



# Fort McDowell Yavapai Nation

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March 18, 2013

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**RE: Fort McDowell Yavapai Nation opposition and concerns over H.R. 687 and S. 339,  
Southeast Arizona Land Exchange and Conservation Act of 2013**

Dear Chairmen and Ranking Members of Committees:

Fort McDowell Yavapai Nation (herein the 'Nation') unequivocally opposes two recently introduced identical pieces of legislation, H.R. 687 and S. 339, regarding the Southeast Arizona Land Exchange and Conservation Act of 2013 (herein the 'Act'). We implore you to take a moment to understand our strong opposition and concerns regarding this Act. The Nation testified before Congress on a previous version similar to this Act and has provided in-depth written testimonies on all other versions introduced since 2007. Thus, we have a keen, in depth understanding of this proposed exchange. We also humbly request formal, individual Congressional Government-to-Government consultation meetings so that we may personally discuss our grave concerns with each of you.

Our apprehensions are many as the Act itself *does not* provide the requisite transparency to address many of the fundamental concerns mining projects like these present including, but not limited to, the lack of quantifiable royalties, the feasibility of the mine and mining operations, fair equalization of the exchange, an unbiased analysis of the potential economic benefits, assessment and mitigation of environmental damages, the extent of those environmental damages, untenable security and sustainability of Apache Leap, and incalculable cultural losses. We will present testimony on these topics under a separate cover before Congress and would like to delve into these issues in a future consolation meeting. However, we specifically discuss herein a few issues regarding the environmental damage this mine presents and the impacts they will have on the sacredness of this area to the Yavapai People. Furthermore we ask if you would answer the following: 1) How will our concerns be addressed given the lack of creditable National Environmental Policy Act (NEPA) as this is a directed land exchange?; 2) Given the immediateness with which the Resolution Copper Mine (herein 'RCM') will take possession of the federal land, once in private hands, how will NEPA be employed? and; 3) As testified to by federal officials, a credible NEPA will take longer than what is prescribed within the Act. Thus, why isn't there enough time permitted within the Act to allow a thorough NEAP?

This Act expressly permits the use of public resources to facilitate RCM, foreign-owned mining conglomerates Rio Tinto and BHP Billiton, to extract ore through the highly destructive block cave mining method. There are a number of serious, highly offensive deficiencies in H.R. 687 and S. 339. The Act will allow this mining operation to not only cause irreparable damage to the environment; including precious water resources, but to sacred sites, archeological, and cultural resources of the Yavapai People. Additionally, there are no obligations or guarantees in the Act such that RCM will mitigate or remedy the results of this destruction. This area is critically important to the Yavapai as it was once part of our ancestral territory and is still a sacred site. Because of this connection, the Nation was promised by Congress that we **would** be included in discussions/negotiations regarding this exchange. Instead, we have been directed to discuss our concerns with RCM. As alluded to in our previous testimony, the Federal Government has a solemn trust, legal, and moral responsibilities to American Indians and therefore, we should be afforded the requisite Government-to-Government consultation **before** this bills moves forward. This trust is not with RCM or other interested outside parties, rather it is with the federal

government. We again request that this bill not advance so that we can begin serious and frank discussions as to how our concerns will be addressed.

The Nation specific concerns as to *how* sacred springs, Oak Flat, and Apache Leap are protected given proposed mining methodologies are also unanswered in the Act. Initial documents provided by RCM to the Forest Service outline the need for constant dewatering of the area. Yet, federal officials or the Act's sponsors have not discussed this issue regarding either religious, cultural or NEPA related provisions with the Nation. Dewatering of the area will have significant impacts to the perennial springs that are sacred and have been in use since time immemorial. Dewatering, in this instance, will cause a cessation of water to the springs. Therefore, one of the very components of these scared areas, the water, will no longer be in existence and our ability to practice our religious and cultural freedoms unquestionably denied.

RCM has openly admitted in testimony, on their web site, and provided information to the Forest Service that due to currently proposed methodologies to remove ore and earth, subsidence will occur. To date, there are no primary reports performed by the Forest Service that outlines how such a large subsidence will affect sacred sites or other religious or cultural properties of the area. The Forest Service is aware of the importance of Oak Flat and Apache Leap to many Native American Tribes, including the Nation. However, the Forest Service nor this Act has discussed how RCM will specifically avoid or remedy subsidence with the Nation or any other Tribe. (However, once massive subsidence occurs- the damage is permanent). Moreover, H.R. 687 and S. 339, under Sec. 8. Apache Leap (2) states that RCM may carry out any underground activities under Apache Leap in a manner that the Secretary determines will not adversely impact the surface of Apache Leap. This could include drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information that does not involve 'commercial' mineral extraction. In essence, the Act does not provide actual protection of the Leap against mining activities as RCC is afforded any and all mining operations other than commercial extraction. Thus, how will the Leaps cultural and religious properties be maintained and how has this been reconciled with affected Tribes?

Although the Act states that there will be 'consultations' with Indian Tribes, in reality this Act eviscerates federal mandates on Government-to-Government consultations with Native American Tribes. Federal laws, Presidential Orders, congressional mandates and statutes, and federal policies regarding these consultations are meaningless due to the Acts direct and required exchange. Tribal input is after-the-fact – after the passage of the Act - making any timely or meaningful consultation part of a check list -just a formality- rather than lawful. In fact, given the compulsory exchange language, the Secretary hands are tied to incorporate any Tribal input into NEPA or an EIS because the land exchange is to be completed before the majority of analysis or consultation is concluded. Rio Tinto is keenly aware of this fact and this fact may also be attributed to their rational for proceeding through a legislative exchange rather than an administrative process.

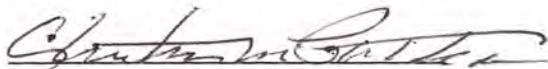
As stated above, dewatering and land subsidence, along with polluting of the land and water, will desecrate this sacred area. I cannot express in words how deeply felt this land

is to the Yavapai – it simply transcends words. Damage that will result from this project cannot be mitigated simply by placing a dollar value on it or by exchanging it for some other land that is far from the area of concern.

The Fort McDowell Yavapai Nation urgently requests and would greatly appreciate discussions with you on this matter. Please have your staff contact our Government Relation's Director, Dr. Carole Klopatek, who has taken the lead in this matter. She can be reached at [cklopatek@ftmcdowell.org](mailto:cklopatek@ftmcdowell.org).

We look forward to hearing from you soon.

Respectfully,



President Clinton M. Pattea  
Fort McDowell Yavapai Nation

cc: Fort McDowell Yavapai Nation Tribal Council  
Mr. Phil Dorchester, General Manager, Fort McDowell Yavapai Nation  
Mr. Tom Moriarty, Acting General Council, Fort McDowell Yavapai Nation  
Dr. Carole Klopatek, Director of Government Relations, FMYN  
Arizona's Congressional Delegation  
Inter Tribal Council of Arizona