that water releases into Lake Mead will be reduced by nine percent (9%) in 2014 and 2015.²¹ If shortages persist, it will result in the Secretary of the Interior declaring a Lower Basin shortage of Colorado River water in 2016. CAP water deliveries would be reduced by 320,000 acre-feet, approximately 20% of the CAP water supply in recent years.

S. 339 does not require Resolution Copper to perform or disclose its studies of the impacts on the regional water supply and hydrology prior to the land exchange. Repeated requests for an independent agency, such as the U.S. Geological Survey (“USGS”), to conduct studies have been ignored or opposed. Resolution’s admitted demands for groundwater must be examined before any exchange in order to determine whether the public interest is served by the exchange.

Resolution Copper’s failure to disclose critical information about the impacts on the region’s water has united a diverse group that opposes S. 339. Our neighbors to the west in Queen Valley have already felt Resolution’s insatiable thirst for water. Since 2008, Resolution has been

¹⁷ Previously on Resolution Copper webpage, now missing file:
<http://www.resolutioncopper.com/res/environment/dnav.css>

¹⁸ *Id.*

¹⁹ See Resolution Copper webpage.

²⁰ See East Valley Tribune, “Pinal farms will get reused water from mine”, March 14, 2009.

²¹ Central Arizona Project, Arizona Department of Water Resources, Joint Press Release, “Colorado River Shortage Will Have No Direct Impact On CAP City Water Supplies”, August 16, 2013.

pumping groundwater to dewater parts of the decommissioned Magma Mine. Water levels in the Magma shaft have declined nearly 2,000 feet and water levels in the surrounding aquifer will inevitably decline as well. The Queen Valley Homeowners Association reported that since Resolution began pumping 900,000 gallons of water a day, the community's water supply fell to a historic low requiring water rationing for the community golf course. The Association passed a resolution opposing the mine that would be authorized by S. 339.

According to USGS records, since 2008, the average stream flow in Queen Creek (downstream from the mine site) has been less than half the average stream flow for 2001-2007 before Resolution began dewatering at Magma Mine. Resolution's dewatering efforts (approximately 920 acre feet per year) remove far less water than will be needed for the mine sought through S. 339, which will require at least 20,000 acre feet per year. The simple act of dewatering the proposed mine's underground works will have negative effects on regional water supplies. If Resolution depends on even more groundwater for its mining operations, the negative impacts will simply grow.

In 2009, former Senate ENR Chairman Bingaman questioned the Forest Service about the impacts of the mine on the local water supplies and quality. Former Deputy Chief Holtrop responded:

At this time the U.S. Forest Service does not have an understanding of the impacts of the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could be obtained by the Forest Service with NEPA analysis *before* the exchange. A NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership. Data and analyses in the possession of Resolution Copper Mining would be of assistance to the Forest Service in evaluating the impacts of the proposed mine on local and regional water supplies and quality.²²

In order to better inform the public of the potential impacts, L. Everett & Associates (LEA), an internationally recognized environmental consulting firm made up of hydrogeologists, engineers, and geologists, conducted a review recently of potential environmental impacts to the region that would be caused by S. 339. The following excerpts from the review clearly rebuff Resolution Copper's water claims:

[I]t is highly speculative that CAP water will be a reliable source for Resolution over the decades-long lifetime of the mine. In fact, Resolution correctly admitted that 'excess CAP water will not always be available for purchase and other sources will be needed.' It seems apparent that Resolution will need to rely on

²² See S. Hrg. 111-65, p. 42 (June 17, 2009)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 409 111th Cong.)(emphasis in original).

local groundwater resources to provide a significant percentage of Resolution's water supply if it is to be a viable project.

It is virtually impossible for Resolution to meet even a fraction of its water needs from local groundwater in a sustainable manner: the amount of water needed is just too vast for the natural processes that recharge the aquifer in this arid region of Arizona to replenish the needed withdrawals.

