Testimony of Dan Breuninger, President
Mescalero Apache Tribe

Before the Senate Committee on Indian Affairs
"Oversight Hearing on Wildfires and
Forest Management: Prevention is Preservation"

May 14, 2014

Introduction

Good afternoon Chairman Tester, Vice Chairman Barrasso, Senator Udall and Members of the Committee. My name is Danny Breuninger. I am President of the Mescalero Apache Tribe (Mescalero Apache or Tribe). Thank you for this opportunity to testify on the topic of forest management and the need to improve wildland fire prevention in Indian Country and nearby forestlands.

Background: the Mescalero Apache Tribe

Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. We were protected by our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our lands, the Apaches entered into a treaty with the United States on July 1, 1852. This treaty, known as the Treaty with the Apaches, promised the Tribe a permanent homeland in its aboriginal territory. The Mescalero Apache Reservation (Reservation), located in the White and Sacramento Mountains of rural south-central New Mexico, was created by a succession of Executive Orders in the 1870's and 1880's. The Reservation spans approximately 720 square miles (460,405 acres) across south-central New Mexico. Our elevation ranges from 4,000 feet in the Chihuahuan desert plateau to over 12,000 feet above sea level in the sub-alpine pine forests. The Reservation is home to approximately 4,900 tribal citizens and approximately 200 non-Indian residents.

The original Reservation boundaries included lands that are currently held in federal ownership, such as Lincoln National Forest (LNF) and Bureau of Land Management (BLM) lands surrounding the Fort Stanton State Monument. However, the Mescalero Apache people have maintained strong cultural ties to these lands, which constitute our ancestral homelands. To this day, we continue to gather plants important to our traditions and conduct ceremonies on these federal lands. To strengthen our ties to these lands and to have input into their management, the Tribe has entered into Memoranda of Understanding (MOUs) with federal agencies, including the U.S. military and U.S. Forest Service (USFS).

Mescalero Apache Forest Management

For centuries, we have managed our forests holistically, as a way of life, to promote the growth of food and medicinal plants, to manage the wildlife in these forests, and to protect our lands from invaders.

This tradition of forestry was put into formal practice when the Bureau of Indian Affairs (BIA) Mescalero Agency opened its Branch of Forestry in 1910. Mescalero's first major commercial timber sale was in 1919. With the opening of the tribally owned Mescalero Forest Products' (MFP) sawmill in 1987, the Tribe entered a new era of forest management. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

For more than a century now, the BIA Mescalero Agency and the Tribe have worked together to develop a premier forestry program on the Reservation. The BIA Branch of Forestry currently employs 3 professional foresters and 2 forestry technicians in the Timber Sale section. This small staff is responsible for preparing and offering for sale lumber at 16.8 million board feet annually and completing all sale planning, environmental compliance work, timber sale layout and administration. Due to the amount of lumber harvested, the BIA identifies the Reservation as a Category 1-Major Forested Reservation. Additionally, the Fire Management and Fuels Management Programs are each rated as High Complexity. These ratings describe not only the complexity of addressing fire concerns across a large landscape but also the need for coordinated efforts among programs and agencies. Despite the importance of this mission and a small budget, over the past five years the Mescalero BIA Branch of Forestry has seen a 43% reduction in its staffing levels.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation and has even been able to assist the BIA in coordinating timber sales and performing fuels management projects. While the local BIA agency oversees the overall management of the forest on the Reservation, many of the projects, such as thinning for hazardous fuels reduction and timber marking, are completed by the Tribe. The progressive working relationship with BIA Forestry and the implementation of contracts under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) has allowed the Tribe to ensure continued success on forest management.

