

Oak Flat: San Carlos Apache Fight for a Sacred Place

by

Debra Barnette

A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Science

Approved July 2022 by the
Graduate Supervisory Committee:

Myla Vicenti-Carpio, Chair
James Riding In
Tennille Marley

ARIZONA STATE UNIVERSITY

August 2022

ABSTRACT

San Carlos Apache Tribe is leading the charge to protect Chi'chil Bildagoteel, commonly known as Oak Flat, from defilement from a mining company determined to strip the land of its precious resources. Oak Flat is sacred ground to the San Carlos Apache and the surrounding tribal communities that share historical ties to the area. Resolution Copper Mine, a joint venture of Rio Tinto and BHP Billiton mining giants, aims to privatize and industrialize Oak Flat's public lands and copper minerals directly under the Oak Flat area. San Carlos Apache archaeological sites, ancient burial grounds, origin stories, place names, and religious practices affirm Apache preoccupation and ongoing connection to Oak Flat. This study attempts to illustrate the historical injustices of how the US government and legislators, combined with mining proponents, displace the San Carlos Apache's religious practices on their sacred sites, inside and outside reservation borders. That trend continues with the controversial Resolution Copper mining project. An unrelated provision or land exchange rider was surreptitiously attached to the National Defense Authorization Act (FY 2015), a must-pass legislation specifying the annual budget and expenditures of the US Department of Defense that would give away the San Carlos Apache religious sacred site of Oak Flat to a foreign mining company. I expose the forces of colonialism to understand how mainstream society and its legal systems have imprinted colonial ideals and have been applied to attack American Indian religious freedoms. Importantly, I show the reconciliation strategies of Apache Stronghold, representing the San Carlos Apache tribe, that could enable restorative justice for the San Carlos Apache and potentially other affected American tribes in the future.

ACKNOWLEDGMENTS

I would like to take the time to sincerely thank my professors, Dr. James Riding In, Dr. Myla VicentiCarpio, and Dr. Tennille Marley for their patience, support, and guidance during my journey in writing this thesis.

I would like to thank my sons, Behr Barnette, Hunter Juryla, and Kyle Juryla for supporting and cheering me on.

I am forever grateful.

TABLE OF CONTENTS

	Page
CHAPTER	
1 INTRODUCTION	1
2 SAN CARLOS APACHE - OAK FLAT.....	21
3 HISTORICAL LAND LOSS OF THE WESTERN APACHE TRIBES-SAN CARLOS APACHE.....	34
4 COPPER AND RESOLUTION COPPER MINE	68
5 SOUTHEAST LAND EXCHANGE	86
6 CONCLUSION: WHERE ARE WE NOW?.....	118
REFERENCES	138

CHAPTER 1

INTRODUCTION

Indigenous peoples have long held cultural and spiritual connections to the land. Traditional lands and territories tie Indigenous peoples to their origins, spirituality, and sacred spaces, as well as their traditional foods, well-being, and their ancestors. For centuries, Indian peoples around the globe have upheld the cultural and spiritual responsibilities of their ancestors as custodians of their sacred ancestral lands. These hallowed spaces and places are indispensable to Indian communities for it is in these domains that religion and nature intersect to recognize profound ancient and cultural traditional values that are still prevalent in their everyday lives.

With the arrival of European colonizers on Indigenous lands, not called the Americas until the 1400s, American Indian nations and peoples have encountered and resisted ongoing threats to their lands, sovereignty, resources, lifeways, spirituality, welfare, freedom, and existence. The European invaders sought to claim economic and political freedoms for themselves and the nation-states they represented. Through warfare, genocide, treaties, and legal fiat European colonizers sought to obtain coveted Indian lands. They also devised effective and destructive policies aimed at assimilation and Christianization, aimed at oppressing, and subjugating Indians. By the late 1700s, the newly formed United States, focused on expansion west. The expansionist nation spawned by the English colonization of the eastern Atlantic seaboard of North America established hegemony over a vast region of the continent that included the homelands and sacred places of hundreds of Indigenous nations.

The United States hegemony disregarded much of the Indigenous people's claim to the land even though they were fully functioning societies in their homelands for thousands of years. Walter Echo-Hawk, renowned American Indian activist and attorney, argues against early European thought that Indians had no concept of land and because non-Christians have no right to land ownership, nor can Indians self-govern, explains "[i]t is based upon the false idea that indigenous peoples had no forms of government and are inherently incapable of self-government" and adds, "[t]he justifications for guardianship over Native peoples rest on notions of racial supremacy and extreme cultural ethnocentricity in which indigenous peoples are viewed as inferior..." (2012, p. 47). This myth of no ownership ignores the inherent value, connections, and unique uses of land by Indian peoples. Nonetheless, Westward Expansion further dismissed Indian's relationship and occupation of their lands and created new laws to define "Indian Country," the states, and federal and private lands. Unfortunately, many cultural resources have already been lost to corporate developments. These losses are a part of a broader historical pattern of United States officials allowing for the desecration of sacred Indian lands by mining, recreation, and tourism companies. More importantly, these sacred spaces are vital to American Indians' ongoing cultural relationships with lands that sustain their cultural, religious, and spiritual well-being and lifeways.

Too often, destructive policies continue to disregard American Indian relationships to land. Globalization and landscape development increase pressures that threaten Indian sacred sites as well as the fragility of ecosystems that American Indians have spent centuries maintaining and protecting. Despite a series of cultural resource laws aimed at supporting Indian people's access to their sacred sites, federal actions

continue to threaten American Indian religions and spirituality by enabling natural resource extraction such as oil, mineral, and timber, including ranching, tourist attractions, and scientific interests to desecrate and destroy sacred places located on public lands. Consequently, Indian peoples and nations have sought to protect their holy lands and spirituality from defilement.

Many tribes have battled to protect tribal religious practices and spaces. Currently, we see numerous ongoing controversial federal land-use projects which illustrate the vulnerability of Indian sacred locations on reservation lands and those lands beyond reservation boundaries. For example, a sacred place to the Lakota, my people, Mato Tipila, commonly known as Devils Tower in Wyoming, is an integral part of our creation story and the sacred location for a history of religious ceremonial practice that continues to this day. Mato Tipila has faced disruption and irreverence through heavy tourism and rock-climbing enthusiasts (Linge, 1999, p. 309-312). The Lakota Nation, and surrounding tribes, continue to fervently fight to preserve and protect the monuments' natural and cultural resources.

Another example is in 2016, the Standing Rock Sioux Reservation in South Dakota, and thousands of Indians and non-Indians joined together to stop the construction of the Dakota Access Pipeline (DAPL), better known as #NoDAPL. The Standing Rock Sioux Tribe protested the destruction of their sacred burial site and the inevitable contamination of their main water supply to globalization efforts in the construction of the oil pipeline (Bender, 2017; Buhl, 2016). DAPL refused to shut down oil production pending a court-ordered environmental impact review statement (ibid). Nonetheless,

DAPL continued transporting hydraulically fractured (fracked) crude oil from the Bakken Oil fields in North Dakota to pipelines in Illinois (ibid).

Bears Ears National Monument is another endangered sacred place. In 2017, the Trump administration used the Antiquities Act of 1906 as its authority to issue an executive order that drastically reduced the size of Bears Ears National Monument, an area considered sacred to the Navajo, Ute, Hopi, and Zuni tribes leaving over one million acres of sacred land unprotected and opened for drilling and mining operations (Schilling).¹ The Bears Ears Inter-Tribal Coalition show that more than 100,000 Indian archaeological and cultural sites are in the Bears Ears area with some dating back to 12,000 B.C.E. (2018).

Arizona faces past and present challenges to sacred spaces between Indian nations and the U.S. government on public lands. The Navajo and Hopi, including several southwest neighboring tribes, sought to protect their holy mountains, the San Francisco Peaks near Flagstaff, which were lost to Arizona SnowBowl, a recreational skiing facility. The San Francisco Peaks are where local tribes pray, hold ceremonies, collect medicinals, and have ancestors buried there (Gulliford, 2000, p. 121-122). The tribes sued to keep the ski facility from using treated wastewater to make snow. Unfortunately, in 2008, the case of *Navajo Nation v. United States Forest Service* affirmed federal approval to spray treated sewage effluent from the City of Flagstaff as artificial snow to enhance skiing activities (McNally, 2019, p. 216).

¹ Reduction of several other national monuments are at risk to allow for mining, oil and gas drilling, logging, and livestock grazing. Additional information can be found in the report memorandum by Ryan Zinke located at <https://assets.documentcloud.org/documents/4052225/Interior-Secretary-Ryan-Zinke-s-Report-to-the.pdf>.

In 1988, the San Carlos Apache lost a battle to prevent the University of Arizona, the Vatican, and others from building an astrophysical observatory atop Mount Graham, traditionally known to the Apache as “*Dzil Nchaa Si An*,” or Big-Seated Mountain (Helfrich, 2014, p. 151). The observatory called for the installation of huge telescopes and the construction of new roads, deforestation, and the disruption of endangered species (ibid). Since time immemorial, the Apaches used this sacred place for traditional religious practices, harvesting medicinal plants, and places to honor their buried ancestors. The U.S. government allowed the construction of the telescope without concern for Apache objections, the American Indian Religious Freedoms Act (1978), and environmental impact laws (ibid, p. 161).

A current fight for the protection of sacred places and the focus of this thesis is the San Carlos Apache Tribe, along with other tribes and national organizations, vehement fighting to save another sacred site from destruction, Oak Flat. The Resolution Copper Mining Company (RCM) is attempting to build a copper mine in the Oak Flat area that will not only completely raze thousands of acres of undeveloped land and contaminate groundwater, but it will destroy an Apache sacred place. (Nosie, 2009; Featherstone, 2008). While the fight to protect homelands, culture, and sacred places begin with the non-Indigenous settlement, the fight to protect Oak Flat is the latest in many cases and represents another attempt to seize Indian lands for resource extraction and development. This thesis focuses on the fight to protect Oak Flat by examining the connections Apache people and neighboring tribes hold to the land and the dispossession from their lands.

With the discovery of rich mineral deposits on Apache homelands the history of colonization, dispossession, and resource development at the expense of Indigenous cultural values is illuminated in the fight to protect Oak Flat. The continued pressure of federal and state political leaders, and natural resource corporations to claim, develop and ultimately destroy Indian sacred locations consequently, place traditional values and culture at great risk to be lost.

Cultural, spiritual, and religious well-being is ultimately at risk for the San Carlos Apaches. The key to their heritage and survival as San Carlos Apache depends on their rights to access to their traditional sacred places as well as their sovereign decision-making authority on the natural resources their traditional land provides. Traditional Apache culture is based on an intimate spiritual connection with the natural world—*the landscape in which the people dwell can be said to dwell in them* (Basso, 1996, p. 102). Expressing this view in 2009, Jeanette Cassa, a former coordinator of the Elder's Cultural Advisory Council for the San Carlos Apache Tribe, stated,

Elders consider activities that harm the natural world, such as large-scale mining and irresponsible ranching, inherently disrespectful and dangerous. Apache elders acknowledge the necessity of exploiting natural resources to survive but are critical of destructive exploitation. Harming the natural world not only destroys habitats for natural resources, thereby removing access to resources, but it breaks the foundation of one's home, exposing people and communities to the harmful side-effects of broken relationships. Because traditional people still have and maintain these relationships, the destruction of habitats hurts them deeply and profoundly, as if a family member has been harmed or killed (National Centre, 2009).

Cassa's words implicitly referred to cultural sovereignty, an important concept when it comes to the future of American Indian nations and peoples. It is about their

ability to maintain traditional values, beliefs, and ceremonies and perpetuate the sanctity of sacred places that have existed since time immemorial.

In decisions concerning the development of lands such as mining, timber access, or recreational access, federal land managers and corporate executives often work cooperatively to implement economic enterprises. Many times, these decisions threaten the health and welfare of indigenous peoples. The historical disregard of Indians' rights in matters pertaining to sacred site protection has had grave social and cultural impacts. The loss of sacred lands remains a current research topic because so many Indian homelands and traditional lifeways remain vulnerable to large development corporations (Welch, 2017a, p. 1).

The Oak Flat fight begins with the discovery of minerals on traditional Apache lands but goes into full swing with a proposed land swap. San Carlos Apache and others have been opposing a land swap legislation, Section 3003 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for the Fiscal Year 2015 (NDAA), also known as the Southeast Arizona Land Exchange (land exchange), that would enable Resolution Copper Mining Company (RCM) to conduct mining operations, a controversial underground copper mining venture. (Welch, 2017a, p. 1). The mine would eventually destroy Oak Flat, an Apache sacred place, and will harm their physical, social, and spiritual well-being. The San Carlos Apache people have performed religious ceremonies at Oak Flat for generations (Rambler, 2016, p. 3). Section 3003, the mining operation, and the fight to protect this sacred space illustrates a historical pattern of colonization and exploitation, the impacts of settler greed through global and American mining operations on indigenous (Apache territory), and the cost of such policies on

Indigenous and Apache people's cultural lives, homelands, and sacred spaces whether they are located inside and outside of their reservation borders (Welch and Riley, 2001, p. 2). This study focuses on the Oak Flat controversy and will analyze the social, political, environmental, and economic impacts associated with corporate and governmental projects within the San Carlos Apache's ancestral homelands.

Statement of the Problem

Federally recognized Indian tribes are acknowledged as constituting nations that hold rights to sovereignty based on US Constitution, treaties, statutes, executive orders, and court decisions. This unique relationship is often referred to as the *federal trust responsibility* between Indian tribes and the United States government. As a function of its trust responsibilities to Indian peoples, the U.S. government should do everything in its power to protect Indian lands, whether located on public or reservation lands.

Like all Indigenous peoples in the United States, the San Carlos Apache tribe are leading their community to create sustainability for their tribal members and to protect the ecosystems and environments on their lands as well as their sacred sites, even those located on public lands. The San Carlos Apache tribe not only strongly opposes the federal land swap legislation specified in Section 3003 they also advocate for the protection of Oak Flat for religious purposes, the environment, and precious water sources from defilement (Apache Stronghold).

This thesis is a case study examining the controversy of a sacred place from an American Indian perspective. I place the Oak Flat controversy in a broad historical perspective that includes information about the effects of mining interests on federal land

policy in Arizona and synthesize the development of statutory and case law about sacred places, cultural resources, and religious freedom as it pertains to American Indians.

My thesis research will focus on the San Carlos Apache's fight to save Oak Flat from Resolution Copper mining operations stemming from the U.S. Congress's approval of the land swap act. The increasing threat of encroaching commercial, government, and other interest groups motivated by the prospect of wealth from natural resources is setting precedence on the consideration of tribal cultural continuity.

The natural resource company, Resolution Copper, highlighted in this research is harmful to the physical, mental, and spiritual well-being of the San Carlos Apache culture, lifeways, and their environment in the name of modernization and development and reflects the perspectives and interest of powerful groups and their strong influence on governmental decisions. This has turned into a national social revolution in the protection of American Indian sacred sites, cultural continuity, and furthermore, for the environmental protection of all peoples. In 2009, Senator John McCain (AZ) and Senator Jeff Flake (AZ) initiated a land swap deal with RCM in the interest of the largest copper ore found in Oak Flat and within the United States (Millet, 2015; Tuhus, 2015). Congress repeatedly voted against previous attempts of bill introductions to open the Oak Flat area to more mining ventures, which were federally protected by presidential executive orders from mining development (Hill, 2015). The Society for American Archaeology government affairs manager, David Lindsay, reports bills proposing the RCM copper mining project were denied five times in the House of Representatives and six times in the Senate (Zorich, 2014). To circumvent that opposition, McCain slipped the land exchange rider into the National Defense Authorization Act (Section 3003) (NDAA)

which addresses military financial support programs, a must-pass legislation, without the consent or deliberation of the San Carlos Apache tribe's religious observance to Oak Flat (ibid).²

The transfer of Oak Flat to the mining industry was not the will of Congress, but rather the will of a few pro-mining lawmakers who exploited the legislative process and turned San Carlos Apaches sacred place into a corporate commodity.

Methodology

Throughout this study, I will use a qualitative research approach to examine and analyze the Oak Flat controversy through historical and present-day contexts to examine the San Carlos Apache's struggle for religious freedom. In utilizing San Carlos Apache's sworn testimony, oral histories, and video recordings, I will articulate their perspectives about the spiritual and cultural importance of Oak Flat. I include the experiences of other Western Apache people (pre-reservation) who have shared the original territories of the San Carlos Apache and share common concerns and spiritual connections with Oak Flat. My research draws on primary and secondary sources about mining operations on federal public lands in general and the San Carlos Apache Oak Flat dispute in particular. In addition, I examine newspaper articles, scholarly journals, case studies, and published books pertaining to legal difficulties American Indian nations face in protecting their access to sacred sites on federal public lands.

The Oak Flat controversy is not unique to Indigenous peoples. The fight for religious expression and the protection of sacred sites has been ongoing since first contact

² The land exchange will be referred to as Section 3003 and land exchange interchangeably, as listed in the NDAA.

between invading Europeans and American Indians. One reason the early colonizers, and later the United States government, have largely failed to accommodate tribal access to and the protection of sacred sites is because of conflicting values. Basically, white America viewed the land as a resource to exploit while Indians view land as sacred. To the latter, sacred places should be kept in a pristine state. It is necessary to provide an expanded summary of Western Apache history and the annihilation practices suffered by Apache for this thesis before discussing the Resolution Copper Mine project that could destroy the religious site of Oak Flat. Without the foundation of American Indian history, particularly the Western Apache, it is difficult for persons to have an informed opinion on the land exchange legislation. Due to the colonial relationship, the San Carlos Apache have with the United States federal government, many of their rights have been repressed entirely or inhibited in some manner which initiated the fight to save Oak Flat.

Contrary to laws and policies, including executive orders that direct federal land management agencies to engage in formal consultation with Indian tribes and to protect and preserve Indian sacred sites, my research will show that the land exchange, Section 3003, was attached as a rider in the National Defense Authorization Act (2015) without proper legislative process. That action propelled Resolution Copper's mining project forward despite several failures to pass the land exchange legislation in Congress of its own accord (Zorich, 2014). Additionally, the failure to provide an environmental impact statement (EIS), which is a federal policy that the National Environmental Policy Agency (NEPA) is to be fully complied with *before* a major project affecting public lands is to be addressed in all federal activities to implement congressional decisions, was avoided (Whitman, 2019). The failure to describe and analyze cultural resources and impacts on

Indians and the general public with the basic means to understand the extent of the mining activities shows a violation of federal law.

Many case law decisions have been made concerning sacred sites and religious freedoms. I will include a few case law decisions that have employed or influenced one or more of the legislations that I will highlight and show the common concern, practice, and residual effects toward American tribes, particularly the San Carlos Apaches impending loss of Oak Flat.

My research thus addresses the harm that white American expansion has inflicted on San Carlos Apaches lands and the potential impacts that will occur if mining destroys Oak Flat. This study will utilize the material to examine the negative effects that will be unavoidable to the San Carlos Apache people. The San Carlos Apache are working to change restrictive regulations and consultation practices on their sacred sites and retrieve rights that were stripped away. This research seeks to be beneficial to the San Carlos Apache Nation by providing supplementary insight into and support of the fight to save Oak Flat from further desecration.

Literature Review: Studies of American Indian Religious Freedom

There has been an incessant pattern of federal action and court decisions that have minimized or flat-out disregarded tribes' participation in their own governance and cultural practice. How have these decisions impacted Indian autonomy, worldviews, and religious freedom? Research has shown that there is a continuance of cultural trauma due to colonization activities, which are often viewed as historical acts and are not viewed as current activities that persist today. Another endangered Indian sacred site is Oak Flat.

Proposed mining operations have put the cultural identity and sanctity of cultural continuity of the San Carlos Apache at risk.

Many scholars have focused considerable attention on the matter of American Indians' religious freedom. Research has shown that, although federal laws and policies have been implemented to provide some protections, the federal government has imposed serious limitations on American Indian religious freedom. American Indian religions deserve the same recognition and protection as any other religion practiced in America. However, the religious freedom of American Indians has been largely dependent on the recognition and enforcement of their cultural rights as Indigenous peoples in the United States executive, legislative, and judicial branches. Yet, Indians continue to face problems obtaining justice in the U.S. Supreme court and decisions made by federal land managers. My literature review focuses on three areas, Apache history and worldview, laws and policies, settler colonialism, and the religious freedom of the San Carlos Apache tribe. These scholars and authors address legal, political, land management, cultural and human rights, and issues of American Indian peoples. Their literature establishes context and insight which help distinguish federal government impacts on Indian peoples and how federal interest is expressed in the American Indian religious freedom process. The specific research I highlighted has made extensive contributions to the issues addressed in this study.

My literature review includes the published works from researchers who have worked with the Western Apache. Keith Basso conducted anthropological studies on the Western Apache at the White River Apache and San Carlos reservations. Basso was considered an authority on Apache culture, and his scholarship has been widely accepted

among the Western Apaches and Indigenous scholars. Basso worked directly with Apache peoples, elders, and young alike, as they explained the significance of place and religious practice. In *The Cibecue Apache* (1986) and *Wisdom Sits in Places: Landscape and Language Among the Western Apache* (1996), Basso expressed how geographical locations are perceived and experienced and offers an understanding that the significance of places within the Apache society is inextricably intertwined with their homelands.

Similarly, David Samuels, a linguistic anthropologist, has written extensively about human identity through language and music, particularly with the San Carlos Apache. *Putting a Song on Top of It: Expression and Identity on the San Carlos Apache Reservation* (2004), Samuels argues that identities are “emergent” and are produced out of practices and expressive forms of everyday life. Ian Record’s *Big Sycamore Stands Alone: The Western Apaches, Aravaipa, and the Struggle for Place* (2006) provide an Apache lens, including the San Carlos Apache, to view their histories, identity, and land connections. Additionally, he documents important elements of Apaches economic, political, and social organizations. Grenville Goodwin’s *The Social Organization of the Western Apache* (1942) contributes to Apache ethnology and is one of the most referenced sources in Apache culture. From 1929-1931, he lived with the Apache who taught him the intimate functions of Apache society and their territories (1942, xiii). Goodwin gives an important Apache perspective on the early formation of the San Carlos Apache reservation and the kinships within Western Apache peoples. Edward Spicer’s *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960* (1962) examines the effects of European expansion on the language, social structure, economy, religion, and self-image of Southwest tribes among

others. Despite subjugation, religious oppression, and forced assimilation tactics, Spicer finds that Indian peoples retained their own sense of identity and social structures.

John R. Welch has contributed extensive research on Western Apache tribes. His work provides invaluable information regarding the San Carlos Apaches fight to save Oak Flat. Welch, an anthropology professor and director of Archaeology, served as the archaeologist and historic preservation officer for the White Mountain Apache Tribe from 1996 to 2005 and continues to serve on the board of the Fort Apache Heritage Foundation (Welch, 2018). Through such writings as *“Reclaiming Land and Spirit in the Western Apache Homeland”* (2001) and *“The United States Treaty with Apaches (Treaty of Santa Fe, 1852), and “It’s Relevance to Western Apache History and Territory”* (2017), he discusses the historical forces of European expansion to alienate the Apache from their homelands and how the Apaches are returning elements of their cultural linguistic and geographical heritage while facing current day challenges of land management issues. In *“Earth, Wind, and Fire: Pinal Apaches, Miners, and Genocide in Central Arizona 1859-1874,”* (2017) Welch analyses Apache antiquity and land use by looking at archaeological sites, place names, stories, and ceremonial practices, both historically and ongoing with significance to Oak Flat. In his 2021 article, *“United States shall so legislate and act as to secure the permanent prosperity and happiness of said Indians”*: Policy Implications of the Apache Nation’s 1852 Treaty,” Welch argues that the land exchange is in direct violation of the 1852 Treaty with the Apaches which remains in effect today. By examining historical records, he reveals how mining proponents used annihilationist propaganda to portray Western Apaches as subhuman obstacles to civilization, progress, and profit. Welch argues that federal and mining

interests must avoid further harm to and reconciliation with the San Carlos Apache people (2017a, p. 2).

Addressing laws and policies pertaining to religious freedom, I utilize the works of legal scholars. Pawnee attorney, Walter Echo-Hawk represents Indian Nations on important legal issues, such as treaty rights, and religious freedom. He has been a fervent activist extending his work as a law professor, tribal judge, international lecturer, and author on important tribal legal issues. My research examines much of Echo-Hawk's extensive research discussing the poignant issues surrounding the absence of religious rights for American Indians. Echo-Hawk findings expose combined injustices with court case decisions, past and present, pertaining to American Indians' religious access to sacred sites and the protection thereof. Importantly, he provides a legal analysis of the strengths and weaknesses of federal statutes pertaining to religious freedom and access to sacred locations for American Indians. *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (2012), he analyzes several federal court cases to explain the development of federal Indian doctrines pertaining to American Indian religious freedom. *In the Light of Justice: The Rise of Human Rights in Native America and the UN Declaration on the rights of Indigenous Peoples* (2013), he calls for grounds for a new generation of federal Indian law involving restorative and reparative actions for American Indian peoples. He has been instrumental in the passage of the *Native American Graves Protection and Repatriation Act* (1990) and the *American Indian Religious Freedom Act Amendments* (1994) (Echo-Hawk, 2004). Echo-Hawk discerns how federal Indian law has been used as a tool to not only protect but to also restrict Indian peoples' access to sacred religious locations. Additionally, his research provides

information about what can be done to achieve reconciliation with Indian peoples, based on the trust responsibility and legal relationship, between the United States and American Indian tribes.

Vine Deloria Jr. has made exceptional and well-respected contributions and to our knowledge about American injustices committed against Indians from an Indigenous perspective. Deloria offers critical observations of the effects of federal agency handling of Indian peoples in legal policies and religious oppression matters. Among other books, he is the author of *Custer Died for Your Sins* (1969), *Behind the Trail of Broken Treaties* (1974), *Red Earth White Lies* (1997), and numerous scholarly journals. *God is Red* (1972), portrays the differing nature of Western and Native conceptions of religion while addressing the U. S. government's prioritizing of land ownership over Indian religious claims. He points out that "the nature of tribal religion brings contemporary America a new kind of legal problem. Religious freedom has existed as a matter of course in America *only* when religion has been conceived of as a set of objective beliefs" (1972, p. 282). He concludes that mainstream belief systems have primarily operated with a conceptual framework based on biblical concepts rather than Indigenous worldviews. Deloria seeks to encourage non-Indians to learn about Indian religions, whose respect for the land, its resources, and all living species and ecosystems can teach mainstream culture how to preserve ourselves from ecological destruction.

Attorney, Jack F. Trope, the Executive Director of the Association on American Indian Affairs has focused his work on the protection of sacred lands and repatriation issues ("Jack F. Trope, Senior"). His publications "*Protecting Native American Religious Freedom: The Legal, Historical, and Constitutional Basis for the Proposed Native*

American Free Exercise of Religion Act" (1992), "*Existing Federal Law and the Protection of Sacred Sites: Possibilities and Limitations*" (1995), and "*Tribal Sacred Places and American Values*" (2002) highlight the difficulties of Indian religious practices that can be severely affected by land development at their religious locations.

S. James Anaya, human rights attorney and current Dean and professor at the University of Colorado Law has taught and written extensively on international human rights and issues concerning Indigenous peoples. Anaya is also the former United Nations Special Rapporteur on the rights of Indigenous peoples during the years of 2008-2014. He has lectured and advised numerous Indigenous nations and organizations on matters of Indigenous human rights and has represented tribal nations from parts of North and Central America. Importantly, he was involved in the drafting of the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) which supports an international framework of Indigenous human rights and the inherent right to self-determination. Among his numerous publications, the *International Human Rights: Problems of Law, Policy and Process* (2011) and the *International Human Rights and Indigenous Peoples* (2013) illustrate many major issues facing Indigenous peoples today.

Conclusion

My research primarily draws from these studies to lend insight into the obstacles facing San Carlos Apaches in their effort to protect Oak Flat and their religious freedom. To the San Carlos Apache, sacred refers to traditional homelands, animals, plant organisms, ancestral remains, and cultural and religious practices. For decades, the San Carlos Apache have increasingly sought to defend their cultural and religious rights around negotiating tables or in courts of law and public opinion. However, treaty rights,

the First Amendment, environmental law, historic preservation law, and federal Indian laws have often failed them. Problematic, in part, is the mainstream view of religion has failed to recognize the distinction of Indian religious practices. Secondly, simple greed.

The San Carlos Apache have experienced a series of traumatic assaults that have had enduring consequences for their community. Nonetheless, the San Carlos Apache fiercely hold on to their histories and kinship to the land notwithstanding the maltreatment received by invading settlers and US federal government.

Chapter 1 will show San Carlos Apaches historical experiences, connections, and concepts of sacredness to their original territories to better understand San Carlos Apaches relationship with the land. Additionally, through the framework of anti-Indianism and genocide by new settlers and government, I bring awareness to institutionalized colonialism and land loss as attempts to extinguish the Apache's relationship to their lands.

Chapter 2 focuses on the historical land loss, genocide, anti-Indianism, and the self-serving colonization practices of European and American governments and settlers (settler colonialism) who forced Christianity and Western views to remove Indigenous tribal societies to gain possession of Indian lands. I will discuss the process of the Doctrine of Discovery and Manifest Destiny of seizing Indian lands, first by the Spanish and Mexican eras, and adopted by the *new* Americans, thereby following US legislative frameworks designed to inhibit Indian sovereignty and culture. I include the principles of the trust relationship between the US and Indian tribes created through legislations, for example, *Worcester v. Georgia* (1832) and the 1852 Treaty with the Apache were designed as a standard of behavior for the US and tribal governments.

Chapter 3 addresses the past practices of Rio Tinto and BHP as mining companies and their disregard for local tribal connections and undercutting regional laws and policies directed at their mining projects, often destroying Indigenous religious sites and environmental contamination.

In chapter 4, I will spotlight the unethical behaviors and practices the Resolution Copper Mine (RCM) company (owned jointly by Rio Tinto and BHP) has taken to obtain the copper below Oak Flat. RCM manipulated the land exchange to be inserted in the National Defense Authorization Act (FY 2015), abusing the legislative process. I will investigate the draft environmental impact statement (DEIS) to ascertain the impacts on Oak Flat and the surrounding area. Importantly, I include the purpose and function of the National Environmental Policy Act (1970) (NEPA) and the National Historic Preservation Act (1966) (NHPA) that are put in place for the safety and conservation of our environment, particularly in the context of the preservation of Oak Flat.

Finally, chapter 5 will examine the reconciliation strategies by Apache Stronghold and Arizona Mining Reform Coalition, et al. to facilitate restorative justice for the San Carlos Apache to participate in the mine's activities for preserving Oak Flat and their religious freedom. Additionally, I will direct attention to the Save Oak Flat Act sponsored by Rep Raul Grijalva and Sen Bernie Sanders to repeal the Oak Flat land exchange, Section 3003, of the National Defense Authorization Act (FY 2015). The importance of reconciliation strategies cannot be understated. The fierce battle to save Oak Flat not only with the San Carlos Apache but the hundreds of organizations and supporters shows the significance of Oak Flat and the environment surrounding it.

CHAPTER 2

SAN CARLOS APACHE - OAK FLAT

Long before European invasion, Indian peoples and nations occupied the lands of their origins and inhabited these cultural and spiritual spaces as sovereign nations and in an interconnected relationship. Our ancestors lived through the cultural teachings of our creator and of Mother Earth. Our cultures respected creation stories that provided the teachings from our creator. Each nation spoke its own languages that connected us to our cultures, worldviews, spiritualism, and lands. Our system of government which included individual freedoms of democracy and the social responsibilities of communalism shaped our values, social, political, economic, and religious systems. The inherent act of tribal self-governance provided the ability to protect the health and well-being of tribal citizens and to protect tribal cultures and identities. Today, we continue in the footsteps of these ancestors and Nations to continue to exercise self-governance as well as recognize their cultural, spiritual, and inherent rights to our territories.