Because groundwater and surface water systems are intimately interrelated, *pumping too much groundwater will have a negative impact on nearby surface water resources because lowering the water table can starve the local streams of recharge from the aquifer.* This is a serious issue that is very difficult if not impossible to mitigate. For example, the nearby Carlota Mine uses much less water than the proposed Resolution Mine (approximately 1,000 acre feet per year). In a 25-day pump test at the Carlota Mine, stream flow in Haunted Canyon (2,300 feet from the nearest well) declined from 45 gallons per minute to 5 gallons per minute, thus threatening the sensitive riparian habitat.²³ (Emphasis added).

Following its assessment of the dewatering process that will be required to operate Resolution's mine, LEA added, "Given the depth of the ore body and the need to dewater the mine workings that are deep below the water table, Resolution will have to aggressively pump groundwater from the aquifer. The effect of this pumping will be felt far beyond the boundaries of the mine."

Throughout the mining process, water will migrate to the vacant ore body and mining tunnels. For example, Resolution estimates that inflows to the existing workings at Magma Mine are 300 million gallons per year. If mining production on this new project is authorized, the mine dewatering will deplete many billions of gallons of water from surface waters and groundwater throughout the region, resulting in the loss of important seeps, springs, and streams and depleting the perennial pools in *Gaan* (Devil's) Canyon and streamflows in Queen Creek and other surface waters.

The alteration of subsurface and surface geological structures because of block caving and the admitted collapse of the land surface will completely alter the natural state of the aquifers and surface drainage of the watersheds forever. Resolution's consumption of water is simply not sustainable. Yet, Resolution has refused to publish the potential impacts on the water supplies of the region despite the fact that this legislation has been introduced in the Congress over the past eight years. Instead, Resolution has simply claimed that it is urgent for Congress to pass this land exchange for jobs. But the real question is whether the benefit of jobs, which we believe Resolution Copper has grossly overstated, will outweigh the loss of the region's water supply and the associated environmental costs.

²³ Letter from LEA Principal Geologist, James T. Wells, PhD, PG, to San Carlos Apache Tribe, Chairman Terry Rambler (March 18, 2013)(Attached to this testimony)(hereinafter "LEA Analysis").

Damage to the Southeast Arizona Environment

While Resolution's impact on the region's supply of water is a paramount concern for the opponents of S. 339, it is not the only concern. Resolution Copper has failed to provide data pertaining to its mining and post-mining subsidence analysis, water quality contamination analysis (including acid mine drainage and subsequent pollution), air quality compliance, tailings and overburden storage and placement. Resolution Copper knows it does not have to disclose such data even in its MPO. Why? Because S. 339 does not require Resolution Copper to provide any such information to the Forest Service prior to the land exchange.

Resolution will use a mining technique known as "block caving." Resolution Copper has acknowledged that the surface land above the ore body will subside and cave in. Indeed, in 2009, Resolution Copper's website identified "surface subsidence" as an "*environmental risk*." Surface subsidence is an indisputable result of Resolution's proposed mine. What is not known is the scope and degree of that subsidence. Resolution has not disclosed its subsidence models or reports.

It is common knowledge that acid mine drainage leaking into groundwater and surface water is a widespread consequence of copper mining. Acid-generating mines pollute surface water and groundwater requiring expensive reclamation and long-term water treatment. The water Resolution is pumping from the Magma Mine shaft is contaminated with heavy metals. That water is being treated at Resolution's water treatment facility. In order for that treated water to be reclaimed and re-used, it has to be diluted with clean CAP water before being transported for use on crops to the Irrigation Districts.

The Town of Superior, in whose backyard the proposed block cave mine would be located, opposes this bill, and the City of Globe tabled a proposed resolution to support the bill until its questions about the bill have been satisfactorily answered about the impacts of this mine. The bill's proponents tout jobs for the local economy. However, these nearby communities question the benefits of jobs if their communities become environmental disaster areas lacking water to support their residents. These local communities and other nearby areas have withheld or withdrawn their support for the bill and Resolution's proposed mine because they lack critical information about the environmental and other impacts of the mine which can only be provided with NEPA review before the exchange. Resolution's lack of transparency is problematic.