Out of a total Reservation land base of 460,405 acres, the Tribe has treated approximately 42,671 acres through commercial harvest in modern times. Through funding allocated under the Department of the Interior's (DOI) National Fire Plan program and other federal programs starting in 1999, the Tribe has treated an additional 59,094 acres through hazardous fuels reduction projects.[1]

We view our forest as a dynamic living entity. It provides water, food, shelter and a means of providing jobs and revenue for Tribal members. When the Tribe first began

[1] A "hazardous fuel" is any kind of living or dead vegetation that is flammable.

commercially harvesting timber, many opposed the concept. This resistance to proactive forest management began to dissipate, however, in 1996 when the Tribe experienced its first large fire in recent history, the Chino Well Fire. This fire began on a windy spring day in April; and, within one day, the fire threatened 42 homes, forcing evacuation and burning a seven-mile strip of forest of more than 8,000 acres. Due to the rapid fire response of Tribal fire crews, no homes were damaged; but, very quickly, we had homeowners wanting to learn how they could protect their homes from future wildfires.

With the advent of the National Fire Plan in the late 1990's, the BIA Branch of Forestry worked with the Tribe to develop strategic ridgetop fuel breaks and implement wildland-urban interface treatments around residential and recreational areas across the Reservation. These projects were coordinated with harvest operations, recognizing that understory thinning alone would not reduce the potential for destructive crown fires. As a result of implementing wildfire mitigation measures to reduce fire danger, the Tribe earned Firewise Communities/USA recognition in 2003 and was the first tribe in New Mexico to earn such recognition.

Since then, Tribal leadership and forestry staff have provided congressional testimony and advised the federal government in developing both the Healthy Forest Restoration Act of 2003 and the Tribal Forest Protection Act of 2004 (TFPA). In particular, the TFPA helped pave the way for the Tribe to work with LNF to develop the first Tribal stewardship contract called the 16 Springs Stewardship contract in 2006 to implement hazardous fuel reduction projects on adjacent U.S. National Forest lands.

Hazardous fuel reduction projects are vital. Forests are living organisms; and, with reductions in density, trees and ground cover are better able to thrive. Southwestern forests grow with very little precipitation. On the Reservation and in LNF, 26 inches of annual precipitation is considered a "wet" year. By reducing tree densities to ensure the crowns are not touching, we greatly enhance the available water, light and nutrients each individual tree receives. With open forest conditions, pine seedlings have a better environment to germinate, resulting in increased forest regeneration.

While the Tribe has worked hard to maintain a healthy forest on our Reservation, for many years Tribal leadership has been concerned about the very dense forest conditions in LNF, which borders our Reservation on three sides. These overly dense, unnatural conditions are not healthy. Due to the unhealthy condition of the LNF, we have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS lands die around us.

As bad as it is, it is not too late to remedy this situation. A case in point is the successful stewardship contract that the Tribe entered into with the USFS. Through the 16 Springs Stewardship contract with LNF, the Tribe has treated more than 6,300 acres of LNF lands mostly located along the shared boundary between our Reservation and LNF. Due to the Tribe's efforts, these USFS lands are much healthier than they were.

However, there are many thousands of additional acres of dense forest within LNF that remain untreated and continue to threaten the lives and property of Tribal members and the general public.

In addition to its hazardous fuels management program, the Tribe, as mentioned above, owns and operates the MFP sawmill. Using the sawmill as a first-line forest management tool, we have been able to treat the larger trees of the forest overstory through selective harvests. We followed up these activities with hazardous fuels reduction projects in the smaller size classes.

To date, Mescalero has been able to make the most out of a shrinking federal budget and a depressed lumber market. The decline in the lumber market, combined with process inefficiencies and a lack of by-product markets, has resulted in the closure of MFP twice, once in December 2008 and again in July 2012. The closure of the sawmill cost jobs for 55 mill workers and close to 150 supporting staff (including marking, harvesting, hauling, and administrative staff). The Tribe was also forced to close a second mill that it owned in Alamogordo, which employed 82 workers.