Contrary to many cultural values of Indigenous peoples, European belief systems of religion and cultural values focused on individualism, private property, and ownership and development to the “use” of the land. Original European invaders through the American government and citizens have focused on access to Indian lands. In order to secure or gain access to those lands, settlers have worked through policies, programs, and theft to claim Native lands or disconnect Native peoples from cultural to legal connections to their homelands. Even with the policies of extermination, termination, assimilation, and enculturation, the United States government has not been successful in

breaking the Indian spirit. Sacred lands, spaces, and places continue to be essential for traditional religious practices.

These connections to land, culture, and spirituality illustrate a resolute Apache spirit and the fortitude and resilience Native peoples have. For generations, the Oak Flat area in Arizona has been inhabited and utilized by various Indigenous peoples, particularly the San Carlos Apache people. For the Apache, key cultural and spiritual connections to sacred places are inseparable from the land. In their language, the concept of *Ni*, meaning both land and mind, illustrates and connects the Apache to sacred locations of “constancy to live their [Ndee] identity and principles” giving them a sense of self, community, and connection to the land. (Record, 2008, p. 7). Importantly, the concept also connects the past to the present which encourages a cultural continuum to reinforce the resilience and connections to the contemporary Apache society of today.

In this chapter, I focus on the importance of San Carlos Apaches identity and stewardship of their homelands to highlight San Carlos Apache culturalism and their concepts of sacredness. It is necessary to understand the social organization of the Apache to better recognize the damage administered by colonial Western perspectives directed at Apache people in their connection to their homelands and the significance of their lifeways.

Who are the Nde?

A common misconception is that Apaches are all the same. The “Apache” that most people think of is Geronimo. Apaches represent several distinct tribal groups, each having a particular set of social, economic, political, and territorial features of their own. However, Apache nations extend from the US into Mexico. In Mexico, Apaches

recognize themselves as N’dee, N’nee, and Nde nation (Carrion, 2021). The Apache peoples include, in New Mexico, the Chiricahua, Lipan, Mescalero, and Jicarilla. And some of the Chiricahua were removed to Oklahoma. In Arizona, there are the Yavapai Apache of Camp Verde, the Tonto Apache, the White Mountain Apache, and the San Carlos Apache. For the purposes of this study, I am focusing on the San Carlos Apache who are part of the Western Apache Nation. Additionally, Western Apache share commonalities in linguistics, but slight variations make them distinct.

The San Carlos Apache is one of four tribes that represent the Western Apache, the other three include the Tonto Apache Tribe, the White Mountain Apache Tribe, and the Yavapai Apache Nation (Welch, 2017a, p. 2). Long before settler contact, the San Carlos Apache inhabited a vast region that spread across the San Pedro Valley in Arizona, southern New Mexico, and Northern Mexico (Ferguson and Colwell, 2006, p. 193, 196) The San Carlos Apaches Tribe comprise one nation of five distinct Western Apache bands, the Aravaipa, Apache Peaks, Pinaleño, San Carlos Proper, and the White Mountain Apache (western/eastern) (Macktima, 2017)³. Historically, each band was geographically distinct and encompassed agricultural sites and hunting areas within its territory (Record, 2008, p. 47). Among other functions, band leaders supervised daily activities, directed seasonal movements, settled disputes, and coordinated activities requiring inter-group cooperation (ibid, p. 47-48). Additionally, each Apache band has responsibilities for the people as a whole. Marcus Macktima, a San Carlos Tribal member and professor the San Carlos Apache College, explains,

³ The term "Western Apache" will be used often throughout this study and is meant to include the San Carlos Apache Nation.

In terms of territory, clans held individual parcels of land, but not in the way that western culture understands exclusive private land ownership. They possessed, if that is the right word, farms that were the responsibility of the specific clan. Bands resided on locations that they claimed as their own territorial region. This claim to territory should not be understood to mean that they claimed the land itself as being possessed by them, in the same ways that imperial forces perceived land ownership, but, more so, as a view of responsibility to their place as clan dictated.

“The true power of clans lay in their far-flung network of obligations – obligations necessary because of a...kinship among all members of the same clan. It is important to note that clan obligations extended not only between members of the same group but to members of all groups, forming the fiber of the few existing intragroup blood kinship bonds.” Each member of a clan had a duty to perform, and these roles were generally decided by both gender and the clan in which a member was born into” (2017, p. 28-29; Goodwin, 1942, p. 97).

San Carlos Apache’s strengths are the pieces of knowledge and ethical interactions that are rooted in Apache lifeways of kinship relationships that build survivance and empowerment.

Before the name Apache was applied to them, the San Carlos Apache have known themselves as *Nde*, meaning “the people,” a “culturally rich Nation with heritage tied to Mother Earth, evident to this day our existence is steeped in thousands of years of lineage in descending knowledge passed down generational since the time of creation” (Apache Nation, 2017). Today, the San Carlos Apache Indian reservation spans Gila, Graham, and Pinal counties in southeastern Arizona and consists of nearly two million acres and is 120 miles east of Phoenix and 120 miles north of Tucson (ITCA; Titla, 2010, p. 45).

Origin Stories and Land Connections

The *Ndee* or Western Apache has dominated much of southern Arizona and surrounding areas for centuries. As with other Indigenous and non-Indigenous cultures, Apache’s conception of the world is determined through their creation stories, culture,

oral histories, and traditions. While mainstream society and the scientific community have long overlooked Tribal oralities, Apache origin stories are just as real as other religious belief systems such as Jesus's *Sermon of the Mount* or his *Resurrection Story*.

The San Carlos Apache origin stories present both historical and cultural perspectives of their people. Their origin stories have important significance, they teach us life lessons, their history, and cultural and spiritual importance of lands, different life (animals, plants) and their traditions. For the San Carlos Apache people, "oral narratives persevere as the marrow of cultural solidarity" and view Apache oralities and histories as "moral guidelines by which one should live...teach the young and remind the old what appropriate and inappropriate behavior is in our cultures; they provide a sense of identity and belonging...within their lineage and establishing their relationship to the rest of the natural world" (Record, 2008, p. 10). The Apache has taken respectful care to preserve their oralities and sacred locations, it demonstrates the strength in the cultural history of the people and the living landscape from which they come.

The following origin stories provide a snapshot to understand the San Carlos Apaches' life view and stewardship towards the land. This first vignette shows how the earth was created, the lands, the environment, the plants and animals, and why it is important.

The Apache Creation Story, as narrated by Franklin Stanley, Sr., an Apache Spiritual leader, recites,

In the beginning, before the universe and earth were created, there were no life forms. What was to be the universe, and what was to be the Mother Earth....

Blackwater Grandfather threw his energy in the four directions. Blackwater Grandfather tied the universal energy in 32 places. The energy which were [sic]

tied in 32 places was to hold the universe and the earth in place. When the earth was forming, Blackwater Grandfather made four winds to blow inward. In the east, Black Grandfather laid black metal in the earth and on its outer surface. In the south, Blackwater Grandfather laid blue metal in the earth and on its outer surface. In the west, Blackwater Grandfather laid yellow metal in the earth and on its outer surface. In the north, Blackwater Grandfather laid white metal in the earth and on its outer surface. In the east, Blackwater Grandfather planted black cane with metal leaves on the earth. In the south, Blackwater Grandfather planted blue cane with metal leaves on the earth. In the west, Blackwater Grandfather planted yellow cane with metal leaves on the earth. In the north, Blackwater Grandfather planted white cane with metal leaves on the earth.

In the next phase (east), Blackwater Grandfather threw black wind once towards the earth. In the south, Blackwater Grandfather threw blue wind once and it almost settled in place. In the west, Blackwater Grandfather threw yellow wind three times and it almost settled in place. In the north, Blackwater Grandfather threw white wind four times and it finally settled in place.

Unto the next phase.... what is now the earth and universe, Blackwater Grandfather threw his energy four times and laid the earth's veins (water).

Unto the next phase.... On what is now the earth and universe, he laid down good energy for all creation to follow. For this reason- the earth and the universe is held together by metal and good energy. The wind that he blew (energy) from the four directions was to give life to all his creation. From the east, he appointed certain sacred beings (energy) to help rule life on earth. From the south, Blackwater Grandfather created Mother Earth and all that lives on her. From the west, Blackwater Grandfather created the sacred corn pollen for all Indeh (Apache). From the north, Blackwater Grandfather created everlasting life for all of his creation. This was how life was created. Before the earth and the universe existed, this was how life (energy) was created for us. For the Apache people, this story is in our language, our songs, and our prayers. If your care to listen, this was how creation began. You all need to know the creation story. By and through the creation of the earth, everything we need is made on the earth. The earth was made perfect for us; everything we needed like the plants, water, and animals...like the deer, turkey, fish, birds, cattle, and horses were created for our survival/needs. The food we eat is made of the earth. We drink from her veins and belly (water). Because of Mother Earth we have shoes, pants, shirts, hats, vehicles, and homes. Because of Mother Earth, we have everything we need to survive, and these we call our own. For this reason, you need to respect our sacred Mother Earth. Don't trash and misuse her (YouTube, 2013).

Marcus Macktima, a San Carlos Apache, reflects on a version of an Apache origin story as told by his family members, that include an important part of their religion and spirituality, the *Ga'an*.

Usen [Apache: Creator] created the universe but did not create the Apache first. In the beginning, there was only darkness. There were two counsels, one of birds, and another of beasts. The birds wanted to bring light into the world, but the beasts protested greatly. There was a great war between the two and the birds, because of their flight, were able to overcome the beasts. Light was admitted into the universe, and this paved the way for man to live and thrive upon the land. However, the biggest threat to man was the monster who would consume the young of the people. A young boy who was endowed with supernatural abilities challenged and overcame the beast with his arrows, and the boy's name was *Apache*. The people are named for this first man who gave the people the opportunity to grow. However, the people did not know how to grow food for themselves, and often fought amongst each other with little regard for the consequences that this fighting would have on their people and culture. *Usen* saw the needs of *Usen's* people, and, as a result, sent helpers to Earth from the Mountains, *Ga'an* [Spiritual deities and Holy People], to come to the people and teach them to grow food. They also brought with them a social order that allowed the *Nde* to respect their relationships and care for their sacred knowledge. They were charged with the responsibilities of caring for the land that gave them sustenance, and honoring both the *Ga'an* and *Usen*, who dwelled within the sun. This was the beginning of the people: *Nde* (2017, p. 2).

Grenville Goodwin, a researcher on the Western Apache, explains the significance of the *Ga'an* to the Apache as *spiritual beings*, the caretakers of prehistoric lands and inhabitants within their territories who continue to protect and bless land. The *Ga'an* are responsible for the blessings and care of Apache's agriculture. Importantly, the *Ga'an* live within mountains, caves, and under the ground of the Apache homelands, including the areas of Oak Flat (1942, p. 64). In ancient times they lived on the earth as people; however, due to sickness and death, the *Ga'an* left in search of a place without sickness and where eternal life would be found (ibid).

The *Ga'an* are integral to San Carlos Apache's oral stories and religious practices. They play a vital role in Apache epistemology, religion, connections to land, tradition, and culture. San Carlos Apache Tribe current Chairman, Terry Rambler emphasizes how their significance is tied to sacred sites, particularly to the Oak Flat area. Oak Flat belongs to "the powerful *Diyin*, or Holy Beings, and is the home of a particular kind of *Ga'an*, which are mighty Mountain Spirits and Holy Beings on whom we Apaches depend for our well-being" (2013, p. 4).

Moreover, Ramon Riley, of the White Mountain Apache, explains,

"Our creation story tells us we are surrounded by four peaks—the sacred mountains. We are in the center, where we emerged. But all these areas have stories. The southern areas have food, and we go there because we know they are there. In the east is black, Mount Baldy; in the south is turquoise; in the west is red, Four Peaks; in the north is white, San Francisco Peaks. Some people say the south mountain is Mount Graham, but my mother always told me they were the Sierra Madre in Mexico. There are songs from time immemorial about these mountains" (Ferguson and Colwell, 2006, p. 193).

These brief examples of origin stories illustrate a strong cultural connection to the lands, space, and place of their origins, including the Oak Flat area. For the San Carlos Apaches this place holds more than one hundred thousand years of ancient knowledge recorded and archived by oral traditions and recollections, and ancient codices passed down through generations (*Apache Nation*, 2017).

It is no wonder the Western Apache know the landscapes of their ancestral territories intimately. They have lived in the region for centuries. They describe and commemorate their history through place names, and that history is shared through stories and songs. Keith Basso who worked directly with Western Apaches, notes that the

most important to Apaches is *where* events occur because it is tied into the landscape that provides “images of the past that can deepen and enlarge awareness of the present” (1996, p. 31) Basso shows landscapes becoming a form of narrative art in which past cultural practices are still alive and notes, “[i]t’s principal themes are the endless quest for survival, the crucial importance of community and kin, and the beneficial consequences, practical and otherwise, of adhering to moral norms” and “one of its basic aims is to instill empathy and admiration of the ancestors themselves,” that is, “a *place-world* wherein portions of the past are brought into being” (1996, p. 6, 33).

Stewardship (Connecting culture/place to stewardship)

As a way to protect and pass down cultural knowledge, The *San Carlos Elders Cultural Advisory Council* (ECAC) was formed in 1993 by the Tribal Council resolution and serves as a source of traditional knowledge to maintain Apache’s distinct identity in the face of a pervasive dominant culture (Ferguson and Colwell, 2006, p. 15, 219; National Centre, 2009). Jeanette Cassa, one of the founders of the ECAC, served as a lead ECAC coordinator to direct the San Carlos Apaches cultural preservation activities and advised any cultural governmental management issues up until her passing in 2004 (Ferguson et al., 2008). She led a primary role in two Apache cultural preservation initiatives, first, the *Western Apache Place Names Project*, working with tribal elders at different locations on and off the reservation, mapping the Apache places to identify and record personal stories and tribal histories of these areas and transcribed traditional Apache landscapes with modern orthography and mapped their locations on contemporary maps (Ferguson et al., 2008). Secondly, the *Ethnobotany Project* focuses primarily on identifying and documenting Apache archaeological sites, traditional

knowledge, traditional medicines, and foods for historic preservation and management of cultural resources (Ferguson and Colwell, 2006, p. 233; Murray, 2009, p. 78).

Importantly, this work included identifying the descendants of nearby tribes who occupied ancient archaeological sites on and surrounding Apache homelands so that all culturally affiliated tribes can be included in government-to-government consultation involving tribal and federal agencies to provide managerial recommendations based on relative tribal principles of cultural heritage (ibid).

The necessity for Apache cultural preservation efforts is due to the constant efforts by governments, states, societies, and institutions to deny the historical formations and deny Apache connections and identity to their homelands and culture. Securing Apaches' histories and cultural perceptions calls for the decolonization and reforms of federal Indian law and policy to shield the foundational principles of the Apache and prevent the loss of intellectual and cultural knowledge. Importantly, it preserves Apaches as *Apache* for generations to come.

Anthropology

Their research also connects the Apaches to their original territories from an anthropology perspective. The Pinal Mountains have been historically documented as the territory of the Western Apache, specifically the Pinal Band of the San Carlos Apaches. The San Carlos, and their other Apache neighboring tribes, the Tonto, White Mountain, and the Yavapai Apaches have archaeological evidence dating hundreds of years (Welch, 2017a). Archaeologists have identified hundreds of archaeological sites in the San Pedro area dating as far back as 12,000 years (Colwell & Ferguson, 2004, p. 7-8; Haury, et al.,

1959, p. 2). They describe the inhabitants within the region, among other southwest tribes, with land connections, to be Western Apache peoples (ibid).

A draft environmental impact statement for Ray Mine Tailings Storage Facility (2018), located 10 miles outside of Kearny, Az and 22 miles from Superior, AZ, included in their analysis that Western Apaches have connections as descendants of the prehistoric peoples of the Late Formative period (about 700-900 C.E.). They are described as “the people living in southern Arizona are the direct descendants of the prehistoric peoples whose numbers and cultures were reduced by the social and economic changes that marked the end of the Formative period” (2018, p. 2, 5). During the Classic period in the San Pedro Valley, from 1150 to 1400 A.D., compound settlements and corrugated ceramics associated with people living in the White Mountains are found in the Salt-Gila Basin, known to be from several tribal groups who joined the Apaches (Ferguson and Colwell, 2006, p. 44-50, 192). Furthermore, Spanish documents during an expedition in the winter of 1697 led by Eusebio Kino recorded the territory of Apache groups, known to the Spanish as the Pinaleños, to have lived in San Pedro Valley and dominated lands to the north, east, and south of the Sobaipuri’s (descendants from the Pima and O’odham peoples) province (Ferguson and Colwell, 2006, p. 43, 57, 74; “Ray Mines,” 2018, p. 2)⁴

The US Forest Service hired a team of local tribal monitors, which is part of the environmental impact process, charged with documenting culturally significant sacred sites that would be affected by the RCM’s impact area, covering approximately 11 square miles that will support Apaches history and activity in the area (Finch, 2019). They have found pieces of prehistoric mortars, grinding stones, and chipstones that have been used

⁴ The “Sobaipuri” are also known as late prehistoric and early historic tribal groups in southern Arizona.

for toolmaking and wild plants used for basket making, food, and medicines; therefore, their findings will enable them to record and present significant sites that would be eligible for inclusion on the National Register of Historic Places, under the National Historic Preservation Act (ibid).

Conclusion

Apache origin stories, testimonies, and academic research illustrate Apache's relationship and attachment to their original territories. The Western Apache, in particular, the San Carlos Apache have a long, continuous, occupation of their homelands, and have a fervent commitment and spiritual connection to their homelands and a place of great spiritual and cultural connection that remains resolute to this day.

In chapter 2, this study shows how history shows that as demand for Indigenous lands increases, Indigenous peoples pay a high price, usually through their culture, language, lands, and lives. The incursion of European settlers, western expansion, and the eventual discovery of rich resources on Apache land led to a history of genocide, dispossession, acts of war, forced assimilation, and religious conversions through the justification of the Doctrine of Discovery and Manifest Destiny.

In chapter 3, I will provide a brief history of the actions and mindset of the Spanish incursions into Apache territories, followed by the Mexicans and finally the new Americans. This framework contributed to the aggressive actions to attain Oak Flat.

Mining proponents and annihilationist propaganda began to portray Apaches as subhuman and hindrances to civilization and land development to access their natural resources. Mining began across Apache territories and did not take long to claim lands inside and outside reservation borders. This harsh historical injustice requires reminding

of the horrific events the Apache have endured and that reconciliation must be in place for any land development projects on Indigenous sacred sites. The atrocities experienced by the San Carlos Apache help to explain their persistent emotional and spiritual connections to Oak Flat and their opposition to the Resolution Copper Mine project.

CHAPTER 3

HISTORICAL LAND LOSS OF THE WESTERN APACHE TRIBES-SAN CARLOS APACHE

In chapter 2, I showed the continued connections the San Carlos Apache have to their homelands which is still integral since time immemorial. The San Carlos Apache's vital relationships to their lands continue today and are an important connection to their origins, their culture, and sovereignty.

Over a century of mistreatment from the United States federal government and European settler colonizers have been inflicted on the San Carlos Apache; therefore, it is essential to keep this in mind when understanding the violence of settler and institutionalized colonialism, which is a set of actions that have resulted in denying or extinguishing those relationships.

The history of the San Carlos Apache people shows they have experienced severe land losses due to American settler intrusion through acts of war and dispossession of their homelands especially once the new settlers discovered lucrative resources on their lands. This chapter will show how the land loss and cultural trauma of the San Carlos (Western) Apaches are tied to the policies and practices of colonialism and settler colonialism.

I will demonstrate how European and American governments and settlers' practice of colonization served the needs of the colonizers. For Indigenous peoples, colonizing forces imposed Christianity and Western worldviews to eradicate Indigenous languages, cultures, and belief/religious/spiritual systems in order to facilitate the dispossession of Indigenous land title rights for settler land development and land

management on federal public lands that were originally Apache homelands. As a result, the San Carlos Apache continue to be marginalized from key land development decisions where their sacred sites are located.

Colonization and settler colonialism has had a profound effect on the well-being and lifeways of the Western Apaches. Equally, it is important to identify all the old and new practices of colonialism that continue to encroach on Indigenous sacred histories, homelands, and cultural lifeways.

What is colonialism?

Colonialism is the act or policy of acquiring full or partial political, economic, and social control over a people, lands, and systems, imposing the colonizer's political, economic, religious, and language upon the colonized (Hiller & Carlson, 2018, p. 50). The action of colonialism takes on overlapping forms. These structures share common practices organized to deny, extinguish, and subjugate Indigenous peoples through involuntary means to gain political and economic control. Walter Echo-Hawk describes colonialism as a “political and economic institution devoted to a one-way transfer of all forms of property from Native to non-Native hands” and “to extract land, resources, and wealth” as its core purpose (2012, p. 245). Colonialist activities have pejoratively stolen lands, developed a sense of racial superiority, and drove unrelenting greed. The policies involving colonization involved invasion, acts of genocide, warfare, individual and structural acts of violence, threats, coercion, trickery, bribery, absolute removal, deceit, and flat-out confiscation of a staggering amount of lands and natural resources have been transferred from Indigenous to non-Indigenous hands robbing Indians of the freedom of our cultural lives in our homelands. Patrick Wolfe quotes Harvey D. Rosenthal, former

historian for the Indian Claims Commission (1985), illustrating colonial perspectives and efforts, “[t]he American right to buy always superseded the Indian right not to sell” (2006, p. 391).

Simply put, it is the practice of governance to gain settlement and political control over other territories and recruit them with new settlers (colonizers) in developing land for economic and political dominance, such as the case with the European sovereign, England, towards what is now the United States. Settler rights and desires supersede Indigenous long-standing connections to the land, as with the Apaches and Oak Flat.

Colonization as a practice did not end, instead, it continues through a concept Patrick Wolfe calls *Settler Colonialism*. Wolfe, a well-respected Australian scholar introduces settler colonialism, in summary, as a form of practice in which colonizers claim “new” territories as their own (do not leave as with colonization) to set up land for economic exploitation while replacing the original population of the colonized territory—done by design as organized structures and not an occasional event (2006, p. 388-398). He further clarifies that settler colonialism is an “inclusive, land-centered project that coordinates a comprehensive range of agencies, from the metropolitan centre [sic] to the frontier encampment;” although, they “are not dependent on the presence or absence of formal state institutions or functionaries” (ibid). We can see this in action as settlers (all non-Indigenous peoples) re-write an American history that eliminates Indigenous connections and claims to their lands.

Continuing the discussion of settler-colonialism, Native scholars, Taiaiake Alfred (Mohawk) and Jeff Corntassel (Cherokee) describe contemporary colonialism systems as “a form of post-modern imperialism in which domination is still the settler imperative but

where colonizers have designed and practice more subtle means of accomplishing their objectives” (2005, p. 598). That is, in place of *physical* removal, law and policies have replaced outright elimination. This has created a political, economic, and legal structure that places Indian communities having their homelands, cultures, and self-determination to be attacked and denied by colonial action. Furthermore, this form of imperialism has normalized a racialized settler mindset. It is important to recognize that contemporary settlers claim indigeneity through their occupation and settlement of land (private property) over several generations and do not recognize their own action of dispossession (Glenn, 2015, p. 58-59).

This settler-colonial mindset can be characterized by their “refusal to recognize themselves as [colonizers]” thus denying a violent history and Indigenous peoples’ experience of land loss (Tuck, McKenzie, & McCoy, 2014, p. 7). For example, here in the Americas, non-Indian people refer to colonizers as Christopher Columbus or the early American colonies that took place in the distant past; nor do they consider the reality that they reside on land stolen or ceded through broken treaties (under duress) much less empathize with Indian people’s relationship to their original territories (ibid). This lack of awareness or recognition allows settler colonialism, in all its subtle and not-so-subtle forms, to continue. Indian peoples confront the constant reality of having their lands, culture, and governance attacked or simply denied by colonial actions that are more than events isolated in the past. Yesterday’s invasions are relevant to today’s U.S. society and how and who benefits from colonialism. The settler-colonial framework, set in place by the Founding Fathers, places a collective act of survival and resistance against a

continuing colonial process of legalities and bureaucratic means of contemporary colonialism (Alfred & Corntassel, 2005, p. 598; Hiller & Carlson, 2018, 50).

Looking through the lens of colonization and settler colonialism we can gain a better understanding of the history of the Apache people and the part of the context of what has led to the fight for the protection of Oak Flat. However, it is important to highlight those early encroachments toward Indigenous peoples were put in place and justified long before new European white settlers' arrival in the Americas.

The invasion of Indigenous homelands interrupted Indian nations' freedoms to live on their lands and disrupted their ways of living. The process of claiming and seizing Indigenous lands began in faraway lands and from a foreign worldview and legal system. The "legal" seizure of Indigenous lands worked through a Western legal system that utilized international law as justification, beginning with – the Doctrine of Discovery and the Right of Conquest.

The Catholic Church sanctioned the colonization and conquest of non-Christian societies. Through various Papal Bulls, the Church and Sovereigns asserted jurisdiction and supremacy over lands of all humanity predicated on the presumption that there is "only one true God (the Christian God) and one true religion (the Roman Catholic Church)" (Echo-Hawk, 2012, 16-17). The "Doctrine of Discovery" originates with the Papal Bulls issued in the late 1400s. Two Papal Bulls gave authority to the Kings of Spain and Portugal to exploit the lands and peoples of Africa and the Americas to benefit the Catholic Church. They were formulated before Columbus's voyage to the "New World" in 1492. The Catholic Church's political doctrine accorded inferior legal status

and rights to non-Christians setting the stage to be put upon Indigenous peoples of the New World.

Steven Newcomb, (Shawnee/Lenape) co-founder of the Indigenous Law Institute, reveals that the creation of the principle of discovery began in 1452, when Pope Nicholas V issued to King Alfonso V of Portugal the papal bull (decree), *Romanus Pontifex*, declaring war against all non-Christians worldwide, and authorizing and “promoting the conquest, colonization, and exploitation of non-Christian nations and their territories” (1992, p. 101). Issued forty years before Columbus’s voyage to the New World, the papal bull directed King Alfonso V to “capture, vanquish, and subdue the saracens, pagans, and other enemies of Christ” and to “put them into perpetual slavery” and “take all their possessions and property” (ibid). Under the 1452 papal bull’s influence, Columbus and other explorers sailed to “discover” a New World with the expressed understanding that he was authorized to take possession of any lands he encountered that were “not under the dominion of any *Christian* rulers” (emphasis added) (ibid).

After Columbus’ return from the New World, Pope Alexander VI issued a papal bull, *Inter Cetera*, in 1493 that conveyed the legal title of the Americas to Spain’s monarchs, Ferdinand and Isabella, including any lands that Spain may “discover” in the future and that the discovered people “be subjugated and brought to the faith itself” so the Christian Empire would be propagated (Echo-Hawk, 2012, p. 17; Newcomb, 1992, p. 101). The papal bulls justified slavery and the taking of Indigenous lands.

Fast forward to 1776, after the American Revolution, when the United States gained independence from England, the Doctrine of Discovery was interpreted by the United States courts to validate the claiming of Indigenous lands and the dispossession of

Indigenous peoples from their homelands (Pevar, 2012, p. 24). This legal principle justified a claim to Indigenous peoples and their lands. It was used later when President Thomas Jefferson instructed the Lewis and Clark expedition to make the United States claims over Indians and their lands under the principles of the Doctrine of Discovery (Miller, 2015). The use of the Doctrine of Discovery and the Lewis and Clark expedition advanced exploration, “discovery,” as an expansion of the US claims to territory. By the mid-1800s, the idea of Manifest Destiny fueled western expansion and combined with the Doctrine of Discovery, justified the claims to Indigenous lands. Echo-Hawk explains that Rudyard Kipling later coined this justification for colonialism as the “white man's burden,” a popular euphemism “for imperialism based upon the presumed responsibility of white people to exercise hegemony over non-white people to impart Christianity and European values” who are “in need of European guidance” (2012, p. 16).

Under the hubris of “Manifest Destiny,” the US was “destined” to expand its authority over what is now the United States with the mindset that white settlers had the “right and a duty” to take land from the “savages” so the land could be used productively and adequately (Pevar, 2012 p. 32). Newcomb clearly describes the framework of Manifest Destiny as a “Chosen-People-Promised Land” model, whereas “God” granted to the United States the divine right to conquer, subdue, and exercise dominion over the lands of North America (2008, p. 51-52). Newcomb maintains that the foundation of federal Indian law is the “idealized cognitive model of the conqueror seizing a promised land for a chosen people” and is not simply a “historical right of conquest in the past, but an ongoing, contemporary right to conquer in the present (2008, p. xiii). New Christian United States lawmakers assumed complete dominion. They thought of themselves as

having the divine right to discover and seize Indigenous lands in their belief that God commanded them. Anders Stephanson, professor of History, describes the concept of Manifest Destiny,

For Europeans, land not occupied by recognized members of Christendom was theoretically land free to be taken.... The Christian colonizers of the Americans...understood theirs as sacred enterprises; but only the New England Puritans conceived the territory itself as sacred, or sacred to be...a land promised, to be reconquered and reworked for the glory of God by His select forces, the saving remnant in the wilderness (Newcomb, 2008, p. 52).

“Discovery” negated the tribe’s rights of sovereignty and equality. Under the Doctrine of Discovery and Manifest Destiny, they legalized and justified colonialism that allowed the use of discovery and war to seize Indigenous lands and assume racial, religious, and cultural superiority over Indians, almost to extinction (Deloria, 1969, p. 31; Echo-Hawk, 2013, p. 28).

Another way colonialism and settler colonialism frame the loss of lands is their defining their relationship with Indigenous nations. Before the formation of the United States, Indigenous peoples were recognized by England, France, Canada, and New Zealand as distinct nations that possessed rights to sovereignty by treaties and alliances (Barker, 2005, p. 5; Calloway, 2018, p. 8,30,62). The terminology in colonial times of nation, sovereign, and treaty obligated the United States to adhere to the internationally accepted definitions of those terms relating to the tribes as independent sovereigns (Barker, 2005, p. 5). The principles of trust and protection that emerged from treaty relationships also encompass the congressional framework of the Northwest Ordinance (1787), which formalized federal protection with the assurance Indians would be treated with the “upmost good faith” (Barrett, 1891, p. 66; Tsosie, 2003, p. 274). Additionally,

Congress passed the Trade and Intercourse Acts (1790) (1834), which codified federal jurisdiction to regulate trade between non-Indians and Indian Nations to protect Indians from non-Indian profiteers (Getches et al., 2017, p. 104).

The most significant in defining the relationship between Indian Nations and the U.S. government were first recognized in the Supreme Court decisions given in *Cherokee v. Georgia*, 30 U.S. 1 (1831) (*Cherokee*) and *Worcester v. Georgia*, 31 U.S. 515 (1832) (*Worcester*). Chief Justice John Marshall's rulings in these foundational cases developed the theory of federal Indian law and served as a precedence for the trust relationship between the U.S. federal government and Indian Nations.

The Cherokee Nation went to the Supreme court with a lawsuit to protect their sovereignty and self-governance of their tribe from encroachment by the state of Georgia (Echo-Hawk, 2012, p. 101). Using the principle of "discovery" in *Cherokee*, Marshall decided that Indians are "domestic dependent nations" whose citizens reside "in a state of pupilage and subject to the guardianship protection on the federal government" resembling that of a ward to a guardian (Marshall, 1831; Wilkins & Stark, 2011, p. 125). This means, that tribes lacked foreign national status because their homelands were within the United States but still had a degree of autonomy as "domestic dependent nations." Joanne Barker, a Lenape scholar at San Francisco State University, explains, "Marshall's concepts sought to secure U.S. interests in controlling Indigenous peoples and their lands by defining their relationship to the United States as wholly subjected and conquered" (2005, p. 10). This decision denied full nationhood to Indian nations. However, in *Worcester*, Marshall recognized Cherokees as a distinct political entity with their jurisdiction allowing no state intrusions; thus, established U.S. federal plenary

power over Indians or their territories (Deloria & Lytle, 1983, p. 5; Echo-Hawk, 2012, p. 109). The Worcester ruling clarifies that Indian nations remain to exist as separate and self-governing communities within the United States with “vested rights which constitute them a state, or separate community-not a foreign, but a domestic community-not as belonging to the confederacy, but as existing within it” (Marshall, 1832, p. 583). Marshall’s decision recognized Indian nations as independent sovereigns despite the ideologies of “civilization” according to European definition. Nonetheless, Worcester strengthened the relationship between Indian Nations and the United States. Notably, features within Worcester obligated and empowered the United States to safeguard tribal interests and to protect the well-being of Indian nations, including their cultural and political integrity. Secondly, Worcester does not give the United States a license to exploit or destroy Indian nations (Echo-Hawk, 2012, p. 433). Worcester explains the protectorate (or guardian) was “interposed to [non-Indians]...from encroachments on [Indian] lands” and contends the guardian has “no claim to lands, no dominion over their persons;” as a result, binding Indian Nations as “dependent all[ies] (Marshall, 1832, p. 517-518). These statutes are principles that Congress designed as standards of behavior for the United States towards tribal nations.