NEPA is a forward-looking statute setting out procedural obligations to be carried out *before* a federal action is taken. NEPA requires federal agencies consider the environmental impacts of a proposed major Federal action and alternatives to such action. As former Forest Service Deputy Chief Holtrop stated:

The purpose of a requirement in the bill that the agency prepare the EIS [Environmental Impact Statement] after the exchange, when the land is in private ownership, is unclear because the bill provides the agency with no discretion to exercise. If the objective of the environmental analysis is to ascertain the impacts

of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency were exercising its discretion in making a decision about the exchange. An EIS after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. The exchange would be a *fait accompli*. A reasonable range of alternatives and public comment would be superfluous.²⁴

Instead, Resolution and its foreign corporate parents seek to avoid revealing the true costs of environmental compliance through S. 339, which does not require NEPA compliance *before* the land exchange. Once these public lands are conveyed into private ownership, and subject only to the permissive mining and reclamation laws of the State of Arizona, Resolution will likely not be required to post a cash bond to underwrite either the cost of remediation during its mining operations or for cleanup upon mine closure. Typically, only self-bonding or *corporate guarantees* are all that is required. This is woefully insufficient to protect the public from bearing the potentially astronomic costs of cleanup resulting from a limited liability company's massive mining operations. Resolution can simply walk away from damage to the Oak Flat area. As a result, American taxpayers would be left without any revenue and will be on the hook for the future cost of any environmental remediation.

There are too many environmental questions that Resolution Copper has failed to answer. This land exchange allows Resolution to avoid responding to these questions that federal law otherwise requires every other company in America to answer. The Subcommittee should ask why a foreign multinational corporation deserves special treatment?

S. 339 is a Massive Giveaway of Taxpayer Resources to Foreign, Special Interests

At a time when all Americans are being asked to tighten our belts, S. 339 will result in a giveaway of substantial American wealth and resources to a foreign-owned mining company. The appraisal requirements of S. 339 are unique to this land transfer and do not adequately ensure that the public will receive fair value. Since the bill does not afford the federal agencies the opportunity to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to Resolution, it is impossible for the Congressional Budget Office and/or Office of Management and Budget to effectively evaluate S. 339. The public interest requires that a complete and fully informed appraisal and equalization of values be performed *prior to* Congressional passage of S. 339, *not after*. Resolution Copper has variously estimated the mineral wealth in the lands ranging from \$100 to \$200 billion. Resolution's *self evaluation* of the ore body underlying Oak Flat is orders of magnitude greater in value than that of the non-federal parcels offered in exchange to the public.

The federal administrative land exchange process typically occurs in five phases:

(1) development of an exchange proposal;

²⁴ See S. HRG. 111-65 (June 17, 2009) p. 47, Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate (S. 409 111th Cong.).

- (2) feasibility evaluation;
- (3) processing and documentation;
- (4) decision analysis and approval; and
- (5) title transfer.

During development of an exchange proposal, the federal and non-federal parties have preliminary discussions to share information about goals and constraints and to screen proposals. The parties develop a written exchange proposal that includes a legal description of the lands to be conveyed and the responsibilities of the parties. Federal agencies check the title of the non-federal land to ensure its acceptability for acquisition and the survey and land status of the federal land to ensure its availability for disposal.

The General Accounting Office (“GAO”) issued a report in June 2000 where it examined a total of 51 land exchanges, most of which occurred in the west.²⁵ The GAO auditors found that often the public lands were being undervalued while the private lands were being overvalued, resulting in significant losses to taxpayers. The agency also found that many of these exchanges had questionable public benefit.