Needless to say, the closing of these sawmills significantly hurt our economy, exacerbating high unemployment conditions on the Reservation. The closures are also beginning to impact our ability to effectively manage our forest and assist in the management of LNF. Efforts are currently underway to fully assess the condition of the MFP sawmill and evaluate various management options with the intent to once again open the sawmill.

Even more harmful, in 2012, our forest on the Reservation experienced a 70% cut in DOI's Hazardous Fuels Reduction program funding. For the previous 12 years, Congress had appropriated between $2-$2.5 million annually to treat hazardous fuels. In 2012, Congress slashed this amount to $800,000, with only $550,000 being allocated for Tribal fuels projects.

These cuts have had direct and real impacts. The Mescalero Division of Resource Management and Protection had to lay off a 20-man tribal thinning crew and 5 support staff, causing additional unemployment on our Reservation. Unless funding is restored, rather than treating thousands of acres per year, we will only be able to treat a few hundred acres per year.

Because of the combined lack of milling capacity and hazardous fuels reduction funding, Tribal and BIA Foresters have estimated that in 20 to 25 years, Reservation forest conditions will be the same as those in LNF. Prior to congressional funding cuts, the Tribe was able to manage the forest better than LNF on a budget that was a fraction of LNF's budget. Failure to restore this modest funding will ensure the demise of a hugely successful program.

Little Bear Fire: Lessons Learned

Nature has provided us a preview of what will happen if the Mescalero forestry program is allowed to die. The Little Bear Fire started in a modest way on Monday, June 4, 2012. The initial small fire was caused by lightning in the White Mountain wilderness in LNF. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only on day shifts, air tanker resources were not utilized and helicopter water drops were minimal. On the fifth day, the fire jumped the fireline and high winds turned the fire into a devastating inferno. By that night, the fire had blazed through the Tribal ski area, Ski Apache Resort (Ski Apache), and crossed onto Tribal lands. Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded $100 million.

A comparison of the impacts of the Little Bear Fire on the healthier tribal forests and much less healthy LNF demonstrates the need for continued funding of smart fuels management projects. In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso, and prevented complete devastation of the Village of Ruidoso source waters. *The Little Bear Fire is proof positive that hazardous fuels reduction projects DO WORK.*

Many members of the surrounding communities, including our Tribal community, felt this fire should have been contained and controlled within the first few days after detection. The proximity of the fire start to Tribal lands, Tribal infrastructure, the Village of Ruidoso and its location within a New Mexico State priority watershed should have triggered a more aggressive response to suppress the fire. Unreasonable restrictions placed on fire suppression actions within LNF wilderness areas contributed to the failure to immediately suppress the fire using all available resources. Had Mescalero not managed its forest through fuels management projects, the fire would have devastated the Village of Ruidoso.

Mescalero Apache Investments in Lincoln National Forest

As noted above, much of LNF is carved out of the ancestral homelands of the Mescalero Apache. Evidence of our connection to LNF can be found throughout the forest, from rock art to mescal pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers, who are holy beings that ensure our well-being.

Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is

located on the northern border of the Reservation. The land is part of the Tribe's aboriginal homelands and is located within the Sierra Blanca Mountain Range, which is sacred to the Mescalero Apache people.

Over the past 50 years, the Tribe has made significant improvements to the Resort. Recently, the Tribe invested $15 million to triple the ski lift capacity at Ski Apache. In addition, this year the Tribe plans to invest over $2.6 million for non-ski, year-round recreation at Ski Apache. Ski Apache employs up to 350 people during the ski season and contributes many millions of dollars to the local economy in tourists and lodgers.

To protect these investments and our sacred lands, the Tribe has a considerable interest in preventing future wildfires and resulting flooding that would devastate the Resort.

Under the current arrangement, the USFS administers these lands, and LNF has the legal responsibility to respond to emergencies, such as the June 2012 Little Bear Fire. However, it has been the Tribe that has acted as the primary first responder in emergency situations. If the Tribe had not taken the initiative to protect its own assets, they would have been lost in the Little Bear Fire.