Initially, the duty of protection from the U.S. was to guard against unrelenting pressure and conflicts from immigrant intrusions on tribal lands. Today, those protections lean towards environmental impacts, incompatible land development projects, and other threats to tribal homelands, resources, burial sites, and traditional religious sacred sites. It is important to point out that the trust relationship is a double-edged sword. It is protective and plenary. Rebecca Tsosie, Yaqui law professor at the University of

Arizona, reminds us that the trust responsibility is premised on a “moral obligation” from the U.S. in “fair dealing” and “good faith” towards Indian nations, which includes cultural resources which are essential to the continued survival of Indian peoples (2003, p. 274). The trust doctrine has been used as both a source of congressional power to control Indian affairs and has enforced limitations on various federal actions that conflict with the federal government’s fiduciary role that undermines tribal self-determination (ibid). Importantly, Echo-Hawk warns that the federal trust responsibility could be assumed without Indian consent as long as Congress sees fit; this draws attention to the risk of the unchecked plenary power of Congress over Indian affairs (2012, p. 198). This means that the “guardianship principle,” in various settings, has been manipulated to supersede tribal internal sovereignty practices and/or cultural traditions to justify excessive government intrusions.

This adopted practice has been genocidal in both practice and intent. Western expansion led to the dispossession of Indian lands, removing Indians from their homelands to reservations, which robbed them of their cultural lives and access to their religious sites. Because of governmental policies, Indian’s religious rights and access to ceremonial spaces have been disrupted. Moreover, family institutions and traditional roles were severed as well as tribal traditional forms of government. Unfortunately, much of the Western legal system and the construction of United States legal precedent has served as colonialism’s validation to legitimate conquest, normalizing racism, and subjugation of Indian peoples, such as the action to attain Oak Flat.

Next, I provide a history illustrating the impacts on the Apache, how they lost lands, and the effects of colonialism and settler-colonialism.

Before the Spanish, Mexican, and American occupation of Western Apache territories and the surrounding area, Apaches led an independent semi-nomadic lifestyle of small-scale agriculture, procuring wild plant foods and medicinals, trading, and hunting. Their system of governance fostered autonomy among other Apache bands and local tribes as well as unity between them. Their self-sufficient and independent nature enabled them to avoid external forces seeking to seize their territories and threaten their communities (Perry, 1993, p. 49; Record, 2008, p. 42). They resisted threats to their way of life to maintain their culture and territories until unrelenting foreign invasions threatened their existence.

Indigenous peoples of the Americas have endured severe economic and political disruptions and severe abuses due to acts of colonialism. In the Southwest, Spanish explorers to the “New World” introduced colonialism, seen with greed for land and its treasures and the dehumanization and genocide of Indigenous peoples. Echo-Hawk reports an astounding assessment of more than twelve million Indigenous peoples who died during the first forty years after Columbus’s arrival as Spaniards infected, killed, tortured, and terrorized each native civilization they encountered (2012, p. 15). Colonizing policies quickly spread throughout the Americas and into Apache territory into what is now the United States, first by the Spanish and Mexicans and later by the United States government.

As previously mentioned, the papal bulls authorized legal title to the New World; however, Spain’s Laws of Burgos (1512) legalized annexation of the New World (New Spain) to justify conquering the Americas by stipulating,

[should] the natives attempt to oppose the settlement [of a colony], they shall be given to understand that the intention in forming it, is to teach them to know God and his holy law, by which they are to be saved;...and teach them to live in a civilized state...They shall be convinced of this by mild means, through the interference of religion and priests,...and if, notwithstanding, they do not withhold their consent, the settlers...shall proceed to make their settlement...without doing them any greater damage than shall be necessary (Echo-Hawk, 2012, p. 18).

Spanish colonization expected that the Indians would accept Spain's domination and Spanish missionaries' conversions to Catholicism or face war, thus, setting the stage to claim and control New World lands and their peoples.

The Spanish conquistadors and settlers used the *encomienda* system as a program in their conquest of the New World and its occupants. The *encomienda* system was a crude form of subjugation designed to fit the demands of Spain's New World empire, also known as New Spain (Anderson, 1985, p. 353-4). Land grants, or *encomiendas*, were parceled out to the Spanish soldiers to encourage colonization. These plantation-like settlements, ranging from agriculture to mining, forced Indian labor, further separating Indian peoples from their families and cultural foundations (Record, 2008, p. 75; Spicer, 1962, p. 302). Its primary purpose was to encourage settlement and permanency, separate Indians from traditional cultural practices, destroy tribal autonomy, and grant colonizers rights to Indian labor for mining or farming and rewards in exchange for Christianizing their subjects (ibid; Record, 2008, p. 75, 308n62). The papal bulls, the Laws of Burgos, and the *encomienda* system together authorized the use of force to steal lands and natural resources and enslave and control Indigenous communities.

Spanish Era

Beginning in the 1500s, in their imperious conquest of the Americas, early Spanish explorers spread north in what is now New Mexico, parts of Texas, and Arizona

to enforce their policies sought to establish Spain's authority setting "firmly among the native populations, or, failing that, to eliminate the inhabitants and occupy their former territories" (Perry, 1993, p. 53; Record, 2008, p. 74). They encountered several southwest tribes, notably the Pueblo Indians, a peaceful sedentary community that disrupted their security and lifeways. The Spanish used violence to suppress the Indigenous peoples, including murder, rape, village burning, land theft, and slave raids (Perry, 1993, p. 49). Missionizing and conversion to Catholicism were also primary tools for the Spanish to control the Indians. In the case of uncooperative converts, methods could include public hangings or burning at the stake (ibid, p. 54). We see the beginning of the disruption of the culture, language, and world views of southwest Indians.

In the mid-1600s-the 1700s, the Spanish began to expand into the Pimeria Alta (southern Arizona and northern Mexico) region, invading and disrupting the lives and livelihoods of the O'odham Indians and other southwest tribes (Record, 2008, p. 82). Soon, Spanish missions, such as the San Xavier del Bac (1692), founded by Father Eusebio Francisco Kino, recruited or forced Indian people into the missionary goal of conversion as a fundamental part of Spanish colonization (Spicer, 1962, p. 118-128).

The Spanish invasion into the region was often met with Indian resistance, especially from the Western Apache. The Apaches semi-nomadic lifestyle made it more difficult for the Spanish to control and govern them. Unlike sedentary tribes with centralized communities, their band structure allowed them to move quickly across their territories. By the late 1700s, the Spanish realized that their traditional policy of reduction and assimilation did not work with the Apaches, leaving the Apache groups to live in

remote locations, and continue raiding Spanish settlements (Perry, 1993, p. 55; Record, 2008, p. 79-80; Spicer, 1962, p. 239).

In 1786, Bernardo de Galvez, a Spanish viceroy, instituted a peace program to manage the Apaches from further resistance and raiding of Spanish presidios (Perry, 1993, p. 57; Spicer, 1962, p. 332-333). Tactics used in Galvez's policy were to offer rations, supplies, and copious amounts of liquor to break down the Apaches way of life and encourage dependence on the Spanish state (Park, 1961, p.133). Additionally, whenever disagreements developed between Apache bands and other tribal groups, the Spaniards would encourage disputes and inflame quarrels to create as much social disintegration as possible (Perry, 1993, p. 58; Spicer, 1962, p. 240). Through Spanish dependency and social dissension, the Spanish hoped to force Indians into submission for conversion and live under military settlements and supervision (Park, 1961, p. 133). In 1799, Jose Cortes, a Spanish lieutenant, wrote of the Apache, "[i]t has been and continues to be our absurd and foolish belief that they are impossible to force into peace and the customs of a rational life, but this is a most patent fallacy. They love peace and hate to lose it" (Perry, 1993, p. 45). Over the next couple of decades, a few Apache bands settled down near Spanish settlements to improve their supplies. However, Apache dependency may have developed more successfully if the Mexican War for Independence had not changed the situation (Spicer, 1962, p. 240). Nonetheless, despite the pressures brought on by the Spanish empire, the Apaches retained their freedoms longer than most of any other tribe in the area.

Mexican Era

After centuries of Spanish colonization and genocide throughout Mexico, Mexico gained its independence from Spain in the Mexican War of Independence in 1821. The Mexican government struggled to assert authority over the newly formed Mexican Empire and faced the continual threat of U.S. expansion into its northern territories.

The new Mexican government did not have the financial resources or the political strength necessary to sustain previous Spanish settlements and agreements with the Indians by the Spanish (Record, 2008, p. 80-81). With limited resources, Mexico's military and diplomatic capabilities declined, shutting down Spanish missions and reducing its military presence leaving the Pimeria Alta and northern Mexico region vulnerable to Indian raids (ibid).

Mexico's failure to maintain previous Spanish presidios caused a dramatic decrease in Apache food rations and supplies, resulting in many Apaches leaving the area and returning to their ancestral territories to resume their traditional lives (ibid). As Apaches left the presidios, they became a growing problem for the Mexican government when they returned to raiding as a form of subsistence, defense, and survival, often forcing the Mexican military to abandon their settlements (ibid; Perry, 1993, p. 84-88).

Whether for subsistence, retaliation, or defense, Apache raids exacted fear from the Mexicans, who, as a result, devised a new extermination policy to control the Apaches. They offered bounties for Apache scalps (100 dollars apiece), including women, elders, and children (ibid). Unfortunately, non-Apache people such as O'odham, Yaquis, other southwest tribes, as well as Mexicans, were slaughtered by bounty hunters because they were more accessible than Apaches (ibid). Disturbingly, the bounties on Apache scalps became a lucrative business for some white settlers who entered the area

to participate as Apache scalp hunters (ibid). Bands of mercenaries relentlessly hunted Apaches across the southwest, using trade and friendship as a ploy to bait prospective Apaches before massacring them. For example, men like Englishman Johnson (no first name) butchered dozens of Apaches in 1847 to acquire Apache scalps by firing a howitzer into a peaceful group of Apaches, under the guise of friendship, killing dozens and inciting a war with the Apaches (Perry, 1993, p. 85-86; Spicer, 1962, p. 245). While the funding for the scalping policy soon ran out, the damage was done; Apache deaths at the hands of bounty hunters and Mexican troops increased Apache enmity towards Apache “hunters” with an increased vengeance (Perry, 1993, p. 87; Record, 2008, p. 82).

Mexico’s financial challenges and the treatment of the Apaches exposed their governments’ weaknesses in controlling their lands and the Indians, erupting in another struggle for the Apaches continuity. Mexico’s financial and political inability to maintain dominance in the north and the reductions of Mexican soldiers at the frontier presidios, the instability as well as American western expansionist aspirations led to an increase in new American settlers entering the region.

American Era

The United States had increased its power and influence while Mexico struggled with political unrest and depleted funds. Political stress and the instability caused by Indian raids expanded Mexico’s difficulties in controlling their new territory, which would include southern Arizona, the Rio Grande Valley of New Mexico, and Texas, and exposed weaknesses before the war with the United States (Weber, 2003, p. 16, 52).

With the Mexican government’s challenges to security, Mexico became increasingly concerned that Mexican Texas was vulnerable to being annexed by the

United States (Weber, 2003, p. 94). Mexico was well aware of the United States' expansion endeavors, as seen in an 1804 letter to a Spanish boundary commissioner, Carlos Delassus, a Spanish lieutenant governor. He warned about the goals of US merchants, writing, "...the general opinion of this latter named nation [United States] is that its limits will extend to Mexico itself, extending their boundary lines to the Rio Bravo...they are already calculating the profit which they will obtain from the mines" (ibid, p. 88). Further challenges for Mexico included the issue that American settlers would not assimilate into Mexican laws, adding to Mexico's insecurities. Fear that Texas was in danger of becoming anglicized and organically absorbed by the United States created further tensions and cultural clashes (ibid, p. 58).

The inability of the Mexican government to gather the necessary resources for a successful attempt to recuperate its lost territory allowed the US an opportunity to execute its expansionist goals. The US government allowed its citizens to cross freely into the territory of Texas, quickly outnumbering the Texanos [sic] (Weber 2003, p. 58, 94, 145). White settlers and some Texanos' desire for separation and self-governance of Texas from the Mexican state of Coahuila created hostilities. Texas wanted to protect their rights of unrestricted trade and property rights to land ownership and slave labor (ibid, p. 56-61, 88). In response, Mexico issued the Law of April 6, 1830, banning additional American settlers from settling in Mexican territory (ibid, p. 58, 84). The ban did not stop American settlers from continuing to migrate to Texas, and by 1836, the population in Texas was approximately 30,000 and quadrupled to 140,000 by 1846 (ibid, p. 145). The vast majority were white settlers (ibid).

By the mid-1830s, white settlers resented Mexico's centralized control and the prohibition on the importation of African American enslaved peoples into Texas (Weber, 2003, 90-93). In 1836, the Texas revolution culminated at the Battle of San Jacinto, when Sam Houston and the Texas army defeated Mexican general Antonio Lopez de Santa Anna's troops (ibid). Taken prisoner by the US, Santa Anna signed the Treaty of Velasco (1836), which recognized Texas's independence from Mexico (ibid). Mexico refused to acknowledge the Treaty of Velasco because Santa Anna signed under duress while in the custody of the Texas army (ibid). Another claim of conflict was the US claim that, based on the Treaty of Velasco, the Texas border extended to the Rio Grande and Mexico claims the border had been farther north at the Nueces River (ibid, p. 95). However, Texans continued to fear another invasion from Mexico, who considered Texas still a part of their territory and never ratified or acknowledged the Treaty of Velasco (ibid).

Following the Texas revolution, in 1836, Sam Houston was elected as the first president of the Republic of Texas and by popular vote of Texas citizens, Houston moved forward on the annexation of Texas to be entered into the Union (Gronnerud, 2015, p. 194). In December of 1845, President James Polk entered Texas as a state (ibid). However, Mexican officials, reluctant to accept the loss of Texas, contested Texas's boundary along the Rio Grande and claimed that the US wanted Mexico's borderlands from New Mexico to California (ibid, p. 196, 200). Mexico refused the US attempts to purchase Mexican territories and settle the boundary disputes. President Polk sent the US military, under General Zachary Taylor, into the disputed area between the Nueces and the Rio Grande, to which they began to build a fort and blockaded the river (considered an act of war under international law) (Weber, 2003, p. 95). After a military conflict

between the American and Mexican forces in the disputed area, President Polk asserted that “Mexico has passed the boundary of the United States, has invaded our territory and shed American blood upon American soil” (ibid).

In 1846, the United States declared war on Mexico, known as the Mexican American War (also known as the Mexican War), enabling its expansionist goals to gain more lands. Two short years later, the Mexican American War ended with the Treaty of Guadalupe Hidalgo signed in 1848 (Gronnerud, 2015, p. 196-197). Mexico’s defeat in the Mexican War was a goldmine for the United States and fulfilled the US belief in Manifest Destiny. The treaty established the US-Mexico border along the Rio Grande, ceded undisputed control of Texas, and enabled the US to expand its territories in the present-day states of California, New Mexico, Arizona, Utah, and Nevada, nearly half of Mexico’s pre-1836 territory (ibid, p. 145-146). Additionally, under the terms of the Treaty of Guadalupe Hidalgo, the US assumed responsibility for subduing and controlling (primarily) the Apaches. Article XI states, “...the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme” and “shall be forcibly restrained by the Government of the United States” and “...sacredness of this obligation shall never be lost sight of by the said Government when providing for the removal of the Indians from any portion of the said territories” (Treaty of Guadalupe of Hidalgo). Following the treaty, the US presumed that their conquest of Mexico nullified the Apaches’ claims to their ancestral homelands and demanded that the Apaches enter into treaties prohibiting them from conducting raids in Mexico (Record, 2008, p. 116).

After the Mexican War and the Treaty of Guadalupe Hidalgo, white settlers were steadily and aggressively encroaching on Apache traditional hunting and farming areas, making Apache safety and survival extremely precarious (Record, 2008, p. 188-119). The Spanish and the Mexican incursion into Apache lands had caused profound disruptions to family relations, traditional lifeways, land losses, and the simple security of peace and harmony, only to be amplified with additional new American settlers' expansionistic fervor of land grabs and stripping the land of her natural resources. These actions only added to further genocide, racism, oppression, and deceitful negotiations and promises of peace leading to the severe unsettling of Apache people's lives.

The Treaty of Guadalupe Hidalgo, which obligated the US to control Apache raids into Mexico and free captive Mexicans by Apaches, stepped up US engagements with Apaches. Four short years later, in 1852, the United States negotiated the "Treaty with the Apache" (also known as the Treaty of Santa Fe) to control the Apache people and secure the resources on the land (Welch, 2017b). The treaty is the only executed treaty between the US and the Western Apache Indians with aboriginal territories in what is now Arizona (ibid).

The 1852 Treaty states in Article 9 to secure "execut[ing] in their territory such laws as may be deemed conducive to the prosperity and happiness" of the Apache people and adds in Article 11 that "the government of the United States shall so legislate and act as to secure the permanent prosperity [of Apache peoples]" (U.S. Congress, 1852, p. 980). The US entering into a treaty agreement with the Apaches created a permanent obligation to compensate Apache peoples for the encroachment of US jurisdiction over their territories. Nevertheless, following the signing of the 1852 Treaty, the US paid

Mexico \$10 million with the Gadsden Purchase Treaty (1853), which solidified the border of Mexico along New Mexico and Arizona, bringing more Apache and several local tribes under US jurisdiction (Welch, 2021, p. 13). Interestingly, the Gadsden Purchase Treaty disregarded the 1852 Treaty, and Article 2 in the 1853 Treaty released the US's obligation to control Apache groups from raiding and liberating Mexican captives (ibid).

One difficulty, the 1852 Treaty does not include a detailed map of Apache territories. The 1852 Treaty did not obligate the Apache to cede any of their lands to the US, nor did it obligate the US to recognize specific areas as Apache territory; however, it did require the US to establish their boundaries (Welch, 2017b, p.1566). In 1859, the US Department of War did map the Apache Nations' territory and depicted the Western Apaches lands within an area encompassing Oak Flat and the surrounding area (Welch, 2021.p. 14). However, lacking clear geographic boundaries about the extent of Apache territories, the US, instead of fulfilling its 1852 Treaty duties to set their boundaries, never formally settled, in turn, the boundaries of the Apache territory (ibid). In 1855, David Meriwether, New Mexico governor, engaged the Apaches to address the US obligation to establish borders, but the federal government rejected further treaties with borderland Apaches on the grounds that the US had purchased the land from Mexico and did not want to give up rights to future mining (ibid).

Furthermore, the 1852 Treaty implies that the bands of the Apache were under one treaty, as one political unit, with the United States because it does not specify any distinct Apache groups. Notably, the treaty was made "by and between Col. E. V. Sumer... and John Greiner, Indian Agent and superintendent of Indian affairs for New

Mexico ... representing the United States, and several Apache leaders, “acting on the part of the Apache Nation of Indians, situate and living within the limits of the United States” were represented in the negotiations of the Treaty with the Apache (U.S. Congress, 1852, p. 979). At this time, Arizona remained part of the New Mexico Territory until February 24, 1863, when Congress passed the Arizona Territorial Bill (Welch, 2017b, p. 1564). In the Treaty with the Apache, the United States’ actions held Western Apaches, including the San Carlos Division, accountable for the treaty provisions at that time. Greiner reported to the U.S. Commissioner of Indian Affairs, in part, “we are now at peace with all the Indians in the Territory” after the signing of the treaty (ibid, p. 1561) Despite the cooperation from the Western Apaches and the 1852 Treaty, the federal government facilitated non-Indian settlers and miners’ encroachments into Apache lands while dismissing their responsibilities as too costly or disadvantageous.

The US military and new settlers increased occupation of Arizona brought new levels of the government’s promotion of white settlement. Instead of fulfilling its 1852 Treaty obligations, the US opted to create military forts and designate reservation areas. Consequently, by adding to Apache control and land seizures, the U.S. Army established Fort Apache in 1870 to keep the “hostile” Apaches in control, prevent Apache interactions of supply trades and relationships with other relative bands, and protect the new settlers and miners from the Indians (Welch & Riley, 2001, p. 6-7).

Following the creation of Fort Apache, President Ulysses S. Grant issued an executive order that established the San Carlos Apache Reservation in 1871(ibid). Government officials purposely chose a location for the San Carlos Division to isolate the Apaches from those areas most desirable for new settlement and development (Record,

2008, p. 30). Increased reports of natural resources or prime agricultural lands surfaced in and around the San Carlos Apache Reservation by miners and government officials (ibid). The boundaries that defined the San Carlos reservation were often disregarded. Opportunists wasted no time occupying lands vacated by Apaches due to their forced relocation to the San Carlos reservation. Greedy land-hungry settlers often staked illegitimate claims on reservation lands, which the US government appropriated in subsequent years. Consequently, prospectors enlisted US officials to lobby Washington to remove said lands from the reservation and confer them in the public domain for their development projects (Record, 2008, p. 30). The acts of the federal agents legalizing squatter land rights further reduced San Carlos Apache landholding which supposedly was for the Apache's permanent use and occupancy and confer them to the public domain to allow access to settlement and mineral resource development (Record, 2008, p. 30; Samuels, 2001, p. 283).

The executive order the US used to create the San Carlos Apache reservation does not reference, implement, or rescind the 1852 Treaty (Welch, 2021, p. 14). This is an important point because the 1852 Treaty remains in effect. This illustrates the settler-colonial priority and focuses on a project to gain more lands and eliminate Indigenous connections to the land, leaving the 1852 Treaty obligations to establish boundaries in the Apache ancestral territories unmet.

From the beginning, settlers encroached on "reserved" lands, with no federal "trust" protections, showing their complicity in exploiting and theft of lands. Mining got a boost when Congress passed the Mining Act (1872), which allowed miners to make more land claims in Apache territory (McClure and Schneider, 2001, p. 1). The mining

law was intended as an incentive for prospectors willing to settle in the west and encourage economic growth (ibid). To appease the miners and settlers, Congress reduced the White Mountain and San Carlos Apaches original territory from fourteen million acres to less than four million acres of reservation lands (Welch and Riley, 2001, p. 7). Furthermore, in 1875, the United States closed the Camp Grant, Camp Verde, Chiricahua, and Fort Tularosa reservations and resettled the Apaches at the San Carlos reservation to accommodate more non-Indians (Welch, 2017a, p. 13). Thereafter, in about 1886, the federal government forcibly removed San Carlos and Yavapai Indians from the Oak Flat area for additional expropriation (Toensing, 2015). In both material and spiritual terms, this resulted in more land losses for the Apache people to serve mining interests for non-Apaches.

These actions can be seen as a direct consequence of the federal effort to eliminate Apache identity by severing ties between the people and their ancestral homelands. The United States' confiscation and redistribution of vast tracts of once sovereign Apache territory caused serious and still-painful impacts to the Apache peoples. Devastatingly, US federal efforts to contain or destroy Apaches became more concerted to the point of anti-Indianism and genocidal actions.

The Anti-Apache Agenda-Genocide

The United States officials' and settlers' motive was not limited to removing Western Apaches from their homelands in the interest of mining and settlement. They wanted to wage a campaign of genocide against the Apache. Their racial attitudes viewed the Apaches as less than human. An 1859 newspaper article reported a petition from the citizens of Arizona calling for the eradication of the Apache states,

The Apache is as near the lobe, or wolf of the country, as any human being can be to a beast.... They neither cultivate nor hunt to any extent, but exist mainly...by plunder... This is the greatest obstacle to the operations of the mining companies... [W]hipping these wild tribes...into submission and driving them into reservations...with the penalty of death sternly enforced if they pass their limits, is the only prompt, economical, and humane process that can be adopted.... My greatest hopes for Arizona, however, rest on the army... Officers of various grades are becoming interested in mines throughout the region. They...have connections of influence and capital (“Arizona and Sonora”).

This petition was sent to Washington, where U.S. leaders’ view of the Apache, matching popular opinion, was of thieves, cut-throats, and savages, and “they do more mischief than any band of Indians on this continent” (ibid). The discovery of gold in 1863 catapulted more deaths for the Apaches. Following this mindset, in 1862, General James Carleton, U.S. Army’s commander, called for a “war of extermination” and ordered Apaches to be killed wherever found to protect the miners and settlers (Clum, 1936, p. 123; Spicer, 1962, p. 247-49; Woody, 2010, p. 158-61).

Although the 1852 Treaty called for peace agreements, neither the military men nor the settlers appeared willing to honor such a policy. White settlers repeatedly approached the Apaches with talks of amity, supplies, and food rations, although they resorted to violence, hostility, and disdain to accomplish their objectives. The resulting inhuman treatment toward the Apache was unprecedented. In 1864, King S. Woolsey led an anti-Apache expedition. Pretending to want peace talks with the Apache, Woolsey’s men fed them poisoned food and shot them, killing twenty-four Indians at a place called “Bloody Tanks” (ibid). Charles Poston, Superintendent of Indian Affairs for Arizona, in support of Woolsey’s expeditions, recommended that the U. S. government chastise the “savages” in a “legitimate way and leave the farmers and miners to the development of

the country” (Bender, 1963, p. 61). Prior to 1869, a couple of years before the establishment of Fort Apache, another poisoning occurred at Goodwin Springs, located near the Chiricahua Mountains in southern Arizona. Western Apaches and many members of the San Carlos Apaches assembled at Goodwill Springs expecting food ration distribution of dried meat (Goodwin, 1942, p. 14). The meat was poisoned and on their return home for the Apaches, “the trail was white with bodies,” and some of the victims were Apache leaders, yet most were women and children (ibid). Compounding matters for Western Apaches, in 1864, the United States authorized Arizona Territorial Governor, John N. Goodwin, to organize the First Arizona Volunteer Infantry regiment (Welch, 2017a, p. 8). Over three hundred fifty men signed up to hunt Apaches (ibid). Woolsey, who had engineered the poisoning incident, was commissioned as a colonel, in recognition and reward, by Goodwin and Secretary of State Robert C. McCormick, with whom Woolsey had joint mining ventures with (Spicer, 1962, p. 248; Woody, 2010, p. 185). Welch gives the example posting on the recruitment towards the campaign listed in The Miner newspaper (1864),

Pinal Apaches...succeeded in stealing from the ranches a large amount of valuable stock...Mr. Woolsey...will organize a company to hunt and punish the thieves, and if it is as successful as the party.... which slaughtered twenty or more of them, he will have a good revenge. He...believes fully, as he has good reason to, in the extermination policy (2017a, p. 8).

In 1874, John Clum, United States Indian Agent at the San Carlos Reservation, reported to the Commissioner of Indian Affairs an attack by a group of San Carlos Indians at Old Camp Grant in retaliation for the attacks by whites where one hundred Apaches were killed (1936, p. 297). Once military officers located the Apaches, they

would not allow them to return to the reservation until they surrendered a minimum of four of their “most prominent outlaws” or would be considered hostile and hunted down; this included women and children. This was a tactic to teach the Apaches that they could not leave the reservation at their leisure. If they commit any crime, they will be captured and punished. This would “ensure their future submission and obedience” (ibid).

A historical attitude of control and genocide for the Apache from white intruders was active and the United States government was complicit in many of their actions. Over the last one hundred and fifty years, white settlement intrusions and mining activities have created a disastrous land loss for the San Carlos Apache people on and surrounding their reservation. The San Carlos reservation is a fraction of its original size and consequently, many religious and sacred locations were desecrated in the wake of new settler invasions in subsequent years.

As an example, Old San Carlos was the home for many of the San Carlos Apache until they were effectively removed during the 1920’s so the federal government could build Coolidge Dam (Record, 2006, p. 132; Rennick, 2006). Completed in 1928, Coolidge Dam was an irrigation project to harness water that was directed primarily to white farmers (Rennick, 2006; Spicer, 1962, p. 258). This need was created by non-Indian population growth, mining activity, farm development, and overgrazing of cattle (ibid). Many of the Apache witnessed their homes being submerged under the reservoir created by the Dam (ibid, p. 133). Subsequently, once fertile Apache farmlands at Old San Carlos were destroyed practically ending farming for the Apache people (ibid). To add further injury, the Coolidge Dam flooded approximately 400 Apache graves, hundreds of archeological sites, and sacred cultural and historical artifacts were lost

(Rennick, 2006). Another example, Mount Graham, also known as “*Dzil ncha si’an*” was cut away from the reservation in 1873 only to be permanently lost to a consortium of international research institutions led by the University of Arizona to establish an international astronomical observatory in 1988 (Helfrich, 2014, p. 151-152; Welch & Riley, 2001, p. 83).

By 1886, Oak Flat, one of the most beloved ancestral sacred sites, was seized by the United States and became part of the Tonto National Forest, which the federal government established as public land in 1905 (Toensing, 2015). Oak Flat is in proximity to Superior, Arizona, known as the “Copper Triangle,” the region extends from the Phoenix area to the Mexico border (Lovett, 2017, p. 358). Copper was first discovered in the area in 1863 and is also known as the “Pioneer Mining District” (Resolution Copper, *About Us*, 2022).

The discovery of valuable minerals within the original territories of the Western Apache would demonstrate an engineered action to subjugate the original Indigenous occupants. For generations, the San Carlos Apache had access to Oak Flat for religious and traditional practice only to face the possibility of permanent destruction to yet another sacred site.

The looming land transfer in the Oak Flat area is a clear demonstration of the ambition and greed of state leaders, corporations, and congressional powers on how that authority can be misused. This authority repeats the history of being forced to surrender Apache sacred lands and hinder Apache religious practices which have often been dismissed or outright outlawed with forced conversions or inventing legal parameters. This misuse of power supports judicial entities to inappropriately make policies that have

the ability to oppress tribal governance and cultural lifeways that have the potential to destroy tribal histories, identities, and languages.

Further desecration of Western Apache sacred sites continues well into the 20th Century with anti-Indianism attitudes. Words are powerful. Attitudes from our government leaders set a tone for non-Indian Americans to retain a warped view of who or what Indians are, their histories, identities, and experiences. Negative attitudes incite further racism and facilitate additional colonization activities as we see in the Oak Flat land exchange.

Anti-Indianism and Perceptions (contemporary)

The constant deluge of tribal land management issues, particularly with access and loss of sacred sites, has been a difficult challenge for tribal peoples. The inundation of attitudes, past, and present, towards native peoples has played a critical role in the perception of American tribes. The motivation of democracy and capitalism in the formation of the United States has believed itself to be benign toward Indigenous peoples with a reservation system and social services they have so “generously” funded. However, contempt is often led by our governmental leaders on who Indian people are. This not only adds to misconceptions about native peoples but spurs a racial divide with negative connotations. It is usually followed by acts of colonialism. To give a sense of hostility towards Indians, the following are quotes from various U.S. presidents:

“Indians and wolves are both beasts of prey, tho’ they differ in shape.” *George Washington*

“If ever we are constrained to lift the hatchet against any tribe, we will never lay it down till that tribe is exterminated, or driven beyond the Mississippi... in war, they will kill some of us; we shall destroy them all.” *Thomas Jefferson*

“...those tribes cannot exist surrounded by our settlements and in continual contact with our citizens is certain. They have neither the intelligence, the industry, the moral habits, nor the desire of improvement which are essential to any favorable change in their condition. Established in the midst of another and a superior race, and without appreciating the causes of their inferiority..., they must necessarily yield to the force of circumstances and ere long disappear.” *Andrew Jackson*

“I don’t go so far as to think that the only good Indians are dead Indians, but I believe nine out of ten are, and I shouldn’t like to inquire too closely into the case of the tenth” and stated that the American war with the “savage Indians” over this land was the most “just” war in all of history. *Theodore Roosevelt*

“...we set up these reservations so they could [maintain their way of life] ...They’re free also to leave the reservations and be American citizens among the rest of us...Maybe we made a mistake. Maybe we should not have humored them in that wanting to stay in that kind of primitive lifestyle. Maybe we should have said, no, come join us; be citizens along with the rest of us.” *Ronald Reagan* (Cook-Lynn, 2001, p. 185; Native News Online Staff, 2018; Storm Wolf, 2017).