In response to the GAO report, the Bureau of Land Management (“BLM”) formed an Appraisal and Exchange Work Group to review BLM land exchanges. The Work Group’s report concluded that BLM’s land appraisals were inappropriately influenced by the managers wanting to complete the deals and that these unduly influenced appraisals cost the public millions of dollars in lost value in exchanges with private entities and state governments. To their credit, the BLM and DOI, with prompting and pressure from Congress, have reevaluated and modified their land exchange processes and appraisal methodologies.

While land exchanges can be a tool for conservation, it is a limited tool and the pitfalls are many. An administrative exchange would include examination of alternatives and would look at the environmental impacts required by NEPA. Even though the federal land management agencies are required to do thorough reviews and ensure that a trade is in the public interest, there are significant problems with land exchanges. Valuation of properties, which are different in nature, is one such problem in that exists in this case. S. 399 undermines the entire administrative land exchange process and the advances made since the GAO report.

A significant amount of information is required for a meaningful and accurate appraisal. Under the Uniform Appraisal Standards for Federal Land Acquisition (“UASFLA”) requirements, a detailed mining plan and a mineral report are necessary to properly assess the value of the exchanged land. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in similar operations. However, it is

²⁵ See BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June 2000.

unknown at this time what Resolution Copper's production estimates are since mining plan data has not been forthcoming. The UASFLA royalty income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life span of the project and a determination of the Net Present Value ("NPV"), including the NPV of the profit stream, based on a discount factor.

Former Deputy Chief Holtrop and BLM Deputy Director Luke Johnson informed the Subcommittee on National Parks, Forests and Public Lands on an earlier version of this bill that the completion of the exchange within one year (as required by S. 339 Section 4(i)) was insufficient time to complete the required appraisals.²⁶ Specifically, Mr. Johnson stated:

Based on our experience with exchanges, we do not believe that this is sufficient time for the completion and review of a mineral report, completion and review of the appraisals, and final verification and preparation of title documents. Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides the foundation for an appraisal where the land is underlain by a mineral deposit. Accordingly, adequate information for the mineral report is essential.

On July 9, 2008, Michael Nedd, Assistant Director of the BLM, repeated Deputy Director Johnson's testimony before this Committee²⁷ calling for Resolution Copper to provide information to the BLM and Forest Service so that a proper valuation of the copper ore body deposit below Oak Flat could be prepared by the federal agencies. He added:

We recommend adding a provision requiring Resolution Copper to provide confidential access to the Secretaries of Agriculture and the Interior (and their representatives) to all exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure an accurate appraisal.

In a hearing before this Committee on June 7, 2009, former Resolution Copper President David Salisbury was evasive about the availability of Resolution's proprietary mining data to the federal agencies, leaving Senator Wyden to ponder: "We're going to have to work with you and with the agencies to, sort of, unpack what that really means, because the agencies have felt strongly about that particular point."²⁸

It is clear that Resolution Copper will benefit from the exchange. It is less clear that the public is getting a fair return or that it is worth the loss of important public lands. It is difficult to

²⁶ See S.110-52 (Nov. 1, 2007), pp. 4, 5, 8 (Legislative Hearing before the Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources, U.S. House of Representatives, 112th Congress).

²⁷ See S. Hrg. 110-572, p. 32 (July 9, 2008)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 3157 110th Cong.).

²⁸ See S. HRG. 111-65, p. 39 (June 7, 2009)(Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 409 111th Cong.).

understand how this exchange could move forward without solid appraisals including the value of the copper ore body itself. Given the evaluation standards prescribed by the UASFLA and the federal agencies, coupled with the lack of factual data from Resolution, the American taxpayer will be short-changed if S. 339 becomes law.

Resolution Copper's Corporate Parents Partner with Iran and China

Resolution Copper is a subsidiary of Rio Tinto (55% majority owner)(UK headquarter/Australian offices) and BHP Billiton (45% shareholder)(Australia headquarter/UK offices). Rio Tinto is a partner with Iran in the Rössing *uranium* mine in Namibia. Rio Tinto owns a majority stake in the Rössing mine. The Iran Foreign Investment Company (“IFIC”) owns a 15% stake in the same mine. The IFIC is wholly owned by the Islamic Republic of Iran.