As noted above, Ski Apache incurred significant damage from the Little Bear Fire. The Tribe has projected a loss of over $1.5 million to tribal assets within the special use permit area due to the fire. Because of the volume of trees that were burnt, there existed a real danger of flooding that could have destroyed buildings, completely re-shaped the existing ski runs, and taken out access roads. Due to additional investments and work conducted by the Tribe, major flooding was avoided.

Ski Apache is located at the highest point of the Little Bear Fire. Failure to address flooding at higher elevations could have made rehabilitation at lower elevations less effective. The Little Bear Fire crossed the Reservation line at a key topographic area. There are two major canyons, Upper Canyon and the Eagle Creek area, that start on the Reservation and then lead off the Reservation. Both areas are heavily populated off-Reservation.

Even though the Tribe, as a permittee, is solely responsible for rehabilitation and all costs related to the Little Bear Fire, the Tribe first had to gain approval from LNF prior to taking such action. Ski Apache quickly submitted a request to LNF to begin rehabilitation efforts. The request included specific rehabilitation actions. It took LNF months to respond. While, LNF committed to cleaning piles of burned trees, it took over 18 months for that action to occur. Burning began in March of 2014.

The BIA has a Burned Area Emergency Response (BAER) team that tried to communicate with the USDA/LNF/BAER team to discuss rehab, especially in the area of these two canyons. However, USDA/LNF/BAER and BIA BAER teams lacked coordination to fight fires and flooding, leaving the Tribe and Ski Apache left in the middle.

Little consideration was given to the importance of Ski Apache to the overall economy of the area. Closure of Ski Apache for a single season would devastate the economies of both the Village of Ruidoso and the Tribe. Despite the importance of Ski Apache, LNF prioritized other areas for fire rehabilitation efforts instead of Ski Apache.

The Tribe's special use permits expire at the end of this year on December 31, 2014. With this impending expiration, the Tribe believes that this is an ideal time to consider enhancing its control over the lands that encompass Ski Apache.

Further Identification of the Problems and Specific Recommendations to Improve Wildland Fire Protection in Indian Country

Tribal forest managers often have a different mission than that of federal land managers. For example, Tribal forest managers work to protect lives and property on our Reservation. Conversely, BLM historically oversees gas/oil/mining permits. BLM has spent millions of dollars implementing projects that are called wildland-urban interface (WUI) that, in reality, only protect the resources under these permits. Likewise, we have seen the USFS propose true WUI projects only to have them challenged in court by third parties. Rather than contesting these legal claims, USFS often chooses to move projects to areas where there is less controversy and less actual fire danger to life and property. Although many project acres are treated, these areas are sometimes not the areas that most need treatment. The current selective WUI process is often implemented at the expense of needed WUI projects that could improve the health of federal lands adjacent to our Tribal lands.

In recent years, due to fires such as Little Bear, annual firefighting costs have exceeded federal budget allocations. This further reduces funding available for prevention programs such as hazardous fuels reduction.

Tribal forestry programs receive far less funding than our state and federal counterparts. A 2013 Report by the Indian Forest Management Assessment Team for the Intertribal Timber Council stated, "Indian forests are receiving much less forest management funding per acre than adjacent forest land owners." BIA allocations to tribes average only $2.82/acre; whereas, National Forests receive $8.57/acre and state forests in the western U.S. average an astounding $20.46/acre. At one-fourth to one-tenth of the funding our state and federal counterparts receive, tribes are able to accomplish vastly more reductions in hazardous fuels and have healthier, functioning forest ecosystems. In addition to greatly reducing wildfire hazard on reservations, tribal land managers have seen forest thinning treatments result in increased water yields despite the current extreme drought situation. **This work is not sustainable.**

To address the shortfalls and concerns listed above, we submit the following recommendations to improve funding mechanisms and methods of managing both tribal and nearby federal forestlands.