Although some of the harsh tones towards American Indians have altered in more recent administrations, the attitude of the former president, Donald Trump, is renewing the battle of insensitive references native peoples have had to endure. Upon Elizabeth Warren’s announcement of running for president in 2020, Trump was quoted as saying, “if Ms. Warren did this commercial from Bighorn or Wounded Knee instead of her kitchen, with her husband dressed in full Indian garb, it would have been a smash!” (Caron, 2019). For many Indian peoples, particularly the Indian Nations directly involved with the Bighorn and Wounded Knee massacres, such as the Lakota, Northern Cheyenne, and the Arapaho, that trauma has not diminished. The loss of their ancestors and basic human freedoms is still strongly felt. Ruth Hopkins, a Lakota tribal lawyer, identifies with that trauma, saying, “It happened in 1890; it’s not so far removed. Those killed are

peoples' grandparents and great-grandparents...It's further compounded by the fact that the soldiers who murdered Lakota at Wounded Knee received medals of honor for it and those medals have never been rescinded" (Caron, 2019). Hopkins explains that Trump's comment equals to making a joke about 9/11 or the Holocaust and that "Trump use[d] this tragedy as a joke, weapon and insult..." and Jefferson Keel, the president of the National Congress of American Indians, agreed, saying " [it's] in the strongest possible terms, the casual and callous use of these events as part of a political attack"...and the hundreds of native peoples "lost their lives at the hands of the invading U.S. Army during these events and their memories should not be desecrated as a rhetorical punch line" (Caron, 2019).

President Trump's repeated disrespectful reference to "Pocahontas" to mock Democratic Senator Elizabeth Warren's claim of Cherokee ancestry has incited "war whoops" in some of his rally crowds and continues to use the reference despite repeated requests to stop (Auber, 2018; Francis, 2018; NCAI, 2017). Furthermore, the use of Pocahontas's name in a derogatory manner for political gain is an insult to the citizens of the Cherokee Nations as a society and distinct culture and demeaning to all Indians. In November 2017, Trump also caused controversy at an event honoring Navajo code talkers for their service in World War II (Valenzuela, 2017). He used the opportunity to, again, offer a jab at Senator Warren. President Trump's repeated use of "Pocahontas" as a slur to attack Warren overshadowed the purpose of recognizing the invaluable contributions of the Navajo code talkers. The result was a focus on Trump's comments rather than the vital role and respect of the native code talkers. What's more, on May 25,

2018, President Trump, during a commencement speech to the U.S. Naval Academy graduating class (2018) stated,

Together there is nothing Americans can't do, absolutely nothing. In recent years, and even decades, too many people have forgotten that truth. They've forgotten that our ancestors trounced an empire, tamed a continent, and triumphed over the worst evils in history...American is the greatest fighting force for peace, justice, and freedom in the history of the world...We are not going to apologize for America (Francis, 2018; Le Miere, 2018).

Conclusion

These attitudes reveal a dismissal and circumvention of the realities about the relationship between Tribal Nations and the United States. It is disconcerting to hear of these imperious opinions considering the federal government's practice of enacting policies that have caused physical and cultural genocide for American Indian nations.

Although the violent techniques of removing the San Carlos Apaches from their homelands have changed, the extortionate move by Senators McCain and Flake in sneaking the land rider in the Southeast Arizona Land Exchange and Conservation Act has the same results of cultural trauma and the breach of trust found with the US in the early historical practice of colonization by removing access to the San Carlos Apache from their sacred site of Oak Flat. Mining corporations have wanted unencumbered access to land and mineral rights from the Western Apache homelands since the first discovery of precious minerals in the 19th century. The history after European contact and the action of colonization is a history of trauma and degradation for the Apache peoples. It continues to plague the San Carlos Apache, and the struggle of colonialism persists within the RCM project.

Chapter 4 focuses on the Resolution Copper Mining Company and its partners Rio Tinto and BHP Billiton. I will provide a brief history of who they are and highlight some past practices of undermining Indigenous rights and overriding relative local laws and policies directed at their mining locations. These past practices tie in with the deceitful actions to obtain Oak Flat.

CHAPTER 4

COPPER AND RESOLUTION COPPER MINE

Arizona has been a major industry leader in copper mining since the early 19th Century. According to the Arizona Geological Survey (AZGS) in 2014, Arizona was known to have been one of the leading copper producers in the U.S., producing approximately 65% of the country's copper ("University of Arizona," n/d). There are 27 major mines in Arizona, including 10 major copper mines which produce 23 to 632 million pounds of copper per year (ibid). Ten copper mines are north of Phoenix; the remaining seventeen are spread out in southeast Arizona surrounding the Resolution Copper Mining project (ibid). Since their establishment, thousands of Indigenous sacred sites and geographical environments have been desecrated or destroyed by their mining projects, too often without the consent or consul of the local Indigenous peoples who have a sacred relationship to their traditional homelands.

The growing demand for copper is showing no signs of slowing down, leaving a complicated relationship between the state, Indigenous peoples, and mining corporations. The transition toward green energy, versus non-renewable energy, has potential environmental and social impacts, as with any industrial activity. As the United States heads towards net-zero emissions, record quantities of copper will be required and are essential for electric vehicles, battery storage, solar panels, and the like, thus, leaving mining companies with the incentive to find copper and develop new copper mines at an aggressive pace. Deanna Kemp (et al.), a professor for Social Responsibility in Mining (University in Queensland) and Chief Investigator on public-private inquiries in mining, along with her partners, warn, "[i]f the projected demand is met, we calculate the world

will produce more than nine times the amount of copper tailings between 2000 and 2050 than in the entire century prior.” (2021).

At the forefront of mining, Rio Tinto and BHP Billiton (BHP) are the largest and most powerful mining corporations worldwide producing iron ore, copper, gold, diamonds, and uranium (BHP, 2021; Rio Tinto, 2021). These companies have mines in the U.S. and around the world, unfortunately, both Rio Tinto and BHP have faced and continue to face controversies from around the world for lack of transparency, irresponsible political activity, poor relationships with local communities, failure in workers’ safety and health, and failure to respect Indigenous peoples’ rights and connections to the land (Rio Tinto, 2015, p. 2). The history of controversies highlights evidentiary systematic deficiencies in Rio Tinto’s and BHP’s approach to environmental, social, and governmental regulations.

This chapter will present a few brief examples of Rio Tinto and BHP’s reoccurring practices of overriding protective governmental regulations and diminishing Indigenous religious and cultural relationships to the land. Their history of controversies illustrates Rio Tinto and BHP’s poor environmental and community practices leading to the destruction of Indigenous religious sites and causing environmental contamination to local communities-both Indian and non-Indian alike, despite their business code of conduct. In showing the continued history of problems and controversies, I illustrate the possibilities of their conduct for mining at the sacred site of Oak Flat.

Practices of BHP Billiton (BHP) and Rio Tinto mining companies

BHP Billiton (BHP) and Rio Tinto mining companies have each mined separately all over the world. While mining is inherently destructive as an extractive resource

industry, responsible and sustainable development of mines can bring economic empowerment. However, the negative impacts of mines can be severe and wide-ranging. Without proper planning, environmental monitoring, and meaningful ethical practices mining can also be a source of contamination and devastation that impacts the health of neighboring communities and the environment. The parent companies of Resolution Mining Company (RCM), Rio Tinto and BHP, have been criticized for human and labor rights violations and environmental devastation perpetrated worldwide. Despite criticism, each of the mining giants describes themselves as exemplary in ethical value systems, and environmental accountability, and boasts their recognition of the traditional inherent rights of Indigenous peoples' relationship with the land (BHP, 2020; Rio Tinto, 2020). Since their establishment, Rio Tinto (1873) and BHP (1885) have destroyed countless Indigenous sacred sites, however, I will focus on a few notable examples.

Several reports researched by international and independent whistleblower organizations seek oversight of natural resource corporations, such as Rio Tinto and BHP, highlight unethical and disastrous operations for the safety of all peoples. IndustriALL Global Union (IndustriALL) was founded in 2012 and has exposed many of Rio Tinto and BHP infractions. IndustriALL represents 50 million workers in 140 countries in the mining, energy, and manufacturing sectors challenging these international companies to improve their economic and social justice models (2020). In the same year, IndustriALL reported Rio Tinto's practices that counter social responsibility claiming,

Rio Tinto's practices not only bring risks to its major stakeholders, such as workers, local communities and investors. They also expose the company to financial, reputational, legal and operational risks. The company's poor practices

constitute a governance gap preventing it from adequately managing the risks in its sector (Rio Tinto, 2015).

Regarding Indigenous communities, IndustriALL reports,

Rio Tinto has repeatedly failed to respect the rights of indigenous communities that are affected, or stand to be affected, by its operations” by “moving forward with operations without properly consulting or gaining the consent of indigenous peoples who own and have rights to the land and its resources” (ibid).

In agreement with IndustriALL, the London Mining Network (LMN), a London organization defending human rights and environmental justice against unethical corporate practices, reported that Rio Tinto’s current operations are more aligned “with fascist and racist regimes than their stated policies of respect for communities, workers and the environment” and “there are countless examples of alleged human and labour [sic] rights violations and environmental devastation perpetrated by Rio Tinto around the world and over decades” (Richard, 2010).

However, Rio Tinto has claimed, in the Cultural Heritage section of its code of business conduct, that “We recognize the cultural, spiritual and physical connections that Indigenous people often have with land, water, plants and animals” and maintain that “[w]here we have to disturb land, we consult with those for whom the cultural heritage site has significance” (2020). Regarding the environment, Rio Tinto asserts, “excellence in environmental performance and product stewardship is essential to our business success...whenever possible we prevent, or minimize, reduce, and remedy the disturbance of the environment” (ibid).

As I show in the following examples about BHP and Rio Tinto, they do not uphold their own business code of conduct. Repeatedly, these companies have failed to

acknowledge and respect Indigenous rights and have an ongoing history of pushing forward with their mining projects despite the voiced concerns over sacred sites or Indigenous community displacement. Rio Tinto's behavior directly contrasts with its own companies' human rights claims and social responsibility in the following examples.

Outside of the United States, Rio Tinto, as the majority owner and operator of the Iron Ore Company (IOC) in Quebec, Canada, since 1954, IOC imposed decades of violations on the Indigenous Innu community's displacement, restrictions on traditional and religious practices, Innu's aboriginal right to informed consent, and irreparable environmental contamination (Andre and Rock, 2013). As a result, in 2013, the Quebec Superior Court filed an injunction against IOC mining operations estimated at \$900 million (ibid).

On the island of Bougainville, Papua New Guinea, there were allegations that Rio Tinto committed crimes against humanity, war crimes, and racial discrimination, as well as violations of international environmental rights in its goal to establish and operate the copper and gold at the Panguna mine in the 1990s (Rio Tinto, 2010). The allegations in Papua New Guinea included that Rio Tinto destroyed the local rainforest, a key source of subsistence to the community and failed to clean up toxic mine waste, which caused death and serious illness to both humans and animals (ibid). In its discriminatory treatment of the locals of Papua, Rio Tinto allegedly paid "slave wages" to Black workers (ibid). Furthermore, Rio Tinto's actions in Papua New Guinea contributed to an uprising, whereas Rio Tinto "played a role in instituting a military blockade that lasted for almost ten years, causing the deaths of 10,000 people between 1990 and 1997" (ibid)

In 2004, Rio Tinto's Oyu Tolgoi mining company forced Mongolian nomadic herders in South Gobi to relocate to gain access to "one of the largest undeveloped copper deposits in the world" (Edwards, 2017; Rio Tinto, 2015). Traditional Mongolian herders assembled their livestock to and from dependent seasonal pastures and water sources within their already challenging desert climate (Edwards, 2017). The forced relocations caused the herders to lose most of their livestock because they were forced onto water and pasture-depleted lands made worse by mining activities (ibid). This created land rights issues and environmental impacts that threatened their livelihoods, health, and culture.

The Oyu Tolgoi mining company failed to acknowledge the indigeneity of the herders depriving them of their ancient cultural traditions, health, and water access in the Gobi Desert terrain (ibid). Not surprisingly, a group of herders filed a complaint to fight for the resolution of their traditional practices, mediated by the World Bank's Compliance Advisor Ombudsman (CAO), a dispute resolution service to facilitate remedies for projected-affected peoples (ibid). In 2017, an agreement was reached in favor of the Mongolian herders, whereas the Oyu Tolgoi mining company has "committed" to dozens of actions to minimize the mine's activities, such as the construction of new wells, a pasture management plan, improved environmental impact monitorization, and compensation packages for the herders (ibid). While the final agreement represents a win for the herders, their supporters stressed that ongoing support would be needed to ensure it is correctly implemented because it is a *voluntary* agreement and not a court-ordered agreement (ibid). This poses a problem if the Oyu Tolgoi mining

company does not follow through on its commitments to the traditional herders, which could leave them in a continued dire situation.

In the United States, Rio Tinto's mining and company practices continue to show the same patterns globally. For example, in Michigan, the Kennecott Eagle Mine (acquired by Rio Tinto in 1997), which produces nickel and copper, has complaints about environmental pollutants and infringements on Indigenous religious freedoms (Koski, 2010; Rio Tinto, 2010). Mining opponents cited that Rio Tinto's mining project did not obtain a permit to discharge treated wastewater into the Salmon Trout River and therefore does not meet legal requirements for protecting the environment. According to the guidelines of the U.S. Environmental Protection Agency (EPA) and a Michigan law, a mining permit applicant must demonstrate that "a mine will not pollute, impair or destroy natural resources" (ibid). And by not receiving a permit and dumping in the river, they both polluted the river and broke state laws.

The Keweenaw Bay Indian Community (KBIC) of the Anishinabe (Ojibwe) resisted the Kennecott Eagle Mine because of their sacred site of Eagle Rock. KBIC argued that the mine infringed on religious freedom, environmental negligence, and violated their treaty (ibid). According to KBIC, under their 1842 Treaty with the United States, the development of the area is prohibited in order to ensure their access to religious practice at Eagle Rock and traditional hunting and gathering activities (Magnuson, 2012). In 2010, with regard to the significance of Eagle Rock to the KBIC, the director of the Department of Environmental Quality, Steven Chester, dismissed protections for Eagle Rock be protected as a place of worship and alleged that Eagle

Rock “is not legally a place of worship because it does not consist of any built structures” (Koski, 2010).

Another instance of contamination was at the Flambeau Mine (1993), a Kennecott/Rio Tinto project which produced copper, gold, and silver (Rio Tinto, 2010). Although it closed in 1997, it was strongly protested due to the proximity of the mine pit to the Flambeau River. A Wisconsin Department of Natural Resources (WDNR) analysis concluded in 2003 that the mining site continued to contaminate surface and sub-surface water sources in and surrounding the Flambeau River. The analysis showed that “statistically significant increased copper concentrations in crayfish (whole-body specimens), walleye (liver tissue), and sediment have been detected (ibid). Rio Tinto/Kennecott had assured the public in 1987 before the mine opened, that the safety of the surrounding bedrock was stronger than the Hoover Dam. However, Rio Tinto/Kennecott had knowledge that the bedrock between the pit and the river was fractured and would allow groundwater from the mine to spill into the Flambeau River (Gauger, n.d.). Furthermore, in 2015, Jack Parker, mining engineer/geologist, confirmed WDNR’s analysis of groundwater contamination and the unmitigated lies given by Rio Tinto/Kennecott and supported several legal actions against the mining company (ibid).

In Alaska, Bristol Bay is watershed water for Alaska. Again, Rio Tinto faced heavy opposition to the development of the Pebble Open Pit Gold and Copper Mine (Pebble Mine) in which Rio Tinto was a minority partner. Interestingly, the Pebble Mine spokesperson, Mike Heatwole, claimed the copper deposit in Bristol Bay was the “largest undeveloped copper discovery in North America”; ironically those are the same claims

made at the Oak Flat copper deposit (Ernst, 2020; Rio Tinto, 2010). The watershed is one of the last pristine sockeye salmon fisheries in the world (ibid). Contamination at the Pebble Mine would devastate the traditional foods and livelihoods of the local Alaskan tribes. Thus, many Alaskan native tribes, commercial and sport fishermen, and environmental groups joined together to vehemently fight against the threats the mine posed to salmon fisheries, local wildlife, and to the ecosystem as a whole (ibid). Their concerns are supported by an EPA ecological risk assessment. Dennis McLerran, head of the EPA assessment on the potential mining impacts of Bristol Bay reported a significant risk to the salmon habitat, and toxic runoff to be too large of a risk to maintaining the integrity of the salmon fisheries (ibid).

Audaciously, Tom Collier, a veteran D.C. lobbyist, was hired to secure permitting for the Pebble Mine. He has a strong incentive to ensure the permits needed to proceed with the project, a substantial annual income of \$1.5 million, and a bonus of \$12.5 million upon permit approval. Collier, on behalf of Pebble Mining company, has paid more than \$11 million to in-house and external lobbyists to help push the permitting process; a process encouraged by the Trump Administration's push for natural resource development (ibid).

In a disastrous event, in the summer of 2020, Rio Tinto demolished the sacred site in Western Australia's Pilbara region, the Juukan Gorge caves to expand its Brockman 4 Iron Ore Mine (Watson & Westcott, 2020). The 46,000-year-old rock shelters are the traditional homelands of the Puutu Kunti Kurrama and Pinikura (PKKP) aboriginal peoples who have proven cultural and archaeological ties to the area (ibid). Numerous formal archaeological digs found aboriginal artifacts that were thousands of years old

with evidence of human habitation through the last ice age and are nine times older than Stonehenge (Toscano, 2020; Watson & Westcott, 2020).

Rio Tinto claimed the PKKP did not request the sacred site to be preserved, to which the PKKP strongly disputed (Toscano, 2020; Watson & Westcott, 2020). This instance illustrates an important precedent and raises serious concerns about Rio Tinto's engagement processes and internal governance controls. This event highlights a failure of communication/consultation with the PKKP. As a result of the sacred site destruction, Jean-Sebastien Jacques, Rio Tinto's CEO, Chris Salisbury, head of iron ore, and Simone Niven, head of corporate relations resigned "by mutual agreement" over the incident (Chau & Janda, 2020). Similar to US Indian policy, the federal and Western Australian ministers charged with responsibility for Aboriginal culture and wellbeing fell short.

It is disappointing that Rio Tinto has continued communication breakdowns, or a lack of respectful consultation with traditional landowners, such as the PKKP aboriginal peoples. This event is only a few short years after the Oak Flat land exchange and accentuates Rio Tinto's cavalier approach to respectful consultation stating in their business code of conduct that "we consult with those for whom the cultural heritage site has significance" (2020). Rio Tinto's actions do not match its stated business practices.

The partner company in the Oak Flat project BHP, claims a similar code of business conduct stating in the section, Our Approach: Indigenous Peoples,

We recognize the traditional rights of Indigenous peoples and acknowledge their right to maintain their cultures, identities, traditions and customs. Indigenous peoples often represent some of the most marginalized populations around the world and may still experience discrimination and political and social disadvantage. We encourage cultural sensitivity and recognize and respect sites, places, structures and objects that are culturally or traditionally significant (2020).

Additionally, BHP recognizes, in their Indigenous Peoples Policy Statement, that Indigenous peoples are often located on or near their mining projects and asserted to their company's establishment of "long lasting relationships with Indigenous communities" and seek "meaningful engagement, trust and mutual benefit" (2020). BHP also defends its commitment "through compliance with domestic laws or completion of host government regulatory processes" (ibid).

However, BHP has received international criticism for its own violation issues over its treatment of communities displaced or severely affected by its mining operations. Repeatedly, BHP has run counter to their own assertions of human rights claims and social responsibilities. They have often been the subject of controversy over labor relations policies and the overly aggressive quest for new mining opportunities (Mattera, 2015). BHP has also shown a past practice of failing to respect the inherent rights of Indigenous peoples' and persist with their mining projects while battling their legal injunctions for past violations and deflections of responsibility. I provide a few examples to show previous questionable practices of BHP before and after the pursuit of the controversial land exchange at Oak Flat.

In 1986, BHP started production of OK Tedi copper and gold mine in Papua New Guinea in which BHP has dumped up to 80,000 tons of untreated mining waste, per day, into the Ok Tedi and Fly River systems (Kirsch, 2002; Rhoades, 2020). The dumping has affected the traditional lifeways and sustainability of fishing, hunting, and agriculture for thousands of Indigenous Papuns, such as the Yonggom and the Ninggirum people (ibid). As a result of the pollution from the dumping, ninety-five percent of the fish population has declined. Also, when the rivers surge, the waste sludge floods into the forests and

agriculture fields and has destroyed over two thousand square kilometers in its wake. BHP has spent millions fighting the lawsuits filed by local Indigenous communities and environmental groups to force the company to install proper waste management facilities and pay adequate compensation to affected communities (ibid). A 1994 lawsuit, representing 34,000 Indigenous plaintiffs against BHP, found BHP to be in violation of the settlement for failing to halt riverine disposal of tailings and other mine wastes as well as ordered to pay compensation to the local communities (ibid).

Thereupon, in 2002, BHP transferred its 52% share in the OK Tedi mine to the Papua New Guinea Sustainable Development Program Company (SDPCO), a new, Singapore-based charitable trust company set up by BHP (ibid). Both plaintiffs and critics viewed this as an attempt by BHP to limit the company's environmental liability for cleaning up the most significant environmental disaster in Papua New Guinea's history (ibid). Stuart Kirsch, anthropologist, and researcher on Ok Tedi, remarked on BHP's withdrawal, "the primary purpose of the trust is to provide BHP Billiton and the Papua New Guinea government with indemnity from claims relating to losses from pollution or damage to the environment as a result of the mine's operation" (2002).

In another instance involving Indigenous peoples, a Cerrejon Open Pit Coal Mine (Cerrejon Mine), in La Guajira, Colombia is located on the Indigenous territory of the Wayuu people. The Indigenous Wayuu communities have launched an appeal for the UN Human Rights Council to intervene in a human rights crisis caused by mining activities of the Cerrejon Mine, backed by BHP since 2002 (Richard, 2013; Turner, 2004). In 2004, BHP, along with its partners, bought nearly all the land surrounding the traditional Wayuu homelands without consultation with the Wayuu community, effectively seizing

their lands (ibid). The Wayuu were forcibly displaced, in part, because the mining company controlled the main road thus limiting access to public transportation for social services such as education and health services which further isolated the Wayuu people (ibid). Additionally, without notice BHP officials reportedly used 500 police and 200 military soldiers to forcibly displace hundreds of ancestral Afro Colombian people located in the Cerrejon mining area right before bulldozing their homes (Lydia, 2019; Turner, 2004). In 2007, a complaint was filed accusing BHP of using forced eviction and destruction of the Wayuu peoples and surrounding communities to provide land for the expansion of Cerrejon Mine (Mattera, 2015).

In addition, contamination from the Cerrejon mining activities has severely impacted the Afro Colombian and Wayuu's primary water resource, the Rancheria River, and their farmlands. The contamination has limited and tainted their traditional food supplies, thus producing increasing health problems (Lydia, 2019; Mattera, 2015).

Undeterred by BHP's actions, the Wayuu are resolute in defending their sacred lands.

Yasmin Romero Epiayu, an Indigenous Wayuu woman from the Epiayu clan stated,

BHP Billiton and its associates at Cerrejon are taking out the coal, which for us represents the internal organs of Mother Earth, which is sacred to us. Diverting the river would be like cutting her veins. They are damaging our land and we have to defend it (Richard, 2013).

In totality, more than 20 communities have lost their territories as well as the social and cultural ties of their communities (Lydia, 2019). Richard Solly, the coordinator of the LMN added, "BHP Billiton is one of many mining companies listed on the London Stock Exchange which violate the rights of communities around the world..." (Richard, 2013).

In November 2015, a catastrophic collapse of the Fundao Dam in Mariana, Minas Gerais, located in southeastern Brazil destroyed entire communities, wildlife, and waterways. The collapse decimated the environment including Indigenous cultural archeological sites and sacred religious areas (Phillips, 2018; Weiner, 2020). The toxic waste from the dam's collapse spread 400 miles throughout the landscape, spilling 45 million cubic meters of mining waste from Samarco's iron ore mine. It reached the Atlantic Ocean resulting in the death of 19 people and leaving several hundred local community members homeless (Phillips, 2018; Redniss, 2020, p. 190; Weiner, 2020). The iron ore toxic tailings caused environmental damage and can be regarded as the largest technological disaster in the world (ibid).

Fundao Dam tail management practices were managed by Samarco Mineracao S/A, a joint venture between BHP and Vale S/A (Phillips, 2018). BHP and their partner Vale currently face multiple lawsuits relating to the dam collapse. The companies are accused of ignoring warning signs that the dam may breach, fearful of any loss of growth and profits (Weiner, 2020). Following the dam collapse, over 200,000 claimants, consisting of organizations and Indigenous communities, filed claims against BHP for damages deriving from the disaster (ibid). However, in 2021, the 7 billion lawsuit was reopened by thousands of the same claimants, against BHP and Vale, due to unresolved settlements of responsibility ("London court," 2021).

In the same year of the Fundao Dam collapse, BHP started mining at the Haju coal mine in the Central Kalimantan province in Indonesia (Hickman, 2020, p. 7). The Haju coal mine is part of the nearby IndoMet coal mining project, found deep within the Borneo rainforest. The Borneo rainforest is recognized for its biodiversity, known as the

“lungs of Asia” (ibid). The development of the IndoMet coal mine has faced significant opposition from the Dajak Indigenous population. The rainforest is their principal source of subsistence and would destroy their subsistence and lifeways. (“BHP Billiton,” 2014).

BHP, in its mission to dominate the regional coal industry, took advantage of the Indigenous resident’s lack of formal deeds to the land and claimed that prior payments given to local peoples, a meager 100 rupiah per square meter (equal to approximately half a penny) eight years previously, were goodwill payments rather than compensation and took possession of the land without the informed consent of the community (ibid).

In 2013, the United States and the Australian Federal Police put BHP under investigation for alleged violations of anti-corruption laws related primarily to its sponsorship activities of the 2008 Beijing Olympics (Jamasmie, 2013). In settlement negotiations with the US Securities and Exchange Commission (SEC) and the Department of Justice (DOJ), BHP agreed to pay a \$25 million fine in 2015 for violations of the Foreign Corrupt Practices Act (1977) despite BHP’s claims that it is “fully committed to operating with integrity and [BHP’s] policies specifically prohibit in unethical conduct” (“Australia: BHP,” 2015; Jamasmie, 2013). The alleged violations stemmed from a criminal investigation that involved bribes to several foreign officials that BHP had an interest in acquiring mining exploration claims in their perspective countries, including US owned companies (ibid). The bribes involved an “Olympic hospitality package,” estimated at \$16,000, which provided business-class airfares, tickets to Olympic events, site seeing excursions, luxury accommodations and meals (“Australia: BHP,” 2015). Andrew Ceresney, director of the SEC enforcement division,

reported that BHP knew that inviting government officials to the Olympics would have a probable risk of violating anti-corruption laws; yet BHP failed to make adequate internal controls to prevent corrupt activities (ibid).

The management practices of Rio Tinto and BHP demonstrate their corporate operations are inconsistent with their policy commitments to Indigenous peoples and environmental safety. Such corporations should not have the power to act imperviously toward project-affected communities. Predatory behavior and systematic theft in the deliberate destruction of Indigenous sacred heritage sites and lifeways would land most citizens in court.

Undeterred by the accusations they face, Rio Tinto (United Kingdom and China) and BHP (Australis) created a new company, Resolution Copper Mining Company (RCM) (Rio Tinto-55% and BHP Biliton-45% ownership) in 2004, in which they lobbied the US government for a decade to win the land transfer of Oak Flat (BHP, 2020; Hunger, 2012; Rio Tinto, 2020).

According to the U.S. Department of Agriculture (USDA), the deposit is estimated to contain 1.7 billion metric tons of copper resource at an average grade of 1.52 percent copper, which equals approximately 23.5 million metric tons of copper over a forty-year period (2021; Lovett, 2017. p. 363). RCM claims that the mining project at Oak Flat would be able to produce 25 percent of the U.S. annual copper demand (2020).

Conclusion

Resolution Copper Mining Company, the company Rio Tinto and BHP formed specifically for the Oak Flat mining project, failed to participate in meaningful engagement with the San Carlos Apache Tribe and other local tribal and non-tribal

communities, shows a lack of transparency and demonstrates the power, self-interest, and greed of these mining corporations.

Rio Tinto lobbied for over ten years to remove Oak Flat from federal protection soon after discovering copper (Rio Tinto, 2015, p. 8). Despite nearly a dozen failed attempts by pro-mining legislators to pass the Oak Flat land exchange bill on its own merit, the legislation was slipped into the National Defense Authorization Act (2015) at the 11th hour--a must-pass legislation that funds our United States military (ibid). This shows the will of pro-mining lawmakers who exploited the legislative process and turned the sacred site of Oak Flat into a corporate commodity.

In Chapter 5, I discuss the unethical actions Resolution Copper Mining company has taken to acquire the Oak Flat area. Problematic was that it was put through a process that was not open and transparent and as a result, it hindered the San Carlos Apache people from protecting Oak Flat from desecration and destruction placing their religious freedom and cultural lifeways in serious jeopardy, furthermore, it disempowered Arizonians from participation on activities found on federal public lands that could negatively affect their health and surroundings. I include the environmental impact statement process and the requirements and functions of the National Environmental Policy Act and the National Historic Preservation Act. Additionally, I examine the discrepancies within the Draft Environmental Impact Statement that are detrimental to Oak Flat and the religious practices of the San Carlos Apache.

The Apache Stronghold organization, authorized to represent the San Carlos Apache tribe and led by Dr. Wendsler Nosie, unyielding fight to save Oak Flat has spurred a greater recognition to hold government agencies and the natural resource

industry accountable for all. A coalition of partners has joined alongside the Apache Stronghold fight to stop the Oak Flat mining project from moving forward. The partnership of reputable organizations (and in no particular order) is, the Arizona Reform Mining Coalition, Community Water Coalition of Southern Arizona, Concerned Citizens and Retired Miners Coalition, Earthworks, Access Fund, Inter Tribal Association of Arizona, and the WildEarth Guardians just to mention a very few.

Undiscouraged by the concerns of the San Carlos Apache and Arizonians, RCM pushed the land exchange legislation to be forcefully passed upon the insertion of the land rider in the National Defense Authorization Act (NDAA), denigrating the legislative process. Secondly, I will examine the draft environmental impact statement to determine the impacts on Oak Flat and analyze critical points of objection to federal law observed by the San Carlos Apache Tribe and their supporters.

CHAPTER 5

SOUTHEAST LAND EXCHANGE

Oak Flat, known as Chi'chil Bildagoteel, to the San Carlos Apache remains a lush desert landscape area with incredible environmental, recreational, and cultural values. This study has shown that San Carlos Apache's connections to Oak Flat, as with all their ancestral homelands, are of great importance to the beliefs of their origins and cultural interactions with the land continue their religious practice and observation. However, catastrophic in the wake of foreign settlers' rapacious hunger for land, the loss of many sacred sites has been experienced by the San Carlos Apache---to all Western Apache for that matter. The Apaches as with all Indigenous people have experienced colonial and settler colonialism's desire for lands resulting in the loss of control or access to their sacred places.