United Against Nuclear Iran (“UANI”) raised concerns about Rio Tinto’s partnership and called on Rio Tinto and Rössing to sever ties with the Iranian government. In a letter to the Chairman of Rio Tinto, UANI President, Ambassador Mark D. Wallace, wrote:

Thank you for the letter of November 8, 2010 from the Rio Tinto Group. While your letter attempts to address some of the concerns . . . the largest issue – the current Iranian government’s 15 percent stake – remains outstanding and is of serious concern to UANI and many within the international community. . . . You dismiss the concerns raised by UANI because the government of Iran initially acquired its share in the Rössing mine in 1975 This fact is not relevant in 2011 when the government that has been profiting from the mine for over three decades is one that is pursuing an illegal nuclear weapons program, [and] sponsoring terrorism in the region. . . .”²⁹

In 2010, The Hill reported that two representatives of the IFIC sat on Rössing’s Board of Directors, including one who is an accomplished chemical engineer.³⁰

In addition, there are no guarantees that the copper mined pursuant to S. 339 will be processed or used in the United States, because the People’s Republic of China looms large in this transaction. Chinalco, owned by the Chinese government, holds a 9% stake in the Rio Tinto Group. According to a recent news article, China expects to consume nearly 84% of the world’s copper by 2014 and Rio Tinto is best situated to benefit from China’s “surging production.”³¹

Contrary to Resolution Copper’s public relations statements, nothing in the bill requires Resolution Copper, Rio Tinto’s subsidiary, to process or sell the copper to U.S. companies, or even use U.S. resources to mine the copper. Nothing in the bill prevents Rio Tinto from selling its

²⁹ Letter from Former U.S. Ambassador and UANI CEO Mark Wallace to Rio Tinto Group Chairman Jan du Plessis (Jan. 13, 2011).

³⁰ <http://thehill.com/blogs/congress-blog/foreign-policy/123753-irans-uranium-holdings>

³¹ <http://www.fool.com/investing/general/2013/08/26/mongolia-copper-heaven.aspx>

interest in Resolution to another foreign company as it just agreed to do with its signature showcase block cave Northparkes Mine in New South Wales, Australia.³²

Based upon the history of parent company Rio Tinto's business relations with Iran and China and in light of the U.S. and international sanctions against Iran, it is not in America's interests to trade valuable federal land to this foreign-owned mining company.

S. 339's Economic Benefits are Speculative

The sponsors and proponents of S. 339 claim that Resolution's mine will create 3,700 jobs. This number comes from an economic report prepared for Resolution. The number of new jobs promised under this bill is false. Resolution Copper plans to use automated drills and a driverless fleet of haul-trucks for the mining project. Further, it is too hot for humans to go down into the mine given the 175 degree temperature at the mine's proposed depth of 7,000 feet below the surface of the earth.

The Tribe commissioned Power Consulting, Inc. to review and evaluate Resolution's report. An executive summary of the Power Consulting report is appended to my statement.³³ The Power report establishes that the mine will produce substantially fewer jobs and less revenue for local communities and Arizona than claimed by Resolution and its supporters.

Between 1974 and 1997, copper production in Arizona rose by 73%, but the workforce was cut by 56%, or about 16,000 jobs. This is directly attributable to improvements in technology worker productivity. In 1974 it took 35 workers per 1,000 tons of contained copper, but in 2003 it took only 7 workers to produce the same quantity.³⁴ This trend will continue. Automation reduces jobs. In fact, RCM's jobs claims are exaggerated and only about 400 permanent mining jobs will be created and no permanent jobs will be created until 2020 when RCM pre-feasibility and feasibility studies are completed.