- The Tribe's hazardous fuels treatment and its positive impact in helping stop the Little Bear Fire represents conclusive proof that hazardous fuels treatments save lives, protect property, and maintain healthy forests. Hazardous fuels funding levels must be restored to enable tribes to continue to protect our communities. Each year, more forests throughout the country are burning, more critical watersheds are jeopardized, and more communities are placed at risk. Congress must acknowledge and fulfill the legal treaty and trust obligations of the United States to help protect and care for Indian lands and our forests as permanent homes. Tribal forestry programs must be funded accordingly. ***Congress should authorize and fully fund hazardous fuels treatment funding for Indian lands and nearby federal lands separately from the national firefighting budgets.***

- Federal agency reports show that firefighting costs have exceeded budget allocations for 8 of the past 10 years. As a result, federal agencies have taken money from wildfire prevention and hazardous fuels reduction programs. These cuts have devastated the Tribe's forestry program and our proven wildfire prevention efforts. Instead of taking from the proven hazardous fuels reduction program, emergency wildfire should be funded as natural disasters. ***The Tribe supports the bipartisan proposal put forth in S. 1875, the Wildfire Disaster Funding Act, which was also included in the President's FY15 Budget. We urge the Committee to work with your Senate colleagues to enact S. 1875.***

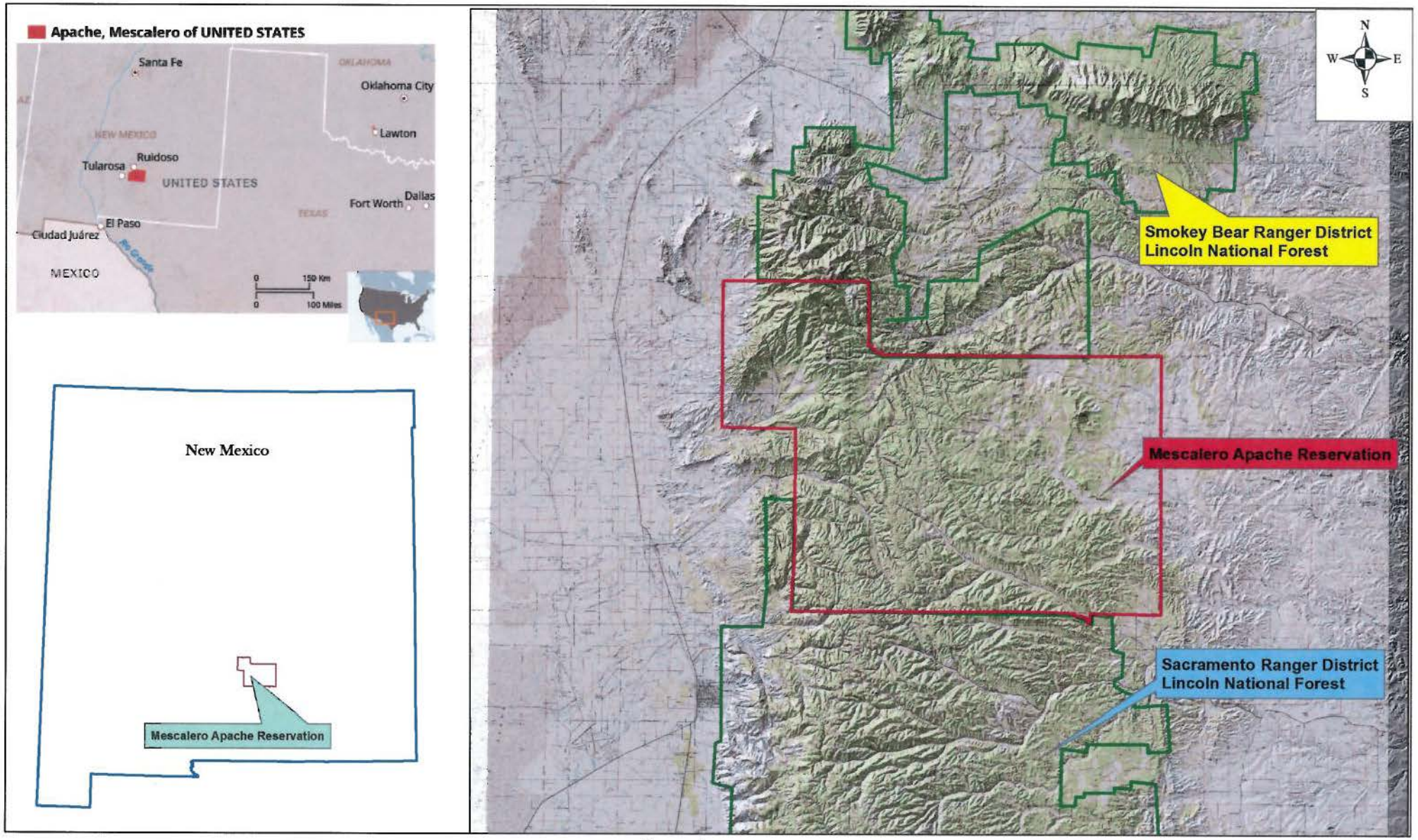
- As noted above, it is not enough that tribal forest managers work to protect tribal homelands. Missteps and mismanagement of federal and other nearby lands can just as easily destroy thousands of acres of adjacent Indian lands. There needs to be better and faster interagency coordination among federal land managers. At this time, both the Tribe and LNF are in the process of updating and revising our respective Forest Management Plans. The TFPA provides for meaningful consultation with tribes to develop strategies for protecting Indian forest lands and tribal interests as well as the restoration of adjacent federal lands. Because these lands are part of our ancestral homelands, we need to be able to provide input on management of these lands that goes before and beyond NEPA requirements. In order to move forward with restoration strategies, the USFS also needs to implement new guidelines acknowledging the benefits of selective harvesting that were approved in 2012 under the Final Recovery Plan for the Mexican Spotted Owl. Tribes need to have a greater presence in the development of forest management strategies. ***We urge Congress to take the TFPA to the next level and actively promote true partnerships. Extending tribal values and management philosophies to National Forests would provide for more holistic management of forested watersheds that do not recognize political boundaries.***