Mining in Southeast Arizona has a long history dating back to the 1870s (Kupel, 1999, p. 110). One of the largest producers of Arizona copper was the Magma Copper Mine (1910) in the Superior (AZ) mining area, until the mid-1980s, mining stopped due to reduced copper demand, poor management, and financial difficulties (ibid, p. 120; US Department of Agriculture, 2021). Despite the mine closure, Magma officials saw the potential of additional copper deposits in the area and began the exploration for additional copper. In 1995, in proximity to the Magma mine site, geologists discovered a large copper deposit that directly sits one mile under the San Carlos Apaches religious site of Oak Flat (Davidson, 2016). The following year, BHP acquired Magma Copper Company and the newly discovered copper deposit and continued searching for possible production (USDA, 2021). In 2001, BHP and Rio Tinto began a partnership to initiate

drilling to explore the deposit further and began to relentlessly pursue access to the rich mineral deposit (Davidson, 2016; USDA, 2021).

Chapter 4 has shown historical and current past practices of both Rio Tinto and BHP in their aggressive actions to access mining resources found on Indigenous lands across the world, including access to the Oak Flat area for their own self-interest. Continued caustic attitudes and legislative violations from Rio Tinto and BHP, and mining companies like them, has the potential of eradicating Indigenous societies nationally and around the globe of their traditional lifeways that have been in reverent practice since time immemorial.

The history of Rio Tinto and BHP actions was in place when, Arizona Senators John McCain and Jeff Flake surreptitiously inserted the Southeast Arizona Land Exchange and Conservation bill (land exchange), Section 3003, as a policy rider in the National Defense Authorization Act (NDAA, 2015). This tactic was utilized after several failed attempts to pass the land exchange legislation through Congress on its own merits. Journalist, Roger Hill reported the land exchange rider was buried in the NDAA approximately two days before voting on the must-pass military legislation in Congress resulting in no opportunity for formal review (2015).

This chapter will examine the *draft* EIS (DEIS), undertaken by the Tonto National Forest Service to determine the impacts of RCM on the Apache sacred landscape at Oak Flat and to analyze key points of objection that Apache Stronghold finds problematic. Congress, United States Forest Service (USFS), and various federal agencies tasked with overseeing federal public lands have the responsibility to expose potential harm to tribal

cultural resources, as well as environmental protections for diverse ecosystems and human life.

An environmental impact statement is a required federal report describing the impacts on the environment including plans to mitigate any impacts as a result of a proposed action (Bregman, 1999). Once the DEIS is finalized, analyzed, and tribal and public comments considered, a reformed final environmental impact statement (FEIS) would be released and subject to review in the same process as the DEIS. Once the FEIS is finalized, the United States Forest Service (USFS) must transfer Oak Flat to the Resolution Copper Mine company within sixty days where it will become private land; not subject to federal laws or protections, thus having the ability to circumvent the environmental process and cultural protection legislation (Arizona Mining, 2019). The proposed Resolution Copper Mine (RCM) would destroy Oak Flat, including thousands of additional acres of public land. This shows a continued neglect (or outright dismissal) of federal protections in place for mining projects surrounding the sacred site of Oak Flat that hinders the religious practice and cultural traditions of the San Carlos community. The historical relationship associated with long oppressed and culturally autonomous communities, such as the San Carlos Apache tribe, must be accounted for within the capitalist system and the history of colonialism led by the state.

The Apache Stronghold, along with numerous local and national tribal nations followed by Indian and non-Indian organizations, have protested the construction of the draft environmental impact statement to be a controversial legislative procedure. The land exchange should not be allowed to move forward.

SE Land Exchange controversy

From the start, the goal to acquire the copper deposit at Oak Flat was riddled with inconsistencies and duplicity. Two things illustrate the level of underhandedness in RCM's attempts to acquire Oak Flat and the land exchange rider. The lack of transparency of slipping Section 3003 in the NDAA and the mandatory land exchange 60 days after the date of publication of the final environmental impact statement weakened the opportunity for the defense of Oak Flat and religious freedom violations for the San Carlos Apache and their supportive parties.

Congressman Raul Grijalva, who is Chairman of the House Natural Resources Committee (2018), testified at a hearing focused on the RCM project to stop the mining project and the effects on the San Carlos community in March 2020, reflected on the land exchange,

[Apaches] weren't heard in the middle of the night when it was stuck in that legislation. There was no transparency, there was no honesty. There was no process. It was just done at the behest of a major multinational mining company; that's why it was done ("The Irreparable").
Congressman Jesus Garcia (Illinois) testified along with Rep. Grijalva and others at the Natural Resources Subcommittee in 2020 on the neglectful actions of national leaders as a "total desecration of religious rights" and "[s]acredness cannot just pertain to one faith, to one people....it has to be embraced and respected for all people" and echoes Rep. Grijalva, "[i]t was a parliamentary maneuver done in the dark, violating the process and the spirit of how we seek to pass legislation for all people" ("The Irreparable," p. 21).

The aggressive action to acquire the southeast land exchange was heightened by the economic goals of former President Donald Trump. Many have argued that former President Trump, during the final days of his administration, pushed to get RCM's mining project going by expediting the publication of the USFS's final EIS in order for

the land to be privatized for development. Curt Shannon, Arizona policy analyst for the Access Fund, an organization for the protection of recreational public lands, reports, “[t]his timing represented an acceleration of the FEIS publication date by a full year from what had previously been published in the Schedule of Proposed Actions (SOPA) issued by the US Forest Service” (2021). Roger Featherstone, Director of the Arizona Mining Reform Coalition, shares that assertion, “[t]his land exchange is based on a bogus environmental review that was rammed through under intense political pressure from the previous [Trump] administration” (Arizona Mining Reform, 2021b) Several of Trump’s policies have harmed American Indian tribes.

During his time in office, Trump approved the Dakota Access Pipeline, reduced the size of Bears Ears and Grand Staircase Escalante federally protected national monuments to allow for mining and energy drilling, destroyed sacred burial grounds with the Mexico border wall construction, and opened part of the Arctic National Wildlife Refuge to oil and gas development (Fountain & Plumber, 2020; Rupcich, 2021). This is a gross neglect of legislations put in place to protect our environments, national monuments, and American Indian’s continuity.

NEPA and the Environmental Impact Statement

Prior to the 1960s, the possible negative impacts held little regard in the planning stages of projects such as industrial plants, highways, natural resource projects, and commercial and residential developments. The national attitude toward any negative environmental impacts caused by these completed projects usually held the general attitude that the damage was often an unavoidable risk or simply antipathetic. By the 1960s, growing public awareness of environmental issues dealing with polluted water and

oil spills spurred legislation passed through the Senate and signed by President Nixon (Bregman, 1999). Congress enacted the *National Environmental Policy Act* of 1969 (NEPA). This important legislation required an agency to examine environmental and human consequences prior to starting a major project (ibid). This legislation provided a framework for protecting our environment and communities.

As a procedural law, NEPA's primary purpose is to direct federal agencies (or any other entity) to evaluate any potential impacts on the environment and to minimize or avoid possible effects before taking action that could possibly harm the environment. NEPA's multi-faceted purpose specifically includes, a) to declare a national policy that will encourage productive and enjoyable harmony between man and his environment, b) to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, c) to enrich the understanding of the ecological systems and natural resources important to the Nation, and d) to establish a Council on Environmental Quality (42 U.S.C. 4321). The Council on Environmental Quality (CEQ) reviews and approves federal agency NEPA procedures, alternative actions for NEPA compliance, and helps to resolve disputes with federal agencies and other governmental entities (U.S. Department of the Interior, 2019, p. 1-2).

As directed by NEPA, agencies must undertake an Environmental Impact Statement (EIS), a comprehensive study and evaluation of human and environmental effects and impacts before a major project (McNally, 2020, p. 132). As a special report, an EIS informs government officials and the public about reasonable options to avoid or minimize adverse impacts on the quality of "human environments" (Langberg, 2014, p. 718).

The report provides several alternatives in anticipation of significant effects related to the area. Before filing a *final* EIS, a *draft* EIS (FEIS, DEIS, respectively) involves filing a public notice initiating a review to identify the participants, issues, timetables, and any requirements beyond NEPA (McNally, p. 134). This important process addresses deferring some impact analysis from the planning phase so that the public and coordinated agencies have an opportunity to assess and comment on the full scope of the project. Upon the release of the FEIS, which addresses any issues within the DEIS, a Record of Decision (ROD) is released concurrently with the FEIS (*ibid*). The ROD states the selection from any alternatives and will determine how the environmental impacts will be managed (*ibid*).

Importantly, the EIS is not a guarantee for a federal agency to withhold its approval for projects with significant effects on the human environment or to manage its impacts (*ibid*).

Simply put, an EIS creates *transparency* for agency action in the administrative system which allows the public to consider the environmental and human consequences.

Many of the actions to attain the copper deposit in the Oak Flat area were not done with the protocols listed under NEPA. NEPA states that the EIS process should be considered *prior* to plans for a project to be finalized (42 U.S.C. 4332.C(v)). Under the CEQ regulations, it directs that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken” and emphasizes “[t]he information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA” and “...documents must concentrate on the issues that are truly

significant to the action in question...” (40 CFR 1500.1 (b)). In addition, the NDAA orders a NEPA compliant FEIS as one of the prerequisites for approval of the land exchange (3003(c)(9)). The land exchange requires an EIS but what is tricky is the legislation also mandates for the land exchange to occur—ostensibly regardless of the findings in the EIS reviews (Lovett,2017, p. 382). Section 3003 of the FY 2015 NDAA states: “Not later than 60 days after the date of publication of the final environmental impact statement, the Secretary shall convey all right, title, and interest of the United States in and to the Federal land to Resolution Copper.” (3003(c)(10)). This runs counter to NEPA’s regulation process. This distinction does not provide a meaningful opportunity for the general public and opponents, particularly the San Carlos Apache community to analyze the Forest Service FEIS report on RCM’s mining project.

This is a serious oversight of the federal government’s current historical, constitutional, and legislative responsibilities to the San Carlos Apache and Arizonians, which is a cause for great concern. Even more concerning, this land exchange allows the foreign mining companies, Rio Tinto and BHP Billiton, to avoid following our nation’s environmental and cultural laws and would bypass the permitting process. This has the danger of setting a precedent to attract additional natural resource development corporations to seek exploitation of our federal lands. Furthermore, it is the first bill that Congress would privatize an Indian sacred site on federal public land which continues a long history of taking land from the Western Apache Nations. An EIS that fails to enable meaningful public review and understanding of the agency’s proposal, methodology, and analysis of environmental consequences violates NEPA.

NEPA and NHPA

NEPA is often referred to as the “umbrella” law that facilitates project consolidation to meet compliance requirements (U.S. Department of the Interior, 2019, 2-1). While NEPA focuses primarily on natural resource regulations, the EIS process must accompany considerations of cultural resources because NEPA mandates agencies to examine the impacts of the *human* environment, which includes cultural resources (McNally, 2020, p. 129).⁵ NEPA requires compliance with other periphery environmental laws, such as the *National Historic Preservation Act* (1966) (NHPA), *Clean Water Act* (CWA), and the *Endangered Species Act* (ESA) along with other federal laws to integrate environmental reviews and consultation requirements to discuss any inconsistencies (U.S. Department of the Interior, 2019, 2-1).

NHPA is a major cultural resource law and review process undertaken concurrently with the EIS process. NHPA provides the legislative authority to identify, evaluate, and preserve historic properties which are important to the protection of cultural resources, especially of concern for Indian tribes. Section 1(b) of NHPA (in part), Congress finds that (2) “the historical and cultural foundations of the Nation should be preserved as a living part of our community life;” (3) “historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency” and (4) “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, esthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans” (16 USC 470).

⁵ The CEQ regulations defines “human environment” to include the natural and physical environment and the relationship of people with that environment

Together NEPA and NHPA’s respective regulations bolster the coordination of the environmental review process. The environmental review process, NHPA’s Section 106, which requires consultation and consideration with stakeholders and Indian tribes of any adverse effects on any sites of historical and cultural significance, and the Records of Decision (ROD), a report of selected alternatives from the final EIS to identify how the environmental impacts are to be managed, are often conducted concurrently (McNally, 2020, p. 134). The requirements established by NHPA and NEPA are necessary for thorough planning and substantive consultation with American Indian Tribes and stakeholders to ensure government agencies account for any effects of their decisions.

NHPA also established the *National Register of Historic Places* (National Register) and dictates the criteria for eligibility and mandating the *Section 106* review process prior to approval for federal undertakings that might have an effect on any “district, site, building, structure, or object significant in American history, architecture, archeology, engineering, and culture.” (16 USC 470f; Tsosie, 1997, p. 71). An important facet for Tribal Nations is under Section 106, which instructs that “[p]roperties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register” (16 USC 470f). A particular feature states “any federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties” commenting on the need for consultation (16 USC 470f). Although consultation is required under both NEPA and NHPA as a federal policy, both acts address a need for federal agencies to step up their consultation with tribes to be able to

participate in discussions on the impact of government projects that profoundly affect their sacred sites and religious practices.

In 1990, NHPA designated *Traditional Cultural Properties* (TCP) as eligible for listing on the National Register and in 1992, that law was amended to formally engage tribal governments in the review process (McNally, p. 127-128). The National Register Bulletin 38 from the US Department of Interior describes a TCP to be:

a) a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world; b) a rural community whose organization, buildings and structures or patterns of land use reflect the cultural traditions...; c) an urban neighborhood that is the traditional home of a particular cultural group, and that it reflects its beliefs and practices; d) a location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and e) a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity (p. 1).

This is vital in maintaining the continuing cultural identity of affected communities.

Importantly, efforts to protect traditional cultural properties significant to Indians as cultural resources under NHPA effects their public value concurrently to the US because it is a part of American history and experience.

As NHPA evolved, the review process developed a commitment to places of religious significance to Indigenous peoples. However, problems persist. Although NEPA and NHPA provide procedures to hold governmental activities accountable, the review process has often become perfunctory, and consultant contractors involved are frequently paid by the project developer and/or promoters which has led to biased approval of proposed actions in favor of the project developer (McNally, 143). Alone, NEPA and NHPA lack robust enforcement mechanisms for judicial review that would better support

negotiations conditions more favorable to Indian peoples, NEPA, for example, does not *require* the federal agency to protect the human environment or to *manage* its impacts or the consultants who oversee the process report (ibid, p. 134). In the case of NHPA, the ambiguity about the *scale* of the review and what to consider *cumulative effects* (ibid, p. 161). The problem with the scale is who is determining the impact area. Federal agencies establish the Area of Potential Effects (APE) for identified historic properties (ibid). This puts Indian tribes at a disadvantage to voice their concerns about accessing religious and cultural sites at risk of destruction if they are not allowed to participate in the initial stages of the proposed project. This allows developers to define “consultation” or “participation” without the affected communities’ concerns or viewpoints.

The lack of legal enforcement makes preserving our environment and historic cultural properties even more difficult. Additionally, the lack of enforcement accentuates the inadequacies to promote environmental justice outcomes and highlights the importance of an active consultation process and participation can be for tribal and non-tribal communities to provide an administration of natural resource development industries and federal decisions.

In 2016, NEPA and NHPA’s lack of enforcement was shown in the controversial Dakota Access Pipeline (DAPL) project that would install an oil pipeline under the Missouri River in addition to hundreds of water bodies throughout several states (ibid, p. 161).⁶ The controversial pipeline was located one half mile from Lake Oahe on the

⁶ Dakota Access, LLC, a subsidiary of Energy Transfer Crude Oil Company, LLC, project is to place pipelines under the Missouri River and pump nearly half a million barrels of crude oil daily under the river from the Bakken oil fields in North Dakota. The pipeline would run approximately 1,100 miles from North Dakota to a river port in Illinois. (McKibben, 2016; McNally, 1-4). Further review of the DAPL controversy permitting

Standing Rock Sioux Tribe's (Standing Rock) reservation. The DAPL project planned to cross beneath the lake across the reservation and destroy Standing Rocks' historical cultural homelands and ancient sacred burial sites (McKibben, 2016). The sacred site at Lake Oahe was subject to meaningful review under both NEPA and NHPA. The DAPL project required NHPA's a Section 106 review and a consultation process for a nationwide permit for the pipeline. The Army Corps of Engineers (Corps), a federal environmental and cultural resource management agency, failed its legal consultation obligation under NHPA to consult with the Standing Rock Sioux Tribe over sacred sites and environmental concerns surrounding the impact site at Lake Oahe (McNally, p. 156).

In a court motion, Standing Rock submitted multiple comments about their reserved water rights which were met with responses from the Army Corps of Engineers that found no impacts on surface water as well as a disputable concern because the pipeline would not cross the reservation (McNally, 2020, p. 133). This brought about Standing Rock to file a complaint in the US District Court against the Corps arguing against the permitting process because the pipeline failed a *full* scope environmental review and neglected other regulations that guaranteed tribal oversight and participation (ibid). Highlighting concerns at Oak Flat and problems with the process, NEPA and NHPA inadvertently empowered agencies and natural resource development proponents' decision-making power and limited participation from affected communities.

process see Taylor Johnson's research article: The Dakota Access Pipeline and the Breakdown of the Participatory Processes in Environmental Decision Making (2019).

Michael McNally, professor of American Religious Studies and Native American religious traditions and culture, argues that “project delays related to NEPA and NHPA are some of the strongest cards available to Native nations facing threats to what they consider sacred, agencies and industries promoting such development *can* structure their review accordingly” (emphasis added) (2020, p. 155). This is a recent example of non-American natural resource companies and our federal agencies, such as the Army Corps of Engineers, to bypass our nation’s environmental and cultural laws. The intention of NEPA and NHPA was put in place for the benefit of all people and should be respected and effectively carried out by all involved.

Discrepancies within the DEIS

The DAPL controversy illustrates measures used to gain access to the Oak Flat area and limit anti-mining interested parties. The lack of consultation and participation remains a major concern with the San Carlos Apache community and others who have an interest in the land exchange area. While NHPA added commitment procedures, the lack of enforcement has left many fighting for protections to go to the courts. Too often, court decisions, such as the case with DAPL, have not supported NHPA’s protections are maximized.

Illustrating the federal government’s understanding of the importance of consultation, Executive Order 13175 (E.O. 13175), issued by President Clinton in 2000, required federal agencies to consult with Indian tribal governments when considering proposed legislation policies that have substantial direct effects on Indian tribes in addition to NEPA and NHPA consultation requirements (EPA). Regardless of consultation requirements, consultation was circumvented with the shady insertion of the

land exchange in the National Defense Authorization Act (NDAA) and continued in the draft EIS process and thus, the final EIS.

The Apache Stronghold coalition vehemently defends the civil right to consultation and participation within the EIS process in order to end federal practices and mining companies' contradictive behaviors towards Western Apache's sacred sites and be held to a higher standard. At the Congressional Hearing, "*The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation*" held on March 12, 2020, Dr. Wendsler Nosie Sr. testified that the Tribal Values and Concerns (DEIS, 3.14) section is "incomplete and demonstrates a failure on the USFS to conduct adequate consultation" with the San Carlos Apache tribe and relative tribes with connections to Oak Flat ("The Irreparable," 2020, p. 10-11). The Apache Stronghold's main goal is the preservation of Oak Flat but equally as important is holding the US accountable in executing and enforcing federal protective legislations to better support the *intention* of those current legislations.

The Oak Flat area has been exclusively protected from mining interest for decades. The Eisenhower Administration issued PLO 1229, an executive order of protection on 760 acres of the Oak Flat area from the threat of mining and the Nixon Administration subsequently reaffirmed with PLO 5132 in 1972 to modify PLO 1229 and allow "all forms of appropriation under the public land laws applicable to national forest lands *except under the US mining laws*" (Lovett, 2017, p. 362-363). These executive orders were intended to protect Oak Flat from mining destruction which the land exchange enables. Under the circumstances that the area was removed from mining ventures, the Forest Service under NEPA should have considered the under-handed

action to undermine protective orders and has the responsibility to honor the government-to-government relationship with Indian tribes.

Despite the avoidance of protective executive orders, Oak Flat, formally known as Chi'Chil Bildagoteel to the San Carlos Apache, has been recognized and listed on the *National Register of Historic Places* (National Register) in 2016 (National Park Service, 2016). The placement of the Oak Flat area on the National Register is the product of historical and archaeological analysis that supports the federal government's recognition of Oak Flat as a national historic and culturally significant landscape worthy of preservation. This action suggests that the USFS has been aware for years that the Oak Flat area encompasses rich and diverse cultural resources that hold great significance to Indians and non-Indians alike. From the start, the San Carlos community deserved a seat at the table upon RCM's mining interest on Oak Flat and proper consultations with tribes should be a top priority.

Apache Stronghold and many other associations have analyzed the DEIS and show that the DEIS has failed to apply the full scope of federal laws under NEPA and NHPA that are applicable to RCM's mining project. The fight to save Oak Flat has shown this is not just an Indigenous issue but a larger environmental battle.

The Apache Stronghold organization responded to the DEIS report, *Tribal Values and Concerns* section commenting that severe archeological, cultural, and religious impacts were not given a respectful in-depth analysis of local Indian's traditional religious and cultural practices. Resolution Copper Mining funded Tonto National Forest Service (TNFS) to hire local Indians as "tribal monitors" in the preparation of this mining project. These monitors were to specifically identify new and existing *traditional*

ecological knowledge places (TEKPs) and other tribal resources that archaeologists might not recognize (U.S. Dept. Of Agriculture, 2019, p. 662). The DEIS focused on the physical impacts on Oak Flat without fully identifying the current relevant presence of religious and cultural practices and cultural connections to the San Carlos Apache and local Indigenous communities (“The Irreparable,” 2020 p. 11). Apache Stronghold commented that the DEIS did not include the full findings of archeological, spiritual, and cultural evidence found by tribal monitors (2019 p. 2). As tribal monitors continue to discover ancient Apache artifacts, the DEIS diminishes the evidence by suggesting ‘[t]here is a *potential* for some portion of existing yet currently unidentified prehistoric and historic artifacts and resources to be disturbed or destroyed, especially within the Oak Flat subsidence area and the footprint of the tailings storage area. These losses could potentially include human burials within these areas” (emphasis added) (U.S. Dept. Of Agriculture, 2019, ES-1.3). A considerable amount of data and personal statements regarding the religious importance of Oak Flat have been submitted to Congress and the USFS. The USFS could have incorporated that information regarding cultural resources to highlight possible harmful impacts.

The analysis of the DEIS by the Apache Stronghold and coalition groups found that the DEIS failed a complete analysis of any impacts on the Oak Flat environment and the religious practices of local tribes. The multiple organizations included a large part of their conversation to be the cultural religious traditions and historical connections of the

San Carlos Apache and other related tribes.⁷ They asserted, “the DEIS fails to disclose the basic descriptive information about cultural resources necessary to allow the public to understand and assist in assessing cultural resource impacts” and “the DEIS acknowledges that hundreds of archaeological, historical, and cultural sites will be damaged or destroyed by the proposed action” (Arizona Mining, 2019, p. 110). They reported that 721 archaeological sites and three historical structures have been recorded within the direct path of the mining area, of which 523 are recommended or determined eligible for listing on the National Register and that cultural resource inventories are still adding to these totals (ibid). They also show that 568 sites are in the indirect impact area of which 265 of the 568 are listed in or eligible to be listed in the National Register (ibid). In the DEIS comments, the pre-Apache archaeological sites in the National Register listing state that Oak Flat should be *considered quantitative* rather than places of significance—spiritually, historically, or culturally pursuant to NEPA and the NHPA (ibid, p. 111). That is when an agency is evaluating foreseeable significant adverse effects on the human environment in an environmental impact statement (EIS) and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking within the EIS (Arizona Mining, 2019, p. 15). Without resource-specific information, it is difficult to properly evaluate their significance or the impact it would have on the Apache people.

⁷ For description of groups, and others, refer to the “Description of Groups” in the Arizona Mining Reform Coalition et. al. Comments on Resolution Copper DEIS (2019).

While the evolution of mines and other development ventures have proved beneficial to mainstream society, they have often adversely and disproportionately affected minority and low-income populations. Many of the communities surrounding RCM's mining project are predominantly Indigenous and Hispanic populations. These communities are often limited in resources to speak out against environmental or economic damage to their health and lifeways. In an attempt to incorporate environmental justice into federal agencies, President Clinton in 1994 signed Executive Order 12898, to improve federal attention on the environmental and human health effects on minority and low-income peoples to achieve proper environmental protection for all communities (Arizona Mining, 2019 p. 129; EPA). Unfortunately, the DEIS neglected the requirements to adequately assess cumulative impacts according to Executive Order 12898. Arizona Mining Reform Coalition et al. scoping comments contend that the DEIS failed to assess the full impacts associated with local non-Indian minority and low-income communities surrounding the land exchange area and relative tribes with connections to the Oak Flat landscape (ibid).⁸

When Congress insinuated the land exchange within the National Defense Authorization Act (NDAA), it did not reduce or eliminate the USFS's responsibilities to fully comply with other environmental laws. Arizona Mining Reform Coalition, et al., expanded on numerous similar DEIS deficiencies involving other affected fauna and flora resources, in the *Endangered Species Act (1973)*, the *Migrating Bird Treaty Act (1918)*, and the *Organic Act (1897)*. The *Endangered Species Act* requires formal consultation

⁸"Scoping" is the process to determine the appropriate content of an EIS and provide public participation to include comments or concerns about what should be included in the EIS.

with the US Fish and Wildlife Service of any action or permitting process that may affect a listed endangered or threatened species or designated critical habitat (ibid, p. 146). The *Migrating Bird Treaty Act* prohibits the destruction, removal, or selling of migratory birds including their nests and eggs (ibid, p. 152). Finally, the *Organic Act*, this act instructs USFS to protect the forest lands from depredations and “to regulate their occupancy and use and to preserve the forests thereon from destruction” (ibid, p. 19). The *Organic Act* includes the prevention of the USFS from adversely affecting public waters, such as the springs that will be dewatered by the mine and the *Organic Act* often works in tandem with the *Clean Water Act* (1972) on projects such as the land exchange (ibid, p. 318; 329). Collectively, these laws work to ensure our biological resources and wildlife protection from cumulative impacts within the mining site and have the potential to mitigate threats to wildlife surrounding the RCM project site.

Apache Stronghold and their coalition partners have severe concerns about surface and subsurface water resources surrounding the RCM site. For the past 20 years, Arizona has struggled with drought and continued depleting water sources throughout the state (“The Irreparable,” 2020, p. 53). The communities within the mining region, Phoenix, Scottsdale, Tempe, Mesa, Gilbert, Queen Creek, and others, rely on the same water sources as RCM’s mining project (ibid, p. 41). The Central Arizona Project, which delivers the most significant renewable water supply and serves more than 80 percent of the state’s population, has experienced drought conditions from the Colorado River due to increasing demand (2022a). Arizona faces even more drastic cuts in Colorado River water if water levels in Lake Mead continue to drop (ibid). Dr. Steven Emerman, an expert in Hydrology and Geophysics, testified before the *Hearing Committee on Natural*

Resources on the underestimation of water consumption of RCM's project to be unjustified and emphasized: "this is the worst mining project I have ever encountered ("The Irreparable," 2020, p. 24-26). Dr. Emerman stresses an inadequate evaluation of cumulative impacts on water resources and predicts that "water consumption of the Resolution Copper Mine is 50,000 acre-feet per year" and describes the annual amount of water to transport the tailings through a 25-mile pipeline as "a column of water covering a football field and ten miles high" filled with toxic waste (ibid, p. 25).

In contrast, Rio Tinto has assured water consumption of only 15,700 acre-feet per year (Arizona Mining, 2019, p. 65). Dr. James Wells, environmental hydrogeologist and advisor to the Tonto National Forest on its preparation of the draft EIS, testified along with Dr. Emerman before the same hearing committee. Dr. Wells brought attention to RCM's assessment that groundwater will be depleted over an area covering about 300 square miles ("The Irreparable," 2020, p. 39).

Although not mentioned in the DEIS, RCM once estimated that it would likely take approximately a thousand years to replenish the water (ibid). Another long-term impact Dr. Wells points out relates to the drying of Apache sacred springs and creeks from the damage of aquifers due to the subsidence crater. With this assertion, a complete analysis should also have been done in the DEIS to consider the full impacts of the mine's impact, especially the proposed water usage on Arizona's dwindling local, regional, and state water supplies. Currently, Interior Secretary Deb Haaland, declared a "*Tier 1 shortage for Colorado River operation in 2022*" shortage will result in a substantial cut to Arizona's share of the Colorado River (Central Arizona, 2022b). This is

about 30% of the Central Arizona Project's normal supply and nearly 18% of Arizona's total Colorado River supply (ibid).

Considering the scope of water depletion in the time of climate change-driven drought in an arid environment, the region of the Oak Flat area should have the complete protection of the Clean Water Act (CWA). The CWA is one of the most important environmental laws in the United States. In 1972, Congress enacted the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" to mitigate the discharge of toxic pollutants (33 USC 1251(a)). Section 404 of the CWA establishes the framework to regulate and monitor the release of dredged or fill mining materials into waters within the US (33 USC 1344). After public discussions and input, the Corps issues permits for any discharge material at specific disposal sites ("The Irreparable," 2020, p. 72). The purpose of Section 404 is that no discharge of toxic material may be permitted if a less damaging alternative option exists or if the state's waters would be significantly degraded (EPA).

Numerous Oak Flat supporters have commented on CWA protections. To ensure the CWA requirements are met, the Apache Stronghold organization and its affiliates have serious concerns about Section 404 of the CWA due to the potential and significant changes to the varied water resources. Apache Stronghold advocates against RCM discharging fill materials into approximately 124 acres of water sources surrounding the mining area ("The Irreparable," 2020, p. 62). Their concern is the installment of a tailings storage facility that would result in permanent loss of water resources and aquifers through the transport and storage of toxic mine tailings (ibid).

A common concern towards the DEIS is the inadequate steps taken to avoid negative impacts on surrounding water sources in the Oak Flat area. The Inter-Tribal Association of Arizona (ITAA), an association of 21 tribal governments in Arizona to advocate for national, regional, and specific tribal concerns, argues that the analysis of Resolution Copper’s water needs for the life of the mine is an “overly conservative estimate” and the USFS fails a meaningful look into all cumulative impacts to Arizona water supplies (“The Irreparable,” 2020, p. 90-91).

Another concern Oak Flat advocates have noted is that the block cave mine project would create a crater roughly two miles wide and 1,000 feet deep due to subsidence of the land (Arizona Mining, 2021c; “The Irreparable,” 2020, p. 124). RCM estimated that the mine would extract and dump nearly 1.4 billion tons of toxic mining waste into an unlined tailings dump, and the tailings site will ultimately cover six square miles with a dam 490 feet high (ibid). The DEIS report states, “the mine and associated activities are expected to increase risks to public health and safety from the presence of a large tailing storage facility on the landscape, and the transport of concentrate and tailings by pipeline. These risks are unavoidable” (U.S. Dept. Of Agriculture, 2019, p. 588). The DEIS report adds, “aside from catastrophic failures, tailings storage facilities can represent other long-term risks to public health and safety; groundwater contamination from seepage, erosion of materials into downstream waters, and windblown dust” and “the potential risk can last for many decades (ibid, p. 516).

Apache Stronghold has serious reservations about the Forest Service’s preferred alternative to the Skunk Camp tailing storage facility located approximately 20 miles southeast of Superior (“The Irreparable,” 2020, p. 79). The analysis of the DEIS scoping

comments shows Skunk Camp to be incomplete. The DEIS reveals that the background groundwater quality is “derived from a single sample” from two different sources, a water well located adjacent to Dripping Spring Wash and from the Gila River at the confluence with Dripping Spring Wash in November of 2018 (US Department of Agriculture, 2019, p. 358). However, no explanation was given as to why only single samples were collected and advocates question a meaningful analysis and/or conclusions could be drawn based upon a single sample (“The Irreparable,” 2020, p. 102). The DEIS fails the essential test of providing a clear and evidence-based rationale for selecting Skunk Camp as the preferred tailing site facility alternative (ibid). Another consideration for an alternative tailings site is the Silver King facility. For instance, in the eventual event of seepage, the Silver King facility would excrete toxic sludge directly impacting the town of Superior’s watershed at a minimum distance of 2,500 feet, Queen Valley by 8.2 miles, and Florence by 20.5 miles, including other locations (ibid, p. 230, 234). Any failures of the alternative tailings site facilities will devastate communities, wildlife, and surroundings.