Incredibly, Resolution's economic report does not examine environmental costs associated with the mine. Specifically, Resolution's Pollack Report -- its economic report -- did not include:

- Costs associated with environmental and engineering issues and the cost of their correction were not included in the study.
- The study did not consider the potential reduction of sales at other establishments in the trade area that may occur as a result of the proposed Resolution mining project.

³² See Rio Tinto, Third Quarter 2013 Operations Review, p. 4. ("On 29 July 2013, Rio Tinto announced that it had reached a binding agreement for the sale of its 80 per cent interest in Northparkes. The Northparkes joint venture parties have since waived their pre-emptive rights under the joint venture agreement and consented to the assignment of Rio Tinto's interest to *China Molybdenum Co., Ltd.*" (Emphasis added).

³³ See http://www.oakflat.org/pdf/Resolution_Mine_Econ_Report_Power_Consulting_Final%209-9-2013.pdf for full Power Consulting report.

³⁴ *Id.* pp. 23-24, Figures H, I.

- The study did not consider the costs to any government associated with providing services to the mine or other operations.³⁵

In reality, the construction and operation of that mine will conflict with other economic activities or values. Resolution's economic report was a "pure benefits" analysis that intentionally ignored obvious costs. Local communities' costs normally incurred when a mine opens, such as road improvements, increased school, police and fire protection service, and other infrastructure costs were ignored by Resolution.³⁶

The economic impacts of the mine will largely be felt outside of Arizona. Over half of the economic impact created by the mine will not stay in Arizona. Instead, economic impacts will flow to national and international investors, including China. Only about 4% of mineral value would flow to local residents in the form of wages and 71% of the tax revenue would go to the federal government.

Resolution has touted local job creation and local economic benefits as the primary justifications for this land exchange. Resolution promises jobs and prosperity.

Yet, Resolution and its supporters have opposed all efforts to amend the bill to require that: (1) the project headquarters to be located in Southeast Arizona; (2) local Arizonans be considered first for any job opportunities that may result from the project; and (3) the ore is processed and used in the U.S. – not in China or another foreign nation. Refusing to consider such minimal amendments to S. 339 contradicts Resolution's promises of local prosperity.

The proposed mine, under S. 339, will be highly automated and the actual jobs likely to be produced will come in far below the speculative figures promised. The Power Consulting report certainly tests Resolution's claims.

Finally, I would like to address claims made by the bill's supporters in the U.S. House of Representatives last week after House leadership abruptly pulled H.R. 687 from the floor for the second time. Supporters of H.R. 687 advise that the San Carlos Apache Tribe should support this bill, given the Reservation's high employment rate. However, the Tribe has worked hard to decrease our unemployment rate by creating new jobs on the Reservation. Our people want jobs, but we will create jobs that respect our religion and respect our tradition of living in harmony with Mother Earth. Our solemn obligation is to protect and preserve our sacred and cultural areas for our children and grandchildren. We are fighting for our ability to take of ourselves in a respectful, Apache way. Maybe we can't live like we did 150 years ago, but we can try to live in ways consistent with our traditional way of life. Further, the elected officials on the San Carlos Apache Tribal Council represent the views of their districts and tribal constituents, and the San Carlos Apache Tribal Council has strongly opposed this bill since it was first introduced in 2005, as evidenced by repeated tribal resolutions opposing this bill.

³⁵ *Id.* pp. 35-36

³⁶ *Id.*

Conclusion

In 1871, the United States established our Reservation. Since then, the United States diminished our Reservation several times due to the discovery of silver, copper, coal, water and other minerals and natural resources. Our burial sites, living areas, and farmlands on our Reservation were flooded for a federal dam for the benefit of others. Based upon this history and for the reasons stated above, the Tribe strongly opposes S. 339 or any other conveyance of our tribal ancestral lands in the Oak Flat area to Resolution Copper for mining that would permanently destroy an area sacred to us. Once done, this action cannot be undone.