- As we have seen over the past few years, medium size to severe wildfires like the Little Bear Fire can have devastating impacts to our watersheds and domestic water supplies. The scorched soils become hydrophobic where water is not absorbed into the soil, causing groundwater storage functions to be

diminished. The runoff causes highly erosive flooding and debris flows can damage water intake systems. The sacred mountains where we live provide the groundwater recharge for much of southeastern New Mexico. In order to maintain the ecological functions of these watersheds, we need to preserve the infrastructure necessary to commercially harvest and thin the dense forest overstories on USFS lands and Reservation lands. USFS thinning practices, including the practice of thinning from below, are not sustainable. These practices weaken forest structure and reduce biodiversity. The Tribe has already shown its dedication and commitment to proactively managing our lands and preserving both the cultural and ecological integrity of the landscape. ***Congress must facilitate the regional dialogues necessary for tribal, state and local governments to work together to explore options for sustainable, regional support of forestry infrastructure. All options, including non-traditional funding options from non-tribal sources and education missions, should be considered.***

Conclusion

The Reservation is our permanent homeland. Our lands serve as the groundwater recharge areas for much of south-central and southeastern New Mexico. We cannot allow a century of work to restore forest health and reduce the threat of wildfire simply fall by the wayside. Congress must work with tribes to find large-scale long-term solutions to this problem to maintain the forestry infrastructure necessary to accomplish a fully integrated forest health treatment program that will help maintain our way of life, create jobs in Indian Country, and sustain the vital watershed for the Apache people and our neighbors.



Mescalero Apache Reservation
Location Map