Another issue on adverse impacts of RCM’s mine project is the DEIS does not ensure compliance with air quality standards under the Clean Air Act of 1970 (CAA). Congress outlined the CAA to manage a variety of pollution threats to protect the public’s health and welfare (EPA). The DEIS lacks data and improper analysis methods relating to air quality and pollution (Arizona Mining, 2019, p. 58). As an example, lead and arsenic are the two major toxic and hazardous materials associated with the mine source materials released from mining activities (ibid). The DEIS describes no risk assessment studies or chronic exposure studies for these substances. These elements are

dangerous to people with regular exposure because they are neurotoxins and affect brain development, cognition, and intelligence, particularly in children-born and unborn (ibid). Furthermore, the DEIS asserts “there would be no impacts on air quality from proposed mining and associated activities” (U.S Dept. of Agriculture, 2019, p.282). It points out that ongoing impacts on air quality are expected to increase with continued population growth in Arizona (ibid). However, my research could not locate additional air quality risks that the RCM mine would contribute to increasing air pollutants. Mining operations will increase dust and particulates, airborne chemicals, and mobile emissions and compromise air quality standards. Again, this raises serious concerns about clarity, legitimacy of public review, and the Forest Service’s compliance with the law.

Religious Freedom

Religious liberty is a fundamental ethical, legal, and social principle of freedom in the United States. It is a liberty so imperative that it has the guarantee of constitutional protection. However, the constitution guaranteed free exercise of religion for American Indians has been violated since the composition of the US Constitution in the 1780s. Forced conversions were placed on Indians because they did not align with Christian definitions of “religion,” unlike other religious communities. However, some constitutional protection was generally applied to Indians when the status of citizenship was applied in 1924.¹ In her book, *A Separate Country*, Elizabeth Cook-Lynn states, “the harm to tribal nationalism and citizenship rights fails to transcend such long-standing logic because tribes were wrongly described in early histories as savage and without government or law” and that “citizenship is a legal concept, and it cannot be simply ignored in the case of American Indians who possess dual citizenship” (2012, p. 129-

130). The defense of citizenship is one of the most vital functions of any sovereign nation.

The First Amendment prevents Congress from making any law that prohibits religious expression to which American Indians are entitled under the laws and Constitution of the United States (NCAI, 2019). It reads as follows,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (National Archives).

That is, the Establishment Clause in the First Amendment guarantees the separation of church and state ensuring that government and religions do not control each other, and the Free Exercise Clause guarantees freedom to believe in any religion of their own choosing (Pevar, 2012, p. 222). As many of us know, many Europeans fled their original homelands and migrated to America, now the United States, in search of religious freedom (Pevar, 2012, p. 222; Trope, 1995, p 30). Considering this, the United States' new government, included the Establishment and Free Exercise Clauses to ensure that religious dissent found in some European countries would not occur here (National Archives). Sadly, many Americans have forgotten their ancestors, who stood for what they believed in, in escaping religious oppression and dismissed the Indigenous people who preceded them in the Americas.

Forced assimilation practices occurred when the United States government recruited Christian missionaries to provide and perform a dominant role in the oppression of Indians that sought to eradicate tribal religion and culture (Echo-Hawk, 2012, p. 304; Newcomb, 2008, p. xxi). This approach reveals that the separation of church and state

outlined in the First Amendment did not apply to American Indians (Echo-Hawk, 2012, p. 194; Wilkins & Stark, 2011, p. 126). The federal government intensified its suppression of traditional Indian religious and cultural practices in 1885 when supported by the Commissioner of Indian Affairs, Hiram Price, who advocated the governmental policy and issued the Code of Indian Offenses. It reads,

The “sun-dance,” and all other similar dances and so-called religious ceremonies, shall be considered “Indian offenses,” and any Indian found guilty of being a participant in any one of more of these “offenses” shall, for the first offense committed, be punished by withholding from him rations for a period not less than fifteen days nor more than thirty days, or by incarceration in the agency prison for a period not exceeding thirty days (United States, 1904, p. 102).

The criminalization of Indian spirituality shows the extreme measures the federal government would take to suppress Indian religions. The United States government used the force of law with the goal to eliminate Indigenous religious practices without regard to the human rights of Indians. The devastating results of this policy manifests itself today in the continued historical trauma felt by Indian people.

The United States’ ideal of religious freedom has yet to be applied to American Indians. Although the US legal system has affirmed the religious liberty of American Indians by enacting cultural laws specifically to protect the religious and cultural integrity of Indian people, courts have yet to augment and validate that Indigenous people have religious freedom rights to the protection of lands, waters, and traditional cultural practices. One difficulty is that Indian religious practices are tribally specific and do not possess the institutional structures found in other mainstream religions. Consequently, looking at legal protections for sacred places as cultural resources alongside natural resources consistently brings hardship and grief to Indian people.

Cultural resource protection laws are put in place, in part, to ensure that policies and procedures of various federal agencies avoid impacting Indian traditional belief systems and the free exercise of religion to preserve Indian sacred sites. Those assurances failed when the TNFS ineffectively analyzed the activities in which RCM's operations violate US Executive Orders and cultural resource laws. They are designed to apply them in the areas of federal trust responsibilities and government-to-government consultation in conjunction with the involvement of the San Carlos Apache Tribe's traditional knowledge of the Oak Flat area.

Legislative accommodations are specific to Indigenous communities under statutes like the American Indian Religious Freedom Act (1978), the Religious Freedom Restoration Act (1993), and Executive Order 13007 acknowledged that the First Amendment has not worked to protect traditional religious practices (EchoHawk, 2010, p. 208). The American Indian Religious Freedom Act (AIRFA) established an affirmative federal policy to protect and preserve the traditional religious beliefs and practices of Indian peoples to reverse the history of religious discrimination and suppression. AIRFA states, "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians..." (42 U.S.C.1996). Along with AIRFA, Executive Order 13007 of 1996 (E.O. 13007), seeks to a) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (b) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites (61 Fed. Reg. 26771).

Additionally, E.O. 13007 mandates federal agencies to “facilitate consultation with appropriate Indian tribes and religious leaders” (ibid). AIRFA and E.O. 13007 direct protection and access to Indian sacred sites are independent of Section 106 and NHPA. AIRFA acknowledged that Indian people had historically been denied their constitutionally guaranteed right to freedom of religion, but AIRFA has shown no provision for enforcing protections. Since AIRFA was passed into law, several Indian tribes have brought suits against public land management agencies in order to coerce the government to respect Indian religious interests. AIRFA’s weakness was shown in the case of *Lyng v. Northwest Indian Cemetery Protective Association (1987)* (Lyng) (Echo-Hawk, 2012, p. 325). Tribes of the Yurok, Tolowa, and Karok in northwestern California attempted to block a USFS plan to pave a six-mile service road through the Six Rivers National Forest, destroying their sacred sites within (ibid, p. 326). In *Lyng*, the Supreme Court declared that no First Amendment principle exists that can protect tribal worship on sacred sites leaving the USFS free to destroy and desecrate Indian religious sites (ibid). It was at this point that AIRFA would be a policy statement, a context for a procedure for subsequent substantive law.⁹

Regarding the Religious Freedom Restoration Act (RFRA), it extends the right to religious freedom by prohibiting any agency from “substantially burdening a person’s exercise of religion” and “laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise” (42 USC 2000bb). RFRA is important to the ability to access Indigenous sacred sites, the use and possession of sacred

⁹ For more in-depth analysis on the Lyng case, refer to Echo-Hawk, *In the Courts of the Conqueror* (2012), Chapter 12.

objects, and the freedom to worship through traditional practices (“The Irreparable,” 2020, p, 79). Additionally, RFRA is often the statutory counterpart to the Free Exercise Clause to prevent government actions that could restrict religious practices for all Americans (McNally, 2020, p. xvii).

In the case of Oak Flat, the impacts are unquestionably prohibiting the Apache people from practicing their religious ceremonies at Oak Flat. The problem is the DEIS fails to analyze, not just the destruction of Oak Flat, but *access* to the San Carlos Apache religious site found only in the Oak Flat area, relative to AIRFA, E.O. 13007, and RFRA.

In 2021, the Apache Stronghold organization filed a suit in federal court against the federal government, *Apache Stronghold v. United States*, claiming, “violations of treaty rights; trust responsibility and fiduciary duty; the Religious Freedom Restoration Act; First Amendment rights to free exercise of religion, and to petition and for remedy; and Fifth Amendment Right to due process” (Arizona Mining, 2021a, p. 6). Dr. Nosie stated, “[g]iving away our sacred land for destruction by a foreign mining company destroys our ability to practice our religion. Besides, the US government never legally took Chi’chil Bildagoteel away from us. It is still Apache land” (Last Real Indians, 2021). According to the 1852 Treaty between the US and the Apache, Oak Flat remains in legal possession of the Apache—the Treaty was never amended or rescinded (ibid). Dr. John Welch, professor and former Historic Preservation Officer for the White Mountain Apache, concurs,

...the “Treaty shall be binding [and]...the government of the United States shall so legislate and act as to secure the permanent prosperity and happiness of said Indians.”; and that, “I found no evidence, in the proceedings of the Indian Claims Commission or elsewhere, of any changes or diminishment in the Apaches’ reserved treaty to the Western Apaches’ Treaty Territory. I found no evidence that

the United States compensated the Apache treaty rights holders for Chi'chil Bildagoteel (Oak Flat). Oak Flat is Apache land, as it has been for centuries and is not owned by the United States of American or any other entity or person (ibid).

Unlike the case of *Navajo Nation v. U.S. Forest Service* (2008), commonly known as the Snowbowl, the court held that the USFS did not violate RFRA, and rejected the Navajo, Hopi, and other tribes' claims regarding reclaimed water contamination of the San Francisco Peaks to feed a ski resort in northern Arizona. The use of recycled wastewater (as snow) was causing illness in tribal members during ceremonies and medicinal plants contaminated surrounding ceremonial grounds (Apache Stronghold, 2019, p. 6). The Snowbowl court ruled that the use of recycled sewage water was not a "substantial burden" on tribal members' religious freedom (ibid). This example shows how environmental decision-makers may claim to take public voices into account but, they either defend decisions already made by those in positions of power or outright ignore affected communities.

In the case of the Oak Flat land exchange, RCM's mining project would not only deny access to Oak Flat but be destroyed creating a devastating "substantial burden" to the San Carlos community's religious practice. Dr. John Welch testified for the preliminary injunction, *Apache Stronghold v. United States*, to the "substantial burden" that would befall on Apache religious practice at Oak Flat as,

The religious practices of the Western Apache people, and especially the Western Apache people who make use of, pray to and through Oak Flat, have already been disturbed and encumbered by the United States in just preparing for and doing the initial drilling for prospecting for this ore body, and certainly, the unfolding of the mine involves an incalculable burden, a huge burden, yes (ibid, p. 34).

In the course of the conclusion, Chapter 6, I will demonstrate the reconciliation strategies by the Apache Stronghold Coalition and others, such as the case of *Apache Stronghold v. United States of America, et al.*, *Arizona Mining Reform Coalition, et al.*, *v. United States Forest Service, et al.* and the *Save Oak Flat Act* which could stop the Resolution Copper Mining project from irreversibly destroying the sacred site of Oak Flat. Additionally, I will highlight any significant changes in the final environmental impact statement, which was released in January 2021.

CHAPTER 6

CONCLUSION: WHERE ARE WE NOW?

In the last chapter, I examined discrepancies and federal law violations in the environmental impact statement process threatening the San Carlos Apache sacred religious site of Oak Flat and its landscape. Many of the failures with the draft environmental impact statement (DEIS) remain in place within the final environmental impact statement (FEIS), such as no alternative considerations to avoid destroying the religious location of Oak Flat and the severe water depletion that will ensue in Arizona's already water depleted desert environment.

Mining within the Apache ancestral territories began immediately following violent US evictions of the Western Apaches from their traditional territories. Territorial dispossession of Indigenous sacred places has gone hand-in-hand with natural resource exploitation. The U.S. and the states have consistently prioritized mining interests over its treaty and fiduciary obligations to American Indian nations, in this case, the Western Apaches. They have failed to protect the Apaches' sacred sites and eliminated them from consideration and consultation in mining proposals. These U.S. actions have funneled billions into mining companies' pockets and left behind toxic wastelands from mining activities throughout American Indian and Apache homelands.

The San Carlos Apache has continued to face the actual and potential loss of lands and an additional sacred site, *Chi'chil Bildagoteel*, commonly known as Oak Flat, to another mining project. Apache culture, religion, and religious practice persist in recognizing Oak Flat and the surrounding areas as a place of profound importance. In

2014, former Senators John McClain and Jeff Flake, along with a few supportive Arizona politicians, crafted a provision for a land exchange, Section 3003, into the National Defense Authorization Act (FY 2015) designed to authorize the destruction and privatization of the sacred site of Oak Flat and American public lands and resources (Welch, 2017b). The land exchange would give mining companies access to the San Carlos Apache religious site of Oak Flat.

The San Carlos Apache Nation and their allies asserted that enough Apache territory has been sacrificed for mining projects and profits, and Apache rights must be fully accounted for. This study has presented the violent oppression of the Western Apache, notably the San Carlos Apache, and despite the atrocities afflicted on the San Carlos, their persistent emotional and spiritual connection to Oak Flat and the unrelenting opposition to the Resolution Copper mining project (RCM) remains resolute.

Current actions from the Apache Stronghold Coalition (who have been authorized by the San Carlos Apache Tribe to advocate for Oak Flat), other Native tribes, and non-Native allies seeking to prevent the overtaking and destruction of Oak Flat are challenging the US plans to allow RCM mine from continuing by filing a lawsuit. The lawsuit, *Apache Stronghold v. United States of America*, filed in March 2021, alleges that the destruction of the sacred site would violate federal law, such as the Religious Freedom Restoration Act, the Free Exercise Clause of the First Amendment, and the fiduciary duties codified in the 1852 Treaty of Santa Fe (2021b).

Apache Stronghold calls on Congressional support to repeal the Section 3003 land exchange. In March 2021, Rep. Raul Grijalva (D-Ariz) introduced the (H.R. 1884) Save

Oak Flat Act (SOFA) to the House of Representatives to permanently protect Oak Flat from the destructive RCM mining proposal (Apache Stronghold, 2016). Concurrently, Sen. Bernie Sanders (I-VT) introduced an identical companion bill, S. 915, urging Congress to overturn the land exchange for the preservation of Oak Flat (ibid). Enacting SOFA would provide the opportunity for the federal government to protect American Indian cultural and religious resources.

In my conclusion, I will highlight some reconciliation strategies by Apache Stronghold that could enable restorative justice on the part of the US for the San Carlos Apache and potentially other future affected American tribes. American Indian Nations deserve to participate in the respectful determination of whether and how RCM and other mining companies may engage in Indigenous sacred homelands and religious sites.

The US government's forceful subjugation of the San Carlos Apache has significantly affected their health and well-being. It constitutes a moral and legal obligation for federal action. This case study is as much about the future as the past. This is about ending a cycle of refusing to acknowledge tribal input and creating barriers to participation in Indigenous religious and sacred locations. The San Carlos Apache has abundant traditional knowledge and history as well as an archaeological record in and surrounding Oak Flat. However, this study has shown that the *draft* environmental impact statement (DEIS) did not include the full findings of the archeological, spiritual, and cultural evidence found by tribal monitors, and failed to apply the full scope and intention of federal laws that are applicable to the RCM mining project. Moreover, a look into the *final* environmental impact statement (FEIS), released in January 2021, when examined

shows minimal changes when compared to the DEIS. However, in March 2021, the Biden administration withdrew the FEIS to reassess legal flaws within the document (Apache Stronghold, 2021b). This should be an opportunity for prompt action on the part of the US to enforce federal protections for Oak Flat, setting a precedence for all activities that threaten the lives of American Indigenous peoples on their sacred sites found on federal public lands.

My study has demonstrated the significance of the San Carlos Apaches connection and stewardship of their religious locations, primarily Oak Flat. Since first European contact, and throughout much of the modern-day attitudes, American Indian religions are frequently not recognized as a viable religion and are still often deemed as superstitious folklore and uncultivated. This mindset has injured the religious practices of every American Indigenous people's cultural traditions, connections, and identities with religious intolerance, violations, and secularization. Besides religious intolerance, the difficulty that Indian religions do not fit the framework of "Christian" beliefs, has determined (and defined) Indian religion by US court decisions created as "lawful" precedent for denying Indian legal relations to land connections and access to sacred sites.

This study has aimed to confront and highlight the forces of colonialism to understand how American society and its legal systems have imprinted colonial ideals and been utilized to attack American Indian religious freedoms. The tactics used to seize the Oak Flat area for mining by the foreign companies, Rio Tinto and BHP, and our own Arizona legislators illustrate another example of colonization and discrimination towards

the San Carlos Apache Tribe. Settler colonialism continues with a repeating history of dispossession and intolerance as we see how San Carlos is forced out of their sacred land in favor of large corporations and capitalism. The lack of protections for Oak Flat has the increased danger of setting a negative precedence of increased vulnerability for Indian religious sacred sites protections on public lands; opening these sacred spaces for destruction and desecration.

I argue that the United States must reform land management policies that have minimized Indigenous peoples' stewardship of their sacred locations and religious practices. The U.S. federal government must develop more collaborative considerations with enforcement power with American Indian Nations in order to protect sacred lands and religious freedoms. Additionally, future EIS procedures must include *significant* tribal consultation that accounts for mining projects' risks to their religious sites.

Legal strategies—Where are they now?

I started this study over 5 years now. I continue to see traditional Indian religious practices come into conflict with federal policies and actions. The United States, a nation that guarantees freedom of religion through the First Amendment, recent Supreme Court ruling that protects a school football coach praying on the field after games, yet the United States has done little to enforce cultural laws to protect Indian religions (Lopez, 2022).

The Constitution's mainstream classification of “religion” privileges the various Christian denominations while diminishing the distinction of tribal religious practices. While it is important to note that the First Amendment and various rulings are not

designed to *keep* Indian people from *their* religious practices either. Yet, as Vine Deloria (1997) states, at one time, the Justice Department suggested removing the word “religion” during several past considerations on legislation regarding protection for traditional Indian religions to avoid formally establishing tribal religions (1997, p. 14).

When a central value of Apache life—Oak Flat—is under the threat of destruction and desecration, the San Carlos Apache move into a defensive and resilient stance. They filed a lawsuit in March 2021. Their lawsuit, *Apache Stronghold, plaintiff, v. United States of America, et.al (Stronghold v. United States)* argues that the proposed mine would violate Apaches rights to access, use, and steward their ancestral territory of Oak Flat and interfere in the conduct their religious practices there (Welch, 2021; *Stronghold v. United States*, 519 F. Supp. 3d 591). It is troubling that the San Carlos and Apache Stronghold must remind the United States of its trust obligations to respect and ensure the security of Apache life. The objective of the Apache Stronghold lawsuit is to preserve Oak Flat’s sacred significance for their community and future generations.

The *Apache Stronghold* lawsuit argues that the federal government’s plans to transfer Oak Flat to Resolution Copper Mining company (RCM) for the expressed purpose of extracting natural resources, violates the Religious Freedom Restoration Act (1993) (RFRA) because it imposes a “substantial burden” on Apache religious exercise (2021b, p. 27). The plaintiff asserts that the federal government made no compelling interest in the “substantial burden” that would inhibit the San Carlos Apache's ability to act according to their religious practices (ibid). The compelling interest test, developed by the Supreme Court for protecting religious liberty under the First Amendment, is that the

government may not infringe upon a religious practice “unless it is necessary to protect a compelling government interest of the highest order” (Echo-Hawk, 2010, p. 278). Under the Free Exercise Clause, the federal government must satisfy “strict scrutiny, a standard (or formal) judicial review of government actions that proves that substantially burdening the San Carlos Apache religious freedom is by the least restrictive means and all alternative actions have been considered (McNally, 2020, p. 80). In this case, the plaintiffs state that the Forest Service failed to show reason to override the burden that the RCM project would place upon the San Carlos Apache religious practices and, therefore, would make San Carlos religious practices impossible.

Additionally, Apache Stronghold through the lawsuit is challenging the United States to respect its own commitments of “permanent prosperity” in the 1852 Treaty and respect Apache religious continuity (2021b p.28). The Supreme Court has held that members of a tribe, in this case, San Carlos Apache, may defend treaty protections against individual injury (ibid, p. 47). *Apache Stronghold* lawsuit notes the general trust relationship is judicially enforceable when combined with “a substantive source of law” as with their 1852 Treaty which establishes fiduciary duties to the Apache people (2021b, p. 48). US treaties with tribes create permanent obligations to compensate Indigenous peoples for intrusive land acquisitions over their territories. In his supportive article, “*United States Shall So Legislate and Act as to Secure the Permanent Prosperity and Happiness of Said Indians*”: *Policy Implications of the Apache Nations’s 1852 Treaty*,” John Welch (2021) points out that the 1852 Treaty provides “mandates and suggests co-management mechanisms to safeguard Apache Nation Treaty Territory and Apache rights to religious practice free from threats of sacred site destruction.” (2021, p. 1). He refers to

Article VI, clause 2 of the US Constitution that identified treaties (and other international contracts), as “the supreme Law of the Land” and reminds us that Indian treaties ratified by the United States between 1778 and 1871, approximately 375 in total, remain in effect (ibid). Apache Stronghold argues that Congress has never revoked that trust relationship, thus creating a responsibility to protect the traditional uses of ancestral sacred sites (2021b, p. 47-49).

In agreement with Apache Stronghold, the Arizona Mining Reform Coalition, et al. (AMRC) filed a preliminary injunction to prohibit the RCM project from continuing. In February 2021, AMRC filed their injunction, *Arizona Mining Reform Coalition, et., al v. United States Forest Service, et., al.* to stop the Forest Service approvals that would facilitate Rio Tinto and BHP’s proposed Resolution Copper Mine (Arizona Mining, 2021a).

AMRC argued that the Forest Service (FS) failed to comply with the National Environmental Policy Act (NEPA) and the National Defense Authorization Act (FY 2015) (NDAA). As a requirement for approving the Oak Flat land exchange, the NDAA, Section 3003, required the Forest Service to prepare a FEIS in compliance with NEPA before any land transaction as an expressed part of the NDAA (Levin, C., & Howard, 2014).

The NDAA states,

Prior to conveying Federal land under this section, the Secretary shall prepare a single environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting

the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities. §3003(c)(9).

AMRC contends that Congress failed to require that each federal agency involved in the mining project act in compliance with NEPA along with all applicable laws so the public may review and comment before approval of the mine project, including RCM's tailing storage facilities (Arizona Mining, 2021, p. 6-8). Their point is that the Forest Service cannot merely defer analysis of these critical appraisals and any mitigation efforts until sometime in the future. Moreover, the federal government must not only ensure collaboration but *enforce* that all meaningful environmental assessments to the public are fully available before decisions and/or actions are made. Roger Featherstone, director of the Arizona Mining Reform Coalition, commented on the faulty environmental review, “[w]e’re asking the court to halt the exchange and restore the process that should have been followed to protect Oak Flat and thousands of additional acres of precious land from Resolution Copper’s failed experiment” concerning the inappropriate forcefulness of the Trump Administration’s to push the FEIS before it was properly analyzed (2021b). The pressure to force the FEIS through deferred and postponed a thorough and complete analysis of the lands to be exchanged, the cumulative impacts, mitigation measures, and analysis of the mining project (2021a, p. 8). Without a complete analysis, the public input cannot meticulously assess the severe environmental and ecological effects related to the land exchange and the RCM mining project.

AMRC also included serious concerns over water depletion in the desert environment. The FEIS fails to provide any meaningful analysis or plan for mitigating the

pumping of vast amounts of water associated with the mine (Arizona Mining, 2021a, p. 13). They point out that the mine would dewater groundwater and deplete surface waters and destroy the Oak Flat area with the anticipated two-mile-wide and 1,000-foot-deep crater that would have devastating effects on the surrounding environment and the people who live in the area (2021a, p. 1). AMRC points out that the FEIS failed to adequately consider and disclose the adverse effects of the substantial amount of water required for the mine. RCM's mine would deplete 677,000 acre-feet (approximately 325,851 gallons per acre-foot) of water from Arizona's limited water sources to support the mine (2021a, p. 13). The Forest Service relies on future Arizona state water permitting processes to ascertain critical water issues (ibid). However, US Secretary of the Interior, Deb Haaland, warns of the substantial cut to Arizona's water supply from the Colorado River to be about 30% of its normal supply (Central Arizona, 2022b).¹⁰

In their case, AMRC also expresses concerns about the irreversible harm to public interests and uses in the Oak Flat area. Besides the Apache people, many groups and individuals have recognized Oak Flat for its beauty and significance for outdoor enthusiasts and its recreational activities. Serious rock climbers and bird watching enthusiasts value the biological diversity of key birding areas and the many rock formations (Arizona Mining, 2021a, p. 3-5). The Oak Flat area provides an important variety of wildlife habitats for federal listed endangered and threatened species, such as the southwestern willow flycatcher, yellow billed-cuckoo, Gila chub, and Arizona

¹⁰ For a more in-depth analysis of water depletion and contamination refer to *The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation. Congressional Hearing (2020)*.

hedgehog cactus, and ocelot (ibid).¹¹ AMRC maintains that the land exchange would immediately privatize Oak Flat and remove federal law protections and Forest Service oversight for the sacred land and public resources at the site (ibid).

In support of the land and the Apaches, AMCR has recognized and supported the historical and religious significance and sacredness of Oak Flat to the San Carlos Apache and relative tribes. The shady land exchange of the Oak Flat area itself would result in immediate, irreparable harm to the public and San Carlos Apache as soon as the land exchange deal is executed. Oak Flat would automatically lose a majority of its environmental and cultural protections, as well as public involvement, comment reviews, and tribal consultation requirements.

Together, Apache Stronghold and AMRC have fully supported H.R. 1884, the Save Oak Flat Act (SOFA). In March 2021, Rep. Raul Grijalva (D-Ariz.), along with Sen. Bernie Sanders (I-Vt.) introduced SOFA to permanently protect the Oak Flat area from RCM destructive mining proposals (Paliewicz, 2022, p. 12). Both lawmakers concurred that the RCM project would destroy Oak Flat, cause massive water depletion in the area, and negatively impact endangered species (ibid). Their concern focused on the expedited FEIS and the draft Record of Decision (ROD which held numerous federal law violations applicable to NEPA and NHPA; all without proper public review and participation (“Bill introduced,” 2021). Sen. Sanders stated,

Too many times our Native American brothers and sisters have seen the profits of huge corporations put ahead of their sovereign rights. It is wrong that a backroom deal in Washington could lead to the destruction of a sacred area that is so

¹¹ Refer to the FEIS report in describing significant and irreversible harm to wildlife from the RCM project (pgs. 573-600).

important to so many. We must defend the hundreds of thousands of Americans who are standing in opposition to this giveaway of our natural resources to foreign corporations (ibid).

If approved, SOFA would overturn the approval of the controversial land exchange.

Randi Spivak, public lands program director at the Center for Biological Diversity, agrees, “[t]his bill will correct a reckless, callous mistake and ensure Oak Flat is safeguarded for future generations.

The *Apache Stronghold* lawsuit argues that the federal government’s plans to transfer Oak Flat to Resolution Copper Mining company (RCM) for the expressed purpose of extracting natural resources, violates the Religious Freedom Restoration Act (1993) (RFRA) because it imposes a “substantial burden” on Apache religious exercise (2021b, p. 27). The plaintiff asserts that the federal government made no compelling interest in the “substantial burden” that would inhibit the San Carlos Apache's ability to act according to their religious practices (ibid). The compelling interest test, developed by the Supreme Court for protecting religious liberty under the First Amendment, is that the government may not infringe upon a religious practice “unless it is necessary to protect a compelling government interest of the highest order” (Echo-Hawk, 2010, p. 278). Under the Free Exercise Clause, the federal government must satisfy “strict scrutiny, a standard (or formal) judicial review of government actions that proves that substantially burdening the San Carlos Apache religious freedom is by the least restrictive means and all alternative actions have been considered (McNally, 2020, p. 80). In this case, the plaintiffs state that the Forest Service failed to show reason to override the burden that the RCM project would place upon the San Carlos Apache religious practices and, therefore, would make San Carlos religious practices impossible.

Additionally, Apache Stronghold through the lawsuit is challenging the United States to respect its own commitments of “permanent prosperity” in the 1852 Treaty and respect Apache religious continuity (2021b p.28). The Supreme Court has held that members of a tribe, in this case, San Carlos Apache, may defend treaty protections against individual injury (ibid, p. 47). *Apache Stronghold* lawsuit notes the general trust relationship is judicially enforceable when combined with “a substantive source of law” as with their 1852 Treaty which establishes fiduciary duties to the Apache people (2021b, p. 48). US treaties with tribes create permanent obligations to compensate Indigenous peoples for intrusive land acquisitions over their territories. In his supportive article, “*United States Shall So Legislate and Act as to Secure the Permanent Prosperity and Happiness of Said Indians*”: *Policy Implications of the Apache Nations’s 1852 Treaty*,” John Welch (2021) points out that the 1852 Treaty provides “mandates and suggests co-management mechanisms to safeguard Apache Nation Treaty Territory and Apache rights to religious practice free from threats of sacred site destruction.” (2021, p. 1). He refers to Article VI, clause 2 of the US Constitution that identified treaties (and other international contracts), as “the supreme Law of the Land” and reminds us that Indian treaties ratified by the United States between 1778 and 1871, approximately 375 in total, remain in effect (ibid). Apache Stronghold argues that Congress has never revoked that trust relationship, thus creating a responsibility to protect the traditional uses of ancestral sacred sites (2021b, p. 47-49).

In agreement with Apache Stronghold, the Arizona Mining Reform Coalition, et al. (AMRC) filed a preliminary injunction to prohibit the RCM project from continuing. In February 2021, AMRC filed their injunction, *Arizona Mining Reform Coalition, et., al*

v. United States Forest Service, et., al. to stop the Forest Service approvals that would facilitate Rio Tinto and BHP's proposed Resolution Copper Mine (Arizona Mining, 2021a).

AMRC argued that the Forest Service (FS) failed to comply with the National Environmental Policy Act (NEPA) and the National Defense Authorization Act (FY 2015) (NDAA). As a requirement for approving the Oak Flat land exchange, the NDAA, Section 3003, required the Forest Service to prepare a FEIS in compliance with NEPA before any land transaction as an expressed part of the NDAA (Levin, C., & Howard, 2014).

The NDAA states,

Prior to conveying Federal land under this section, the Secretary shall prepare a single environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities. §3003(c)(9).

AMRC contends that Congress failed to require that each federal agency involved in the mining project act in compliance with NEPA along with all applicable laws so the public may review and comment before approval of the mine project, including RCM's tailing storage facilities (Arizona Mining, 2021, p. 6-8). Their point is that the Forest Service cannot merely defer analysis of these critical appraisals and any mitigation efforts until sometime in the future. Moreover, the federal government must not only ensure collaboration but *enforce* that all meaningful environmental assessments to the public are

fully available before decisions and/or actions are made. Roger Featherstone, director of the Arizona Mining Reform Coalition, commented on the faulty environmental review, “[w]e’re asking the court to halt the exchange and restore the process that should have been followed to protect Oak Flat and thousands of additional acres of precious land from Resolution Copper’s failed experiment” concerning the inappropriate forcefulness of the Trump Administration’s to push the FEIS before it was properly analyzed (2021b). The pressure to force the FEIS through deferred and postponed a thorough and complete analysis of the lands to be exchanged, the cumulative impacts, mitigation measures, and analysis of the mining project (2021a, p. 8). Without a complete analysis, the public input cannot meticulously assess the severe environmental and ecological effects related to the land exchange and the RCM mining project.

