S. HRG. 112–486

RESOLUTION COPPER

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

TO

CONSIDER H.R. 1904, THE SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2011; AND S. 409, THE SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2009, AS REPORTED BY THE COMMITTEE DURING THE 111TH CONGRESS

FEBRUARY 9, 2012

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

75–271 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JEFF BINGAMAN, New Mexico, *Chairman*

RON WYDEN, Oregon
TIM JOHNSON, South Dakota
MARY L. LANDRIEU, Louisiana
MARIA CANTWELL, Washington
BERNARD SANDERS, Vermont
DEBBIE STABENOW, Michigan
MARK UDALL, Colorado
JEANNE SHAHEEN, New Hampshire
AL FRANKEN, Minnesota
JOE MANCHIN, III, West Virginia
CHRISTOPHER A. COONS, Delaware

LISA MURKOWSKI, Alaska
JOHN BARRASSO, Wyoming
JAMES E. RISCH, Idaho
MIKE LEE, Utah
RAND PAUL, Kentucky
DANIEL COATS, Indiana
ROB PORTMAN, Ohio
JOHN HOEVEN, North Dakota
DEAN HELLER, Nevada
BOB CORKER, Tennessee

ROBERT M. SIMON, *Staff Director*
SAM E. FOWLER, *Chief Counsel*
MCKIE CAMPBELL, *Republican Staff Director*
KAREN K. BILLUPS, *Republican Chief Counsel*

CONTENTS

STATEMENTS

APPENDIXES

APPENDIX I

APPENDIX II

RESOLUTION COPPER

THURSDAY, FEBRUARY 9, 2012

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK. Why do we not get started? I am told Senator Murkowski is delayed a little bit and has asked us to go ahead, so we will do that.

This morning the committee is considering legislation to provide for a land exchange between the Forest Service and the Bureau of Land Management, and the Resolution Copper Company to facilitate Resolution Copper's development of a large copper mine in Southeastern Arizona.

This is an issue that has been before the committee now for several years, one that has generated significant controversy. During the previous Congress, Senator McCain, who is a member of our committee, asked me to work with him and see if we could come up with agreement on bill language to move this forward. We spent several months in discussions at the staff level on that set of issues, including many meetings with Resolution Copper and other interested parties. We did reach a compromise, which then resulted in the committee reporting a bill unanimously.

Unfortunately, that bill, like almost all other public land bills reported in the last Congress, was not considered on the Senate floor, and was not enacted.

Let me turn for a minute to the issues associated with the legislation. The mine proponents contend that the mine will create significant economic benefits. It will be located near an area with a history of mining. That would all appear true. This is a complicated project, as I understand, and will have a significant impact on the land which is currently part of a national forest.

There is considerable disagreement as to the effect that the development will have on cultural resources and to sites that nearby Indian tribes consider sacred. There are issues that obviously need to be reviewed and answered before the land exchange takes place, in my view.

A principle concern with the House bill—let me just flag so that witnesses can comment on it—is that it provides for a directed land

exchange, does not allow for the analysis of potential impacts of the exchange prior to that exchange being conducted. It does not give the Federal Government any ability to modify the terms and conditions of the exchange to take into account information raised or brought to light as part of those reviews.

Let me go ahead and defer to Senator Barrasso if he has comments that he wanted to make as an opening statement here.

Senator BARRASSO. Mr. Chairman, in light of the fact that Senator Murkowski is here and has an opening statement, I have one. I will wait until after our guests make their presentation. Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Why do we not go ahead and hear from our 2 colleagues from Arizona, Senator McCain and Senator Kyl. Why don't you proceed and give us your views on this issue? We appreciate your being here.

Senator McCain.

[The prepared statements of Senators Barrasso and Risch follow:]

PREPARED STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

I would like to thank Senators McCain and Kyl for their testimony here today.

I would like to join them in expressing support for H.R. 1904.

Like Senators McCain and Kyl, I believe Congress should not cede its constitutional authority to direct land exchanges.

A State's elected representatives are far better positioned to determine what is in the public interest than political appointees in Washington.

Of course, I understand that determining the public interest may often be difficult.

However, in our system of government, we rely upon the judgment of our elected representatives.

We do not expect or want our elected representatives to abdicate their responsibilities or punt difficult decisions to unelected officials.

Congress has a long history of directing land exchanges.

I don't see why Congress should give up that authority now—not with a national unemployment rate of 8.3 percent.

And not when this specific land exchange will help create an estimated 3,700 jobs.

And I certainly don't think that Congress should cede its authority to an Administration that puts politics ahead of unemployed Americans.

We have seen this time and time again.

I'm not only referring to the President's rejection of the Keystone XL pipeline.

But also to the Administration's uranium withdrawal in Arizona.

And the recent proposal to vastly reduce the acreage available for oil shale development throughout the West.

In January, the President's Jobs Council released its year-end report for 2011.

In that report, the Jobs Council stated that: "providing access to more areas for mining is controversial, but, given the current economic situation, we believe it's necessary to tap America's assets in a safe and responsible manner."

Well, I believe H.R. 1904 does just that.

And if the Administration won't follow the recommendations of the President's own Jobs Council, then Congress should.

We can begin by passing H.R. 1904.

PREPARED STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR FROM IDAHO

I think it is unusual that we are holding a hearing on a bill that has not been introduced by the proponents of the exchange, Senators McCain and Kyl. It is my hope that this committee will work with the home state senators on H.R.1904, which they support.

I do not support ceding the power of Congress to determine what is in the public interest to the Executive Branch. I believe that Senators McCain and Kyl represent their state well and have clearly determined that 3700 jobs is in the best interest of the people of Arizona in an area where unemployment is near 50 percent. I believe that my colleagues from Arizona understand the impacts of this exchange bet-

ter than the rest of us in the U.S. Senate and we should give deference to their views.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman. First of all, I would like to thank you for all the efforts you have made on behalf of trying to see this very important issue come to fruition. I want to thank you and your staff for the efforts that we have made. If in my statement and Senator Kyl's statement, I am sure if we show a little frustration, I think maybe it would be understandable because we have been at this issue for a long time.

As you know, the bill would facilitate a complex land exchange, as you said, that will ultimately protect 5,000 acres of environmentally sensitive lands throughout Arizona, while allowing for the Resolution Copper project to develop the third largest copper ore body in the world—the third largest in the world.

It would employ 3,700 Americans. It would produce 25 percent of the United States copper supply. It generates $61 billion in economic growth, provide $20 billion in Federal, State, and local tax revenue.

We can get copper from this mine, Mr. Chairman, or we can import it from someplace overseas. There will be a continued demand for copper in our economy.

My colleague, Senator Kyl, and I first introduced the bill in 2005, 7 years ago. Today marks the bill's sixth hearing before our congressional committee. At every hearing the project's tremendous economic and environmental values are reaffirmed, and yet at each hearing we see the same agitators trot it out to play the tired role of the industry obstructionist.

This vocal minority is so philosophically opposed to any mining in Arizona, they are willing to throw away the future of young families along with the best hope for long-term prosperity in the town of Superior, Arizona and the San Carlos Apache Indian reservations, where, Mr. Chairman, unemployment hovers around 50 percent.

Unfortunately, today's testimony by the Administration includes no meaningful recognition of the mine's national importance aside from passively mentioning "potential economic and employment benefits." Shame on the Administration for that kind of a statement when we have unemployment ripe throughout my State, and people are hurting, and homes are under water. The only mention in their long statement will be "potential economic and employment benefits." The disconnect between Washington Democrats and facts on the ground could never be more apparent than in the Administration's statement today.

Instead the Administration's testimony feeds unsubstantiated claims that the mine imminently threatens the area's environmental quality and cultural resources. This committee spent years analyzing, discussing, and evaluating this land exchange. We have had representatives of the Administration, including Interior Secretary Ken Salazar, visit the proposed mine site. The Forest Service began conducting preliminary evaluation of the mine area as far back as 2004.

The Resolution Copper Company has invested $750 million to collect engineering data to develop its mine plan of operation, which is now nearly complete. Yet no "compromise" is acceptable to the opponents who continue to demand more tribal consultation and more environmental study.

Let me say a word about tribal consultation. You are going to have a witness here from the Indian—Inter Tribal Council of Arizona. He will not mention that despite Senator Kyl and I constant urging that the San Carlos Apache tribe just sit down, just listen to the Resolution Copper. They refuse to do it. They refuse to sit down and at least listen and let the copper company make a presentation. Yet they will urge tribal consultation, tribal consultation.

It is not fair. It is not right to the poorest part of my home State of Arizona that we cannot move forward with what would not only help that part of our State, but also the United States of America.

So, I want to point out again the San Carlos Apache tribe have never met with Resolution Copper to learn about the project or discuss their cultural concerns. That is not what America is supposed to be all about. I respect tribal sovereignty. I do not respect people who refuse to sit down and at least listen to something that could help the tribe itself enormously, economically.

So, the tribal leaders—the San Carlos Apache obviously care more about some issues than they do about the prospect of employment for their tribal members, which, as I mentioned, is incredibly high, not to mention the problems of drug abuse, alcohol, and all the other things that plague their reservation because of their failure to have any kind of viable economy.

On multiple occasions, I have asked the chairman of the tribe to be briefed on the project and engage in constructive dialog, and each time my request and Senator Kyl's request has been declined.

So, are we to believe that the mining opponents genuinely want tribal consultation? Are we to assume that in