AMRC also included serious concerns over water depletion in the desert environment. The FEIS fails to provide any meaningful analysis or plan for mitigating the pumping of vast amounts of water associated with the mine (Arizona Mining, 2021a, p. 13). They point out that the mine would dewater groundwater and deplete surface waters and destroy the Oak Flat area with the anticipated two-mile-wide and 1,000 foot deep crater that would have devastating effects on the surrounding environment and the people who live in the area (2021a, p. 1). AMRC points out that the FEIS failed to adequately consider and disclose the adverse effects of the substantial amount of water required for the mine. RCM’s mine would deplete 677,000 acre-feet (approximately 325,851 gallons per acre-foot) of water from Arizona’s limited water sources to support the mine (2021a, p. 13). The Forest Service relies on future Arizona state water permitting processes to ascertain critical water issues (*ibid*).

In their case, AMRC also expresses concerns about the irreversible harm to public interests and uses in the Oak Flat area. Besides the Apache people, many groups and individuals have recognized Oak Flat for its beauty and significance for outdoor enthusiasts and its recreational activities. Serious rock climbers and bird watching enthusiasts value the biological diversity of key birding areas and the many rock formations (Arizona Mining, 2021a, p. 3-5). The Oak Flat area provides an important variety of wildlife habitats for federal listed endangered and threatened species, such as the southwestern willow flycatcher, yellow billed-cuckoo, Gila chub, Arizona hedgehog cactus, and ocelot (ibid).¹² AMRC maintains that the land exchange would immediately privatize Oak Flat and remove federal law protections and Forest Service oversight for the sacred land and public resources at the site (ibid).

In support of the land and the Apaches, AMCR has recognized and supported the historical and religious significance and sacredness of Oak Flat to the San Carlos Apache and relative tribes. The shady land exchange of the Oak Flat area itself would result in immediate, irreparable harm to the public and San Carlos Apache as soon as the land exchange deal is executed. Oak Flat would automatically lose a majority of its environmental and cultural protections, as well as public involvement, comment reviews, and tribal consultation requirements.

Together, Apache Stronghold and AMRC have fully supported H.R. 1884, the Save Oak Flat Act (SOFA). In March 2021, Rep. Raul Grijalva (D-Ariz.), along with Sen. Bernie Sanders (I-Vt.) introduced SOFA to permanently protect the Oak Flat area

¹² Refer to the FEIS report in describing significant and irreversible harm to wildlife from the RCM project (pgs. 573-600).

from RCM destructive mining proposals (Paliewicz, 2022, p. 12). Both lawmakers concurred that the RCM project would destroy Oak Flat, cause massive water depletion in the area, and negatively impact endangered species (ibid). Their concern focused on the expedited FEIS and the draft Record of Decision (ROD which held numerous federal law violations applicable to NEPA and NHPA; all without proper public review and participation (“Bill introduced,” 2021). Sen. Sanders stated,

Too many times our Native American brothers and sisters have seen the profits of huge corporations put ahead of their sovereign rights. It is wrong that a backroom deal in Washington could lead to the destruction of a sacred area that is so important to so many. We must defend the hundreds of thousands of Americans who are standing in opposition to this giveaway of our natural resources to foreign corporations (ibid).

If approved, SOFA would overturn the approval of the controversial land exchange. Randi Spivak, public lands program director at the Center for Biological Diversity, agrees, “[t]his bill will correct a reckless, callous mistake and ensure Oak Flat is safeguarded for future generations. We can’t allow the mining industry to continue destroying sacred sites, plundering irreplaceable natural and cultural resources, and sucking up precious water supplies. Congress needs to pass this bill and protect Oak Flat” (“Congress must,” 2021).

The transition of the outgoing and newly elected president and the first few months of 2021, showed to be an active time for Oak Flat. In the last few months of the Trump administration, the Forest Service moved to push the FEIS and the ROD to complete the land exchange. They issued the FEIS and the ROD in January 2021, just five days before Biden took office (“Bill introduced,” 2021). However, in March 2021,

the Biden administration withdrew the FEIS for further analysis on the irreparable damage the copper mine would inflict on Oak Flat (ibid). Furthermore, in February 2021, the Advisory Council on Historic Preservation (ACHP), an independent federal agency, said it would no longer support the FS plans for the mine because “the statute [Section 106] requires specific actions be taken, the parties to the Section 106 review were not able to consider an alternative that would avoid all adverse effects to historic properties,” and the ACHP recommends “that the United States Department of Agriculture work with the Biden administration and Congress to take immediate steps to amend or repeal the legislation...” (“Background,” 2021).

Key objections listed by Curt Shannon, policy analyst for the Access Fund, a non-profit advocacy organization, included the FEIS being insufficient in the following areas. In summary, the FEIS did not adequately address the environmental impacts of the massive water depletion needed for the RCM project. So far, no comprehensive assessment has been made of the impacts on local groundwater (2021). Additionally, the FEIS had no environmental assessment of the project’s multiple transmission line corridors or pipeline corridors across public land (ibid). Questionably, the US Forest Service relied on Resolution Copper’s own hydrological study of the Oak Flat area instead of doing a proper independent study (ibid).

Considerations on changes within the FEID when compared to the DEIS include permanent protection for Apache Leap, known as *Dibecho Nadil*, “to preserve the natural character of Apache Leap; to allow for traditional uses of the area by Native American people; and to protect and conserve the cultural and archeological resources of the area”

(Shannon, 2021, p. 67). However, Apache Leap is less than a quarter-mile away from the upper-end subsidence diameter, and there is no assurance that Apache Leap will be secure and protected (Arizona Mining, 2021a, p. 70-71). Other changes mentioned in the FEIS are the ongoing access to Oak Flat as long as it is safe and a conservative program for emery Oak Trees in the mining area (US Dept. of Agriculture, 2021). Nowhere near where other considerations should be considered, as previously mentioned. And unfortunately, on May 12, 2022, U.S Congresswoman Debbie Lesko (AZ-08) introduced a bill to have the Agriculture Secretary reissue the FEIS to authorize the land exchange and start the RCM mining project (Harris, 2022)

Apache Stronghold and their supporters have shown a robust global Indigenous resistance to a natural resource companies' destructive practices and lack of transparency towards the San Carlos Apache and other Indigenous cultures and religious sites. One thing is clear, consultation with tribes and consideration with those tribes of *any* adverse effects on *any* historical or culturally significant locations must be enforced by Congress. Importantly, the 1852 Treaty remains unchanged, and the US government must honor its commitments to the San Carlos Apache people. Federal agencies, including land management agencies, must approach their trust responsibilities to tribes in a way that affects federal Indian policy to protect tribal interests and ensures tribes' political and cultural well-being and survival.

At the time of completion of this thesis, the Oak Flat controversy has yet to be resolved. To follow the ongoing fight or to support Apache Stronghold, see <http://apache-stronghold.com/>

REFERENCES

- Alfred, Taiaiake. (2009) *Peace, Power, Righteousness: An Indigenous Manifesto*. Ontario. Oxford University Press.
- Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against Contemporary Colonialism. *Government and Opposition* (London), 40(4), 597–614. Retrieved from <https://doi.org/10.1111/j.1477-7053.2005.00166.x>.
- Anaya, S. J. (2009). *International Human Rights and Indigenous Peoples: 2010*. Wolters Kluwer Law & Business.
- Anderson, Gary Clayton. (2014) *Ethnic cleansing and the Indian: the crime that should haunt America*. University of Oklahoma Press.
- Andre, N., & Rock, K. (2013, March 20). NEWS RELEASE: \$900 million lawsuit filed against Rio Tinto's IOC. Republic of Mining. Retrieved from <https://republicofmining.com/2013/03/20/news-release-900-million-lawsuit-filed-against-rio-tintos-ioc/>.
- Annual Report of the Commissioner of Indian Affairs (1871). Retrieved from <http://digital.library.wisc.edu/1711.dl/History.AnnRep71>.
- Anonymous. (2015). OAK FLAT and the Apache Stronghold. *Earth First!*, 35(4), 17–18.
- Apache-Stronghold. (2016) *Home Page*. Retrieved from <http://apache-stronghold.com/>.
- Apache Stronghold. (2019, October). Comments on the Resolution Copper Project and Land Exchange Draft Environmental Impact Statement. Retrieved from http://users.neo.registeredsite.com/8/3/2/11897238/assets/Apache_Stronghold_-_Resolution_EIS_Comments-Section_1-4a_-_VOLUME_I-REDUCED.pdf.
- Apache Stronghold. (2021a, March 8). Apache Stronghold makes U.S. government retreat causing 9th Circuit denial of emergency injunction. *Indian Country Today*. Retrieved from <https://indiancountrytoday.com/the-press-pool/apache-stronghold-makes-u-s-government-retreat-causing-9th-circuit-denial-of-emergency-injunction>.
- Apache Stronghold vs. United States of America et al. (2021b, March 18). Retrieved from <https://dockets.justia.com/docket/arizona/azdce/2:2021cv00050/1258104>.
- “ARIZONA AND SONORA-NO. VII. (1859, January 26). The Apaches--Military Garrisons and Indian Agencies--Petition from Citizens of Arizona--Mistaken Action of the Government--The Military Becoming Interested in Mines.” *The New York Times*. <https://timesmachine.nytimes.com/timesmachine/1859/01/26/78883822.pdf>. Accessed 6 Feb. 2018.

- Arizona Memory Project. (26 March 2018.) Adjutants General of Arizona: Colonel Samuel Hughes. *Arizona Military Museum*. Retrieved from <http://azmemory.azlibrary.gov/cdm/ref/collection/ammgen/id/62>. Accessed on
- Arizona Mining Reform Coalition, et al. (7 November 2019). *Comments for Resolution Copper DEIS*. Retrieved from <http://azminingreform.org/wp-content/uploads/2019/11/AMRC-DEIS-comments-11-7-19-FINAL-sans-appendices.pdf>.
- Arizona Mining Reform Coalition, et al., vs. United States Forest Service. (2021a, February 19). Retrieved from <http://azminingreform.org/wp-content/uploads/2021/02/Plaintiffs-Motion-for-Preliminary-Injunction-Oral-Argument-Requested-2-19-21.pdf>.
- Arizona Mining Reform Coalition. (2021b, February 19). *Injunction sought to block oak flat land trade for massive Arizona copper mine*. Retrieved from <https://azminingreform.org/injunction-sought-to-block-oak-flat-land-trade-for-massive-arizona-copper-mine/>.
- Arizona Mining Reform Coalition. (2021c, March 1). Huge news! US Forest Service rescinds Resolution Copper Final Impact Statement. Retrieved from <https://azminingreform.org/huge-news-us-forest-service-rescinds-resolution-copper-final-impact-statement/>.
- Auber, Tamar. (2018, June 23). Trump Says He Apologized Over ‘Pocahontas’ Slur... to Pocahontas.” *Mediaite.com*. Retrieved from <https://www.mediaite.com/tv/trump-says-he-apologized-over-pocahontas-slur-to-pocahontas/>.
- Australia: BHP Billiton fined \$25 million for corruption. (2015, May 21). *Corruption.net*. Retrieved from <https://corruption.net/australia-bhp-billiton-fined-25-million-for-corruption/>.
- Background on Resolution Copper Project and Southeast Arizona Land Exchange, Tonto National Forest | Advisory Council on Historic Preservation. (2021, March 28). Advisory Council on Historic Preservation. Retrieved from <https://www.achp.gov/news/background-resolution-copper-project-and-southeast-arizona-land-exchange-tonto-national-forest>.
- Balch, Oliver. (2013, June 25). Cerrejon mine in Colombia: can it address its human rights risks? *The Guardian*. Retrieved from <http://www.theguardian.com/sustainable-business/cerrejon-mine-colombia-human-rights>.
- Barker, J. (Ed.). (2005). *Sovereignty matters: Locations of contestation and possibility in indigenous struggles for self-determination*. University of Nebraska Press.

- Barrett, Jay A. (1891). *Evolution of the ordinance of 1787*. Retrieved from <http://www.archive.org/details/evolutionordnance00barrich/page66/mode/2up/se-arch/indians>.
- Basso, Keith H. (1986) *The Cibecue Apache*. Waveland Press.
- Basso, Keith H. (1992) *Western Apache language and culture: Essays in linguistic anthropology*. University of Arizona Press.
- Basso, Keith H. (1996) *Wisdom Sits in Places: Landscape and Language among the Western Apache*. University of New Mexico Press.
- Bears Ears Inter-Tribal Coalition. (2018, February 9) *Website*. Retrieved from <https://bearscoalition.org/ancestral-and-modern-day-land-users/>.
- Bearscoalition.org. (2017, Dec. 4). *Bears Ears Commission of Tribes Condemns President Trump's Unilateral Action to Revoke Bears Ears National Monument*. Retrieved from <http://www.bearscoalition.org/bears-ears-commission-of-tribes-condemns-president-trumps-unilateral-action-to-revoke-bears-ears-national-monument/>.
- Bender, Albert. (2017 Nov. 11). Rogue Judge Pushes on with Destruction of the Standing Rock Sioux." *Peoples World*. Retrieved from <http://www.peoplesworld.org/article/rogue-judge-pushes-on-with-destruction-of-the-standing-rock-sioux/>. Accessed 16 Nov. 2017.
- Bender, Averam B. (1963) *A Study of Western Apache Indians 1846-1886*. St. Louis. Prepared for the U.S. Department of Justice.
- BHP Billiton's IndoMet Project: Digging Deep into the Heart of Borneo. (2014, October 1). *Global Justice Now*. Retrieved from <https://www.globaljustice.org.uk/resource/bhp-billitons-indomet-project-digging-deep-heart-borneo/>.
- BHP Website (2020). Retrieved from <https://www.bhp.com/our-approach/our-company/>.
- Bill introduced to protect sacred Apache site from development. (2021, March 17). *Indianz.com*. Retrieved from <https://www.indianz.com/News/2021/03/15/bill-introduced-to-protect-sacred-apache-site-from-development/>.
- Biron, Carey L. (15 Dec. 2014). Congress Approves Secret Giveaway of Sacred Apache Land to Foreign Mining Company. *Mint Press News*. <https://www.mintpressnews.com/congress-approves-secret-giveaway-sacred-apache-land-foreign-mining-compan/199871/>.
- Bosworth, N. (2016). RE: Scoping Comments for the Resolution Copper Mine DEIS. Retrieved from <http://azminingreform.org/sites/default/file/docs/scoping%20comments%20FINAL%20with%20attachments.pdf>.

- Bosworth, Neil. (2019 August). *Resolution Copper Project and Land Exchange: Draft Environmental Impact Statement*. USDA Forest Service. Retrieved from <https://www.resolutionmineeis.us/sites/default/files/deis/resolution-deis-executive-summary.pdf>.
- Bowers, A., & Carpenter, K. A. (2011). Challenging the Narrative of Conquest: The Story of Lyng v. Northwest Indian Cemetery Protective Association.
- Bowman, Estelle. (2018). *Tribal Members Trained and Hired to Hunt for Resources of Cultural Value*. Office of Tribal Relations. Retrieved from U.S. Forest Service website: <https://www.fs.fed.us/features/tribal-members-trained-and-hired-hunt-resources-cultural-value>
- Brave NoiseCat, Julian. (2015 Sept. 28). John McCain fought for Native Religious Freedom, then sold sacred Oak Flat. But who has the power to define what is sacred? *The Huffington Post*. Retrieved from https://www.huffingtonpost.com/entry/john-mccain-fought-for-native-religious-freedom-then-he-sold-sacred-oak-flat_us_5605990ce4b0768126fd7b70.
- Bregman, J. I. (1999). *Environmental impact statements*. CRC Press.
- Buhl, Larry. (2016 Sept. 7). Sacred burial grounds destroyed, Judge halts construction of portion of Dakota Access Pipeline. *EcoWatch*. Retrieved from <https://www.ecowatch.com/sacred-burial-grounds-dakota-access-pipeline-1998932006.html#toggle-gdpr>.
- Cagle, Alison, (2019, November 15). Tribes Halt Major Copper Mine on Ancestral Lands in Arizona. *EarthJustice.org*. Retrieved from <https://earthjustice.org/blog/2019-november/rosemont-mine-arizona-tribes-Tohono-Oodham>.
- Calloway, C. G. (2018). *The Indian World of George Washington: The First President, the First Americans, and the Birth of the Nation*. Oxford University Press.
- Caron, Christina. (2019, January 14). Trump's use of Wounded Knee to mock Elizabeth Warren angers Native Americans. *The New York Times*. Retrieved from <https://www.nytimes.com/2019/01/14/us/politics/wounded-knee-trump-warren.html>.
- Carpenter, K. A. (2004). A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Nonowners. *UCLA L. Rev.*, 52, 1061.
- Carpenter, K. A. (2012). Individual Religious Freedoms in American Indian Tribal Constitutional Law. *The Indian Civil Rights Act at Forty (American Indian Studies Center Publications)*.
- Carpenter, K. A. (2012). Limiting Principles and Empowering Practices in American Indian Religious Freedoms. *Conn. L. Rev.*, 45, 387.

- Cassa, Jeanette Clark. (2002 February 8). San Carlos Apache Elders Cultural Advisory Council. *Honoring Nations symposium*. Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University. Sante Fe, New Mexico. Presentation.
- Central Arizona Project. (2022a). *Water*. Retrieved from <https://www.cap-az.com/water/#:~:text=Central%20Arizona%20Project%20%28CAP%29%20reliably%20delivers%20Colorado%20River,80%25%20of%20the%20state%E2%80%99s%20population%2C%20including%20irrigated%20farmland.>
- Central Arizona Project. (2022b). *Tier 1 Shortage: Shortage Impacts*. Retrieved from <https://www.cap-az.com/water/cap-system/planning-and-processes/shortage-impacts/>.
- Chair Grijalva introduces "Save oak flat act" to permanently protect tribal sacred site in central Arizona from destructive mining. (2021, March 15). Retrieved from <https://grijalva.house.gov/chair-grijalva-introduces-save-oak-flat-act-permanently-protect-tribal-sacred-site/>.
- Chau, David and Janda, Michael. (2020, September 11). Rio Tinto boss Jean-Sebastien Jacques quits over Juukan Gorge blast. *ABC news*. Retrieved from <https://www.abc.net.au/news/2020-09-11/rio-tinto-boss-jean-sebastien-jacques-quits-over-juukan-blast/12653950>.
- Coffey, W., & Tsosie, R. (2001). Rethinking the tribal sovereignty doctrine: Cultural sovereignty and the collective future of Indian nations. *Stan. L. & Pol'y Rev.*, 12, 191.
- Cohen, Felix S., and United States. Department of the Interior. (1940). Office of the Solicitor. *Handbook of Federal Indian Law*. Temp. ed., United States Department of the Interior, Office of the Solicitor.
- Colwell-Chanthaphonh, C., & Ferguson, T. (2004). Virtue Ethics and the Practice of History: Native Americans and Archaeologists along the San Pedro Valley of Arizona. *Journal of Social Archaeology*, 4(1), 5-27.
- Colwell-Chanthaphonh, C. (2003). Western Apache oral histories and traditions of the Camp Grant massacre. *American Indian Quarterly*, 27(3/4), 639-666. JSTOR www.jstor.org/stable/4138967.
- Cook-Lynn, Elizabeth. ((2012). *A separate country: postcoloniality and american indian nations*. Lubbock, TX: Texas Tech University Press.
- Clinton, R. N. (1993). Redressing the legacy of conquest: vision quest for decolonized federal Indian law. *Arkansas Law Review*, 46(1), 77-160.
- Clinton, R. N. (1995). The dormant indian commerce clause. *Connecticut Law Review*, 27(4), 1055-1250.

- Clinton, W. J. (2000). Executive Order 13175--Consultation and Coordination with Indian Tribal Governments. *Weekly Compilation of Presidential Documents*, 36(45), 2806-2809. Retrieved from <https://web-a-ebshost-com.ezproxy1.lib.asu.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=0244a014-badf-4172-b034-7612ceff23f9%40sessionmgr4008>.
- Clum, Woodworth. (1936). *Apache Agent*. New York. The Riverside Press Cambridge.
- Convention on the Prevention and Punishment of the Crime of Genocide. https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf.
- Cossavella, Bri. (2016 Dec. 26). San Carlos Apache Tribe, Environmentalists Battle Oak Flat Copper Mine Bid. *Indian Country Today*. <https://indiancountrymedianetwork.com/news/environment/san-carlos-apache-tribe-environmentalists-battle-oak-flat-copper-mine-bid/>. Accessed on 21 Feb. 2018.
- Council on Environmental Quality (CEQ) and Advisory Council on Historic Preservation (ACHP). (2013). *NEPA and NHPA: a handbook for integrating NEPA and section 106*. Retrieved from https://ceq.doe.gov/docs/ceqpublications/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf#xml=https://ceq.doe.gov/dtSearch/dtisapi6.dll?cmd=getpdfhits&u=41e5ec&DocId=20&Index=%2a%7baa6ef58232bb83cd704a3f43820d33a0%7d%20CEQ&HitCount=14&hits=dd1+dd2+18ed+18ee+1919+191a+1d0b+1d0c+2490+2491+2b21+2b22+2c67+2c68+&SearchForm=%2fCEQSearch%5fform%2ehtml&.pdf.
- Council on Environmental Quality. (2005) Regulations for implementing the procedural provisions of the national environmental policy act. Retrieved from <https://www.energy.gov/sites/default/files/NEPA-40CFR1500-1508.pdf>.
- Cragun, Boone. (2005) A Snowbowl Deja vu: The battle between Native American tribes and the Arizona Snowbowl continues. *American Indian Law Review* 30(1), 165-183.
- Davis, Toni. (2020, February 14). 'Shocking,' 'blockbuster' Rosemont Mine ruling has national implications, experts say. *tucson.com*. Retrieved from https://tucson.com/news/local/shocking-blockbuster-rosemont-mine-ruling-has-national-implications-experts-say/article_55dd98cc-128b-5105-9590-186f8c2c1e8f.html.
- Davidson, Osha Gray. (2016, February 2). How a huge Arizona mining deal was passed — and could be revoked. *High Country News*. Retrieved from: https://www.hcn.org/issues/48.2/how-a-huge-arizona-mining-deal-was-passed/print_view

- Deloria, V. (1969). *Custer died for your sins: An Indian manifesto*. University of Oklahoma Press.
- Deloria, Vine Jr. (1992) *God is Red: A Native View of Religion*. Colorado: North American Press, Second Edition. *Kindle* ebook file.
- Deloria, Vine Jr. (1975) Researching American Indian Treaties: Northwest and Southwest. *Am. Indian J.* 1, 14.
- Deloria, Vine Jr. & Lytle, Clifford M. (1983). *American Indians, American Justice*. Austin, TX: University of Texas Press.
- Dongoske, Kurt E., Theresa Pasqual, and Thomas F. King. (2015) Environmental Reviews and Case Studies: The National Environmental Policy Act (NEPA) and the Silencing of Native American Worldviews. *Environmental Practice* 17(1), 36-45.
- Echo-Hawk, Walter R. (2012). *In the Courts of the Conqueror: The ten worst Indian law cases ever decided*. Golden, CO: Fulcrum Publishing.
- Echo-Hawk, W. R. (2013). *In the light of justice: The rise of human rights in Native America and the UN Declaration on the Rights of Indigenous Peoples*. Golden, CO: Fulcrum Publishing.
- Echo-Hawk, W., Foster, L., & Parker, A. (2004). *Issues in the Implementation of the American Indian Religious Freedom Act: Panel Discussion*. *Wicazo Sa Review*, 19(2), 153-167.
- Edwards, Sophie. (2017, August 9). How a group of Mongolian herders took on a mining giant-and won. *devex*. Retrieved from <https://www.devex.com/news/how-a-group-of-mongolian-herders-took-on-a-mining-giant-and-won-90765>.
- Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) Web. <https://caselaw.findlaw.com/us-supreme-court/494/872.html>. Accessed on 25 Sept. 2018.
- EPA. (2022). Retrieved from <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404#:~:text=Section%20404%20of%20the%20Clean%20Water%20Act%20%28CWA%29,%28such%20as%20highways%20and%20airports%29%20and%20mining%20projects>.
- Ernst, Aaron. (2020, May 27). Alaska's controversial Pebble Mine was dead. Not anymore. *Frontline*. Retrieved from <https://www.pbs.org/wgbh/frontline/article/alaska-pebble-mine-bristol-bay/>.
- Falk, Donald. (1989) Lyng v. Northwest Indian Cemetery Protective Association: Bulldozing First Amendment Protection of Indian Sacred Lands. *Ecology LQ* 16, 515.

- Featherstone, Roger. (2008, July 9). Testimony before the Public Lands and Forests Subcommittee of the Senate Energy and Natural Resources Committee Hearing on S. 3157 “Southeast Arizona Land Exchange and Conservation Act of 2008.” Retrieved from <https://www.energy.senate.gov/services/files/0D9B3E06-B7EA-F0AE-7C13-4065E2D1175C>.
- Ferguson, T. J., & Colwell-Chanthaphonh, Chip. (2006). *History is in the Land: Multivocal tribal traditions in Arizona's San Pedro Valley*. Tucson: University of Arizona Press.
- Finch, Daisy. (2019, January 8). Native American hopes to protect ancestral sites from multibillion dollar copper mine. *Cronkite News*. Retrieved from <https://www.nhnews.com/news/2019/jan/08/native-american-hope-protect-ancestral-sites-multi/>.
- Fixico, Donald. (n/d). *Termination and restoration in Oregon. (essay)*. Updated 6 Feb. 2020. Retrieved from The Oregon Encyclopedia website: https://oregonencyclopedia.org/articles/termination_and_restoration/#.VJuCuv-oDA.
- Fixico, D. (2011). *Invasion of Indian country in the twentieth century: American capitalism & tribal natural resources (2nd ed.)*. Boulder, Colo: University Press of Colorado.
- Fountain, Henry & Plumber, Brad. (2020, August 17). Trump Administration finalizes plan to open Arctic refuge to drilling. *The New York Times*. Retrieved from <https://www.nytimes.com/2020/08/17/climate/alaska-oil-drilling-anwr.html>.
- Francis, Kirk. (18 June 2018) Disrespect and Disregard Towards Indian Country Continues Today.” *Indians.com*. <https://www.indianz.com/News/2018/07/03/kirk-francis-disrespect-and-disregard-to.asp>. Accessed 23 July 2018.
- Gauger, Laura. (n.d.). Kennecott/Rio Tinto’s Lies. [Flambeau Mine Exposed – I] Retrieved from <https://flambeaumineexposed.wordpress.com/kennecotts-lie/>.
- Getches, David H., et al. (2017) *Cases and Materials on Federal Indian Law*. Seventh Edition. West Academic Publishing.
- Glauner, Lindsay. (2014). The Need for Accountability and Reparations: 1830-1976 the United States Government's Role in the Promotion, Implementation, and Execution of the Crime of Genocide against Native Americans. *DePaul Law Review* 51(3), 911.
- Glenn, E. N. (2015). Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation. *Sociology of Race and Ethnicity*, 1(1), 52–72. <https://doi.org/10.1177/2332649214560440>.

- Goodwin, Grenville. (1942). *The Social Organization of the Western Apache*. Chicago. The University of Chicago Press.
- Gordon, Sarah B. (1985) Indian Religious Freedom and Governmental Development of Public Lands. *The Yale Law Journal* 94(6), 1447-1471.
- Government Publishing Office. (August 11, 1978). *American Indian Religious Freedom*. Public Law 95-341, 95th Congress. <https://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg469.pdf>. Accessed September 18, 2018.
- Gulliford, Andrew. (2000) *Sacred Objects and Sacred Places: Preserving Tribal Traditions*. University Press of Colorado.
- Harjo, S.S. (2004). The American Indian Religious Freedom Act -- Looking Back and Looking Forward. *Wicazo Sa Review* 19(2), 143-151. doi:10.1353/wic.2004.0020.
- Harris, Rachel. (2022, May 12). Lesko introduces legislation to greenlight Resolution Copper Mine. U.S. Congresswoman Debbie Lesko. Retrieved from <https://lesko.house.gov/news/documentsingle.aspx?DocumentID=2711>.
- Haynal, P. (2000). Termination and Tribal Survival: The Klamath Tribes of Oregon. *Oregon Historical Quarterly*, 101(3), 270-301. Retrieved from www.jstor.org/stable/20615068
- Haury, E. W., Sayles, E. B., & Wasley, W. W. (1959). The Lehner mammoth site, southeastern Arizona. *American Antiquity*, 25(1), 2-30.
- Helfrich, Joel. T. (2014). Cultural survival in Action: Ola Cassadore Davis and the struggle for dził nchaá si'an (Mount Graham). *Native American and Indigenous Studies*, 1(2), 151-175. Retrieved from <http://www.jstor.org/stable/10.5749/natiindistudj.1.2.0151>.
- Henson, Eric C. (et al). (2008). The state of the native nations: conditions under U.S. policies of self-determination. Harvard Project on American Indian Economic Development. New York: Oxford University Press.
- Herr, SA. (2013). In Search of Lost Landscapes: The Pre-Reservation Western Apache Archaeology of Central Arizona. *American Antiquity*, 78(4), 679.
- Hickman, Andrew. (2020, February). Cut and Run: How Britain's top two mining companies have wrecked ecosystems without being held to account-Destroying Borneo's rainforest. *London Mining Network*. Retrieved from <https://londonminingnetwork.org/wp-content/uploads/2020/02/EMBARGOED-Cut-and-run.-How-Britains-top-two-mining-companies-have-wrecked-ecosystems.pdf>.
- Hill, Roger. "The Apache Way: The March to Oak Flat." Popular Resistance.org. 5 Mar. 2015. <https://popularresistance.org/the-apache-way-the-march-to-oak-flat/>. Accessed 14 April, 2016.

- Hiller, C., & Carlson, E. (2018). These are Indigenous lands: Foregrounding Settler Colonialism and Indigenous Sovereignty as Primary Contexts for Canadian Environmental Social Work. *Canadian Social Work Review*, 35(1), 45–70. Retrieved from <https://doi.org/10.7202/1051102ar>.
- Hunger, Martha. (2012, December 5). San Carlos Apache Tribe and Concerned Citizens and Retired Miners Coalition and Arizona Mining Reform Coalition Oppose Resolution Copper Mine Land Exchange. *PRNewswire*. Retrieved from <https://www.prnewswire.com/news-releases/san-carlos-apache-tribe-and-concerned-citizens-and-retired-miners-coalition-and-arizona-mining-reform-coalition-oppose-resolution-copper-mine-land-exchange-182165311.html>.
- (illegible). (10 Aug. 1864). “The Pre-Historic Man of Arizona.” *The Arizona Miner*. <https://chroniclingamerica.loc.gov/lccn/sn82016242/1864-08-10/ed-1/seq-1/>. Accessed 5 Feb. 2018.
- IndustriALL Global Union. (2020). Who we are. *Website*. Retrieved from <http://www.industriall-union.org/who-we-are>.
- ITCA | Inter Tribal Council of Arizona, Inc. (n.d.). San Carlos Apache Tribe. Retrieved from https://itcaonline.com/?page_id=1177.
- Jamasmie, Cecilia. (2013, August 16). BHP Billiton faces US corruption probe. *Mining.com*. Retrieved from <https://www.mining.com/bhp-billiton-faces-us-corruption-probe-79037/>.
- Jorgensen, Miriam, editor. (2007) *Rebuilding Native Nations: Strategies for Governance and Development*. Tucson: University of Arizona. Print.
- Kappler, Charles Joseph, ed. Indian affairs: *Laws and treaties*. Vol. 1. US Government Printing Office, 1904.
- Kemp, D., Lebre E., Owen, J., Valenta, R. K. (2021 April 21). Clean energy? The world’s demand for copper could be catastrophic for communities and environments. *The Conversation Newsletter*. Retrieved from <https://theconversation.com/clean-energy-the-worlds-demand-for-copper-could-be-catastrophic-for-communities-and-environments-157872>.
- Kirsch, Stuart. (2002, September). Litigating OK Tedi (Again). *Cultural Survival Quarterly Magazine*. Retrieved from <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/litigating-ok-tedi-again>.
- Koski, Jessica L. (2010, April 11). UP mine threatens sacred tribal rights. *Mining Action Group*. Retrieved from <http://savethewildup.org/2010/04/up-mine-threatens-sacred-tribal-rights/>.

- Kupel, D. E. (1999). Copper Chronicle: Magma Mine, Superior Arizona. *Mining History Journal*, 6, 109-22. Retrieved from <https://portal.azoah.com/oedf/documents/17-001-WQAB/AMRC-19-Douglas%20E.%20Kupel,%20Copper%20Chronicle%20-%20Magma%20Mine,%20Superior%20Arizona,%201999%20Mining%20Hist.%20Journal.pdf>.
- Langberg, S. (2014). A “Full and Fair” Discussion of Environmental Impacts in NEPA EISs: The Case for Addressing the Impact of Substantive Regulatory Regimes. *Yale Law Journal*, 124(3), 716–756. Retrieved from <https://web-a-ebSCOhost-com.ezproxy1.lib.asu.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=74993603-7e95-4bbf-a56d-403743478d7a%40sessionmgr4007>.
- Last Real Indians. (2021, January 16). Apache file lien on Oak Flat, temporary restraining order to stop land transfer from Forest Service to foreign mining company. Retrieved from <https://lastrealindians.com/news/2021/1/16/apache-file-lien-on-oak-flat-temporary-restraining-order-to-stop-land-transfer-from-forest-service-to-foreign-mining-company>.
- Levin, C., & Howard, P. B. M. (2014). National Defense Authorization Act for Fiscal Year 2015. Public Law, 113, 291. Retrieved from <https://dair.nps.edu/bitstream/123456789/3795/1/SEC809-RL-14-0151.pdf>.
- Lewis, Shan. (2012, February 9). Testimony of the Inter Tribal Council of Arizona regarding H.R. 1904, Southeast Arizona Land Exchange Act of 2011. Retrieved from <https://www.energy.senate.gov/services/files/3FCE6805-A610-49B0-93B6-AA1B77E36D26>.
- Library of Congress, The. U.S. Reports: Cherokee Nation vs. the State of Georgia, The, 30 U.S. (5 Pet.) 1 (1831). Retrieved on 25 February 2020. <https://www.loc.gov/item/usrep030001/>.
- Library of Congress, The. U.S. Reports: Worcester v. the State of Georgia, 31 U.S. (6 Pet.) 515 (1832). Retrieved on 25 February 2020. <https://www.loc.gov/item/usrep031515/>.
- Linge, George. (1999) Ensuring the Full Freedom of Religion on Public Lands: Devils Tower and the Protection of Indian Sacred Sites. *BC Envtl. Aff. L. Rev.* (27), 307.
- Le Miere, Jason. (25 May 2018) Donald Trump Says, ‘Our Ancestors Tamed a Continent’ and ‘We Are Not Going to Apologize for America. *Newsweek.com*. <https://www.newsweek.com/donald-trump-tame-continent-america-945121>. Accessed 23 July 2018.
- London court reopens \$7bn Brazil dam collapse. (2021, July 27). *The Guardian*. Retrieved from <https://www.theguardian.com/business/2021/jul/28/london-court-reopens-7bn-brazil-fundao-dam-collapse-lawsuit-against-bhp>.

- Lopez, Brian. (2022 June 27). Supreme Court sides with school coach who prayed at game, offering more protection to public displays of religion. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2022/06/27/supreme-court-school-prayer-texas/>.
- Lovett, K. E. (2017). Not All Land Exchanges Are Created Equal: A Case Study of the Oak Flat Land Exchange. *Colo. Nat. Resources Energy & Envtl. L. Rev.*, (28), 353.
- Lydia. (2019, August 9). Tabaco, Colombia: still no justice after 18 years. *London Mining Network*. Retrieved from <https://londonminingnetwork.org/2019/08/tabaco-colombia-still-no-justice-after-18-years/>.
- Macktima, Marcus. (2017). "Examining Historical Issues Pertaining to San Carlos Apache Tribal Identities Through Peoplehood."
- Magnuson, Jon. (2012, January 21). Witness: A personal account of local efforts to stop the Kennecott Eagle Project mine. *The Cedar Tree Institute*. Retrieved from <https://cedartreeinstitute.org/2012/01/witness-personal-account-of-local-efforts-to-stop-kennecott-eagle-project-mine-by-jon-magnuson/>.
- Mander, J., & Tauli-Corpuz, V. (2006). *Paradigm Wars: Indigenous Peoples' Resistance to Globalization*. San Francisco: Sierra Club Books.
- Marshall, J. & Supreme Court Of The United States. (1831) U.S. Reports: Cherokee Nation vs. the State of Georgia, The, 30 U.S. 5 Pet. 1. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep030001/>.
- Marshall, J. & Supreme Court Of The United States. (1832) U.S. Reports: Worcester v. the State of Georgia, 31 U.S. 6 Pet. 515. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep031515/>.
- Mattera, Philip. (2015, November 23). BHP Billiton: Corporate Rap Sheet. *Corporate Research Project*. Retrieved from <https://www.corp-research.org/BHP-Billiton>.
- McClure, Robert, and Andrew Schneider. (2001). The General Mining Act of 1872 has left a legacy of riches and ruin. *Seattle Post-Intelligencer* (11), 1-7. Access World News: <https://infoweb-newsbank-com.ezproxy1.lib.asu.edu/apps/news/document-view?p=AWNB&docref=news/0EC97774D8B6F866>.
- McDonald, Amber L. (2004) Secularizing the Sacrosanct: Defining Sacred for Native American Sacred Sites Protection Legislation. *Hofstra L. Rev.* (33), 751.
- McNally, Michael D. (2020). *Defend the sacred: native american religious freedom beyond the First Amendment*. Princeton, New Jersey: Princeton University Press.
- McNally, Michael D. (2019). Native American Religious Freedom as a Collective Right. *Brigham Young University Law Review*, 2019(1), 205–291. Retrieved from

- <https://web-b-ebshost-com.ezproxy1.lib.asu.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=a511fe55-c1b7-4e62-888f-0a2815f213ff%40sessionmgr102>.
- McKibben, Bill. (2016, September 6) A pipeline fight and America's dark past. *The New Yorker Times*. Retrieved from <https://www.newyorker.com/news/daily-comment/a-pipeline-fight-and-americas-dark-past>.
- Mennecke, M. (2009). The Crime of Genocide and International Law. *Genocide Studies and Prevention: An International Journal*, (4), 146-161.
- Miles, D. (23 July 2015). Oak Flat is a Sacred Site? It Never was Before. *The Arizona Republic*. <https://www.azcentral.com/story/opinion/op-ed/2015/07/23/oak-flat-sacred/30587803/>.
- Miller, Robert. J. (2015). The doctrine of discovery, manifest destiny, and American Indians. Why You Can't Teach United States History Without American Indians.
- Miller, S. F. & Supreme Court Of The United States. (1885) U.S. Reports: United States v. Kagama, 118 U.S. 375. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep118375/>.
- Millet, Lydia. (26 May 2015.) Selling off Apache Holy Land. *The New York Times*. <https://www.nytimes.com/2015/05/29/opinion/selling-off-apache-holy-land.html>.
- Murray, W. F. & Laluk, N. C. & Mills, B. J. & Ferguson, T. J. (2009). Archaeological Collaboration with American Indians: Case Studies from the Western United States. *Collaborative Anthropologies*, (1 2), 65-86. University of Nebraska Press. Retrieved July 25, 2019, from Project MUSE database.
- National Archives*. America's Founding Documents: The Bill of Rights, 1789, <https://www.archives.gov/founding-docs/bill-of-rights-transcript>.
- National Centre for First Nations Governance. (2009 June). Best Practices Case Study (Cultural Alignment of Institutions): San Carlos Apache A Report for the National Centre for First Nations Governance. *The National Centre for First Nations Governance*. Canada. Case Study. (http://fngovernance.org/toolkit/best_practice/apache_first_nation. Accessed January 23, 2013).
- National Congress of American Indians (NCAI). (2017 May 3). NCAI Condemns President Trump's Derogatory Use of "Pocahontas" Name in Political Attack. <http://www.ncai.org/news/articles/2017/05/03/ncai-condemns-president-trump-s-derogatory-use-of-pocahontas-name-in-political-attack>.
- National Congress of American Indians (NCAI). (2019 October). Support for the Protection of Oak Flat and Other Native American Sacred Places from Harm.

- Resolution #ABQ-19-062*. ncai.org. 20. Retrieved from:
<https://www.ncai.org/ABQ-19-062.pdf>.
- National Historic Preservation Act (16 USC 470). (1966). Retrieved from
<https://www.nps.gov/history/local-law/nhpa1966.htm>.
- National Park Service, U.S. Department of the Interior. (2016). *National Register of Historic Places Program: Weekly List*. Retrieved from:
<https://www.nps.gov/nr/listings/20160311.htm>.
- Native American Rights Fund. (1979). “*We Also Have A Religion: The American Indian Religious Freedom Act and the Religious Freedom Project of the Native American Rights Fund*.” Native American Rights Fund Announcements.
<https://www.narf.org/nill/documents/nlr/nlr5-1.pdf>.
- Native American Rights Fund. (Winter/Spring 2002). The long struggle home: the Klamath tribes’ fight to restore their land, people, and economic self-sufficiency. *NARF Legal Review*. Vol. 27, No. 1. National Indian Law Library. NIII No. 010069/2002 dl cl. Retrieved from:
<https://www.narf.org/nill/documents/nlr/nlr27-1.pdf>.
- Native News Online Staff. (2018 February 19). “US Presidents in Their Own Words Concerning American Indians.” *NativeNewsOnline* .
<https://nativenewsonline.net/currents/us-presidents-words-concerning-american-indians/>.
- McNeel, Jack. (2018 January 17), Devils Tower: Name is “Offensive, Disrespectful, Repugnant” to Tribes. *Indian Country Today*, Retrieved from
<https://indiancountrymedianetwork.com/history/sacred-places/devils-tower-name-offensive-disrespectful-repugnant-tribes/>.
- NEPA: National Environmental Policy Act. (n.d.). Retrieved January 06, 2021, from
<https://ceq.doe.gov/>.
- Newcomb, S. (1992). Five hundred years of injustice: the legacy of fifteenth century religious prejudice. *Native American Voices: A Reader*, 101-104.
- Newcomb, Steve. (2008). *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*. Fulcrum Publishing.
- “New Oak Flat Land Exchange Language Analysis Section 3003 of the National Defense Authorization Act.” *Arizona Mining Reform Coalition*. Retrieved from
<http://azminingreform.org/sites/default/files/docs/New%20Oak%20Flat%20land%20exchange%20language%20analysis%20FINAL.pdf>.
- Northwest Portland Area Indian Health Board, Indian Leadership for Indian Health. (2015). *Klamath Tribe*. Retrieved from <http://www.npaihb.org/member-tribes/klamath-tribes/#1450475820392-65215ee8-17e6>.

- Nosie, Wendsler Sr. (2009 June 17). Testimony before the U.S. Senate Energy and Natural Resources Committee Subcommittee on Public Lands and Forests. Retrieved from <https://azminingreform.org/sites/default/files/docs/Wendsler%20Nosie%20Testimony%20S%20409%20final%20061509.pdf>. Accessed April 2016.
- Nosie, Wendsler Sr. (2010 Sept. 17). "Why Oak Flat is sacred to the San Carlos Apache Tribe." *YouTube*. Uploaded by cronkitenews, , <https://www.bing.com/videos/search?q=wendsler+nosie+sr+claims+oak+flat+sacred&view=detail&mid=3A9E08A4DE917B0A9BAA3A9E08A4DE917B0A9BAA&FORM=VIRE>.
- Ogle, Ralph H. (1939). Federal Control of the Western Apaches, 1848-1886, I. *New Mexico Historical Review* (14.4), 309.
- Ojibwa. (2012 August 24). "The Civil War and Indians in Arizona." *Native American Netroots*. <http://nativeamericannetroots.net/diary/1369>. Accessed 6 Feb. 2018.
- Paliewicz, N. (2022, May 05). Decolonizing Oak Flat: Apache stronghold's placebased, temporal, and mnemonic dissensus at public hearings. Retrieved from https://www.academia.edu/78556322/Decolonizing_Oak_Flat_Apache_Strongholds_Placebased_Temporal_and_Mnemonic_Dissensus_at_Public_Hearings.
- Park, Joseph F. (1961) The Apaches in Mexican-American Relations, 1848-1861: A Footnote to the Gadsden Treaty. *Arizona and the West* (3.2), 129-146.
- Pevar, Stephen L. (2012). *The Rights of Indians and Tribes*. Fourth Edition. New York. Oxford University Press.
- Rambler, Terry. (2014, December 10). "Re: Raiding Native Sacred Places in a Defense Authorization: Everything Wrong with Congress." *Indian Country Today*. Retrieved from <https://warriorpublications.wordpress.com/2014/12/10/re-raiding-native-sacred-places-in-a-defense-authorization-everything-wrong-with-congress/>
- Rambler, Terry. (2013 Nov. 20). 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. energy.senate.gov/public/index.cfm/Files/serve?File_id=bd432593-9e7c-4F18-8a61-4e74bc6edb34.
- Ray Mine Tailings Storage Facility. (2018). Draft Environmental Impact Statement. Appendix F. (H-1 – H-15). Retrieved from: https://www.spl.usace.army.mil/Portals/17/docs/regulatory/Projects/Ray_Mine/Final_EIS/Appendix-H-Cultural-Resources.pdf?ver=2018-09-06-135056-130.
- Record, Ian W. (2008). *Big Sycamore Stands Alone: The Western Apaches, Aravaipa, and the Struggle for Place*. University of Oklahoma Press.

- Redniss, Lauren. (2020). *Oak Flat: A fight for sacred land in the American West*. New York: Random House.
- Rennick, C. (2006). The national historic preservation act: San Carlos Apache tribe v. united states and the administrative roadblock to preserving native American culture. *New England Law Review*, 41(1), 67-114.
- Resolution Copper. (2020). About the Project. In *About Rio Tinto* and *About BHP*. Retrieved from website <https://resolutioncopper.com/resolution-copper-mine/>.
- Richard. (2010, April 20). Rio Tinto: a shameful history of human and labour rights abuses and environmental degradation around the globe. *London mining network*. Retrieved from <https://londonminingnetwork.org/2010/04/rio-tinto-a-shameful-history-of-human-and-labour-rights-abuses-and-environmental-degradation-around-the-globe/#:~:text=A%20class%20action%20complaint%20on,to%20establish%20an d%20operate%20the.>
- Richard. (2013, October 22). Indigenous woman travels from Colombian barricades to BHP Billiton AGM in London. *London mining network*. Retrieved from <https://londonminingnetwork.org/2013/10/indigenous-woman-travels-from-colombian-barricades-to-bhp-billiton-agm-in-london/>.
- Rio Tinto: A Shameful History of Human and Labour Rights Abuses And Environmental Degradation Around the Globe. (2010, April 20). *London Mining Network*. Retrieved from <https://londonminingnetwork.org/2010/04/rio-tinto-a-shameful-history-of-human-and-labour-rights-abuses-and-environmental-degradation-around-the-globe/>.
- Rio Tinto: The way it really works. (2015, July 14). *IndustriALL Global Union Report*. Retrieved from <http://www.industrialunion.org/rio-tinto>.
- Rio Tinto. (2020). *Rio Tinto*. Retrieved from <https://www.riotinto.com/about>.
- Royce, Charles C and Cyrus Thomas. (1899). Indian land cessions in the United States. Online Text. Retrieved from the Library of Congress, <www.loc.gov/item/13023487/>.
- Rupcich, Claudia. (2021, January 31). Battle for Oak Flat: Mining company one step closer to building copper mine on sacred land. ABC15 Arizona News. Retrieved from <https://www.abc15.com/news/state/battle-for-oak-flat-mining-company-one-step-closer-to-building-copper-mine-on-sacred-land>.
- San Carlos Apache Reservation Attractions - 1.86 million Acres of Nature's paradise. (n.d.). San Carlos Apache Nation-Nde Nation. Retrieved April 7, 2017, from <http://www.sancarlosapache.com/Attractions.htm>.

- San Carlos Apache Tribe welcomes designation at sacred Oak Flat. (2016 March). *indianz.com*. Retrieved from: <http://www.indianz.com/News/2016/03/18/san-carlos-apache-tribe-welcom.asp>.
- Samuels, David. "Indeterminacy and History in Britton Goode's Western Apache Placenames: Ambiguous Identity on the San Carlos Apache Reservation." *American Ethnologist*. 28, no 2 (2001): 277-302.
- Samuels, David W. (2004). *Putting a Song on Top of It: Expression and Identity on the San Carlos Apache Reservation*. University of Arizona Press.
- Schilling, Vincent. (2018 January). Heated Exchanges as Utah Lawmakers Push Bill for Vast Reduction of Bears Ears Monument. *Indian Country Today*, Retrieved from <https://indiancountrytoday.com/archive/heated-exchanges-utah-lawmakers-push-bill-vast-reduction-bears-ears-monument>.
- Semken, Steven, and Elizabeth Brandt. (2010) Implications of Sense of Place and Place-Based Education for Ecological Integrity and Cultural Sustainability in Diverse Places. *Cultural Studies and Environmentalism*, 287. Print.
- Shannon, Curt. (2021, June 25). [Letter to Susan Rice]. Access Fund. Boulder, Colorado. Retrieved from <https://d1w9vyym276tvm.cloudfront.net/assets/Access-Fund-Letter-to-Susan-Rice-June-22-2021-Attachments-1.pdf?mtime=20210628140526&focal=none>.
- Skibine, A. T. (2003). Integrating the Indian Trust Doctrine into the Constitution. *Tulsa L. Rev.*, 39, 247.
- Southeast Arizona Land Exchange and Conservation Act. S. 409, 111th Cong. (2010).
- Spicer, Edward H. (1962). *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960*. Tucson. The University Press.
- Spivak, Randi. (2021, July 8). Congress Must Pass Save Oak Flat Act to Protect Sacred Land in Arizona From Massive Copper Mine. *Center for Biological Diversity*. Retrieved from https://biologicaldiversity.org/w/news/press-releases/congress-must-pass-save-oak-flat-act-to-protect-sacred-land-in-arizona-from-massive-copper-mine-2021-07-08/email_view/#:~:text=Congress%20needs%20to%20pass%20this%20bill%20and%20protect,Resources%20Committee%20and%20awaits%20a%20full%20House%20vote.
- Standing Rock Sioux Tribe*. Website. <https://www.standingrock.org/>.
- Stephanson, Anders. (1996). *Manifest destiny: American Expansion and the Empire of Right*. Hill and Wang.

- StormWolf. (2017 May 22). American Holocaust – The Ongoing Genocide Against the Indigenous. *StormWolfsWords.wordpress.com*.
<https://stormwolfwords.wordpress.com/tag/native-american-history/>.
- Suagee, Dean B. (1982) American Indian Religious Freedom and Cultural Resources Management: Protecting Mother Earth's Caretakers. *American Indian Law Review* (10.1), 1-58.
- Swarner, Jessica. (2016, March 14). Oak Flat historic designation a win for mine opponents, but fight continues. *Tucson Sentinel*. Retrieved from:
http://www.tucsonsentinel.com/local/report/031416_oak_flat/oak-flat-historic-designation-win-mine-opponents-but-fight-continues/
- The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation. Congressional Hearing, 2020-03-12. (2020). Retrieved from
https://search.lib.asu.edu/discovery/fulldisplay?docid=cdi_proquest_congressional_hearing_hrg_2020_hnr_209461&context=PC&vid=01ASU_INST:01ASU&lang=en&search_scope=MyInst_and_CI&adaptor=Primo%20Central&tab=Everything&query=any,contains,Section%203003%20NDAA%20fy%202015&offset=0.
- Titla, Mary Kim. (2010 January/February). Arizona's Apache: Home of the Brave. *Native Peoples Magazine*, 23(1), 44-48. EBSCOhost,
search.ebscohost.com/login.aspx?direct=true&db=aft&AN=505285395&site=ehost-live. Accessed 8 March 2016.
- Toensing, Gale Courey. (2010 March 17). Copper Mine Opposition Grows as Senate Land Swap Bill Moves Forward. *McClatchy - Tribune Business News*: n/a. Print.
- Toensing, Gale Courey. (2015 July 20). Grijalva's Save Oak Flat Bill Boosted by Historic Preservation Listing. *Indian Country Today Media Network*. Retrieved from
<https://indiancountrytoday.com/archive/grijalvas-save-oak-flat-bill-boosted-by-historic-preservation-listing>.
- Toscano, Nick. (2020, June 1). Rio Tinto investors “shocked,” want answers on rock shelter blast. *The Age and Sydney Morning Herald*. Retrieved from
<https://www.smh.com.au/business/companies/rio-tinto-investors-shocked-want-answers-on-rock-shelter-blast-20200601-p54yf9.html>.
- Treaty of Guadalupe Hidalgo (1848). *National Archives*. Retrieved from
<https://www.archives.gov/milestone-documents/treaty-of-guadalupe-hidalgo#:~:text=The%20Treaty%20of%20Guadalupe%20Hidalgo%2C%20which%20brought%20an, had%20fled%20with%20the%20advance%20of%20U.S.%20forces>.
- Tsosie, R. (2003). Conflict between the public trust and the Indian Trust Doctrines: federal public land policy and Native Indians. *Tulsa L. Rev.*, (39), 271.

- Tsosie, R. (1997). Indigenous rights and archaeology. *Native Americans and archaeologists: stepping stones to common ground*, 68. Retrieved from <https://scholar.google.com/scholar?hl=en&inst=1960582506653781529&q=Indigenous%20Rights%20and%20Archaeology%20>.
- Tribes, K. (2002 Winter/Spring). The long struggle home: the Klamath Tribes; fight to restore their land, people and economic self-sufficiency. *The NARF Legal Review*, 27, 1.
- Trope, Jack F. (1995, December) Existing Federal Law and the Protection of Sacred Sites: Possibilities and Limitations. *Cultural Survival Quarterly Magazine*. Retrieved from <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/existing-federal-law-and-protection-sacred-sites>.
- Trope, J. F. (1992). Protecting native american religious freedom: The legal, historical, and constitutional basis for the proposed native american free exercise of religion act. *New York University Review of Law & Social Change*, 20(2), 373-404.
- “Jack F. Trope – Senior Director- Casey Family Programs.” (2018 November 28). *University of Alaska Fairbanks*. Website. Retrieved from <http://tribalmgmt.uaf.edu/gov16/Trope>.
- Trope, Jack F. and Suagee, Dean B. (2002 August). Tribal Sacred Places and American Values. *Association on American Indian Affairs*. Web.
- Tuck, E., McKenzie, M., & McCoy, K. (2014). Land education: Indigenous, post-colonial, and decolonizing perspectives on place and environmental education research. *Environmental education research*, 20(1), 1-23.
- Tuhus, Melinda. (2015 July 23). Apache activists call on Congress to reverse deal that gave sacred land to mining company. *FSRN Free Speech Radio News*. <https://fsrn.org/2015/07/apache-activists-call-on-congress-to-reverse-deal-that-gave-sacred-land-to-mining-company/>. Accessed 7 Feb. 2018.
- Turner, Liz. (2004, June 25). Environment & human rights group condemn BHP Billiton in Colombia. *Friends of the Earth*. Retrieved from <https://www.foe.org.au/media-releases/2004-media-release/environment-%26-human-rights-groups-condemn-bhp-billiton-in-colombia>.
- U.S. Dept of Agriculture, Tonto National Forest (USDA). (2019). Resolution Copper Project and Land Exchange-Environmental Impact Statement. Draft EIS. Retrieved from <https://www.resolutionmineeis.us/documents/draft-eis>.
- U.S Dept of Agriculture, Tonto National Forest (USDA). (2021). Resolution Copper Project and Land Exchange-Environmental Impact Statement. Final EIS. Retrieved from <https://www.resolutionmineeis.us/documents/final-eis>.

- United States. American Indian Policy Review Commission. (1976). *Final Report to the American Indian Policy Review Commission*, (Issue 10). Washington, DC: Government Printing Office. Digitized 15, Nov. 2019.
- U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement. (July 2019). *Handbook on Implementing the National Environmental Policy Act*. Retrieved from https://www.osmre.gov/LRG/docs/directive995_NEPAhandbook.pdf.
- U.S. Department of the Interior. (2019, July). *Handbook on procedures for implementing the national environmental policy act*. Office of Surface Mining Reclamation and Enforcement. Retrieved November 26, 2021, from https://www.osmre.gov/sites/default/files/pdfs/directive995_NEPAHandbook.pdf.
- U.S. House. Committee of Natural Resources. (2020). *The Irreparable Environmental and Cultural Impacts of the Proposed Resolution Copper Mining Operation* Hearing, 20 March 2020. Washinton: U.S. Government Publishing Office.
- United States. Office of Indian Affairs. (1874) *Annual report of the commissioner of Indian affairs for the year 1874*. Washington, D.C.: G.P.O. [cm.http://digital.library.wisc.edu/1711.dl/History.AnnRep74](http://digital.library.wisc.edu/1711.dl/History.AnnRep74).
- United States, Office of Indian Affairs. (1904). Regulations of the Indian office. Effective April 1, 1904: Published under authority of the Secretary of the Interior. Revised by the Indian Office. Government Printing Office. Retrieved from <https://babel.hathitrust.org/cgi/pt?id=hvd.hl28k7&view=1up&seq=108>.
- United States. Congress. House. Committee on Natural Resources. Subcommittee on Native American Affairs, and United States. Congress. House. Committee on Resources. Subcommittee on Native American & Insular Affairs. American Indian Religious Freedom Act: Oversight Hearing before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, First Session, on Effectiveness of P.L. 95-346--the American Indian Religious Freedom Act of 1978 (AIRFA). U.S. G.P.O. : [Supt. of Docs., U.S. G.P.O., Congressional Sales Office, Distributor], 1993.
- United States, Congress, House. S.J. Res. 102-Joint Resolution American Indian Religious Freedom Act of 1978. Congress.gov, <https://www.congress.gov/bill/95th-congress/senate=joint-resolution/102>, 95th Congress, passed 11 Aug. 1978.
- United States, Federal Agencies Task Force. American Indian Religious Freedom Act Report: P.L. 95-341. The Task Force, 1979.

- U.S. Congress. (1852). Treaty with the Apache. Retrieved from <https://congressional-proquest-com.ezproxy1.lib.asu.edu/congressional/docview/t53.d54.00010-stat-0979-000001?accountid=4485&parmId=16BC9650AF8>.
- University of Arizona, Superfund Research Center. (n/d). *Copper Mining in AZ and Tribal Lands-Copper mining in Arizona*. Retrieved from <https://superfund.arizona.edu/resources/modules/copper-mining-and-processing/copper-mining-az-and-tribal-lands>.
- Unmack, Fred. (1987) Equality Under the First Amendment: Protecting Native American Religious Practices on Public Lands. *Pub. Land L. Rev.* 8 165.
- Valenzuela, Stephanie. (2017 Dec. 6). Trump Continues U.S. Legacy of Contempt for Native Americans. *Lakota Law Project*. <https://www.lakotalaw.org/news/2017-12-06/trump-continues-u-s-legacy-of-contempt-for-native-americans>.
- Valley, Megan. (2015, March 4). Experts explore implications of southeast arizona land exchange. *The Observer*. Retrieved from <https://ndsmcobserver.com/2015/03/experts-explore-implications-southeast-arizona-land-exchange/>.
- Walch, Michael C. (1983). Terminating the Indian Termination Policy. *Stanford Law Review*, 35, 1181-1217.
- Ward, Robert Charles. (1992). The Spirits Will Leave: Preventing the Desecration and Destruction of Native American Sacred Sites on Federal Land. *Ecology LQ* 19, 795.
- Washington, John. (2017, November 11). What's at stake in Oak Flat? *Edible Baja Arizona Magazine*, 27. (November/December 2017). Retrieved from <https://ediblebajaarizona.com/what's-stake-oak-flat>.
- Watson, Angus and Westcott, Ben. (2020, June 1). Rio Tinto apologizes for blowing up 46,000-year-old sacred indigenous site in Australia's Pilbara region. *CNN Business*. Retrieved from <https://edition.cnn.com/2020/06/01/business/rio-tinto-pilbara-sacred-site-intl-hnk-scli/index.html>.
- Weber, David J. (2003). *Foreigners in their Native Land*. Albuquerque. University of New Mexico Press.
- Weiner, Jade. (2020, August 11). BHP to be Dammed? *Oxford Human Rights Hub*. Retrieved from <https://ohrh.law.ox.ac.uk/bhp-to-be-dammed/>.
- Welch, John R., and Ramon Riley. (2001) Reclaiming Land and Spirit in the Western Apache Homeland. *The American Indian Quarterly* 25(1), 5-12. Print.
- Welch, John R., Chip Colwell-Chanthaphonh, and Mark Altaha. "Retracing the Battle of Cibecue: Western Apache, Documentary, and Archaeological Interpretations." *Kiva* 71.2 (2005): 133-163.

- Welch, John R. (2017a) "Earth, Wind, and Fire: Pinal Apaches, Miners, and Genocide in Central Arizona, 1859-1874." *SAGE Open* 7(4), 2158244017747016.
- Welch, John R. "The United States Treaty with Apaches (Treaty of Santa Fe), 1852, and It's Relevance to Western Apache History and Territory." 2 Dec. 2017b. Retrieved from <https://portal.azoah.com/oedf/documents/17-001-WQAB/SCAT-35-J.Welch.2017Treaty.SantaFe.BATES.pdf> .
- "Welch, John R. – Director – Professional Grad Programs in HRM Archaeology." *Linked In*. Web. 28 Nov 2018. <https://www.linkedin.com/in/john-r-welch-81520310>.
- Welch, John R. (2021). "United States shall so legislate and act as to secure the permanent prosperity and happiness of said Indians": Policy Implications of the Apache Nation's 1852 Treaty. *The International Indigenous Policy Journal*, 12(4). Retrieved from <https://doi.org/10.18584/iipj.2021.12.4.14181>.
- Whitman, Elizabeth. (13 November 2019). Arizona Groups: 'Hurried' Oak Flat Copper Mine Review Violates Law, Risks Lives. *Phoenix New Times*. Retrieved from <https://www.phoenixnewtimes.com/content/printView/11391865>.
- Wilkins, David. (1997). *American Indian sovereignty and the U.S. Supreme Court: the masking of justice*. (1st University of Texas Press ed.). University of Texas Press.
- Wilkins, David E. & Stark, Heidi Kiiwetinepinesiiik. *American Indian Politics and the American Political System*. 3rd. ed. / David E. Wilkins and Heidi Kiiwetinepinesiiik Stark. ed., Rowman & Littlefield, 2011.
- Wilkinson, C., & Biggs, E. (1977). The Evolution of the Termination Policy. *American Indian Law Review*, 5(1), 139-184.
- Williams Jr, Robert A. "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence." *Wis.L.Rev.* (1986): 219. Print.
- Wolfe, Patrick. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, 8(4), 387–409. <https://doi-org.ezproxy1.lib.asu.edu/10.1080/14623520601056240>
- Woody, Carol Ann, et al. (2010) The mining law of 1872: Change is overdue. *Fisheries* 35(7), 321-331.
- Woody, Clara T. (1962). The Woolsey Expeditions of 1864. *Arizona and the West* 4(2), 157-176.
- Wyatt, Kathryn C. (1989) The Supreme Court, Lyng, and the Lone Wolf Principle. *Chi.-Kent L. Rev.* 65 : 623.
- Yablon, Marcia. (2003) Property rights and sacred sites: Federal regulatory responses to American Indian religious claims on public land. *Yale LJ* 11(3), 1623.

Zoll, Rachel. (6 Dec. 2017). "Jerusalem is Sacred Place for Jews, Muslims, Christians." *Fox News Website*. foxnews.com/us/2017/12/06/jerusalem-is-sacred-place-for-jews-muslims-christians.html. Accessed 19 Jan. 2018.

Zorich, Zach. (Dec. 10, 2014). Planned Arizona copper mine would put a hole in Apache archaeology. *Science AAAS Magazine*. <http://www.sciencemag.org/news/2014/12/planned-arizona-copper-mine-would-put-hole-apache-archaeology>. Accessed April 28, 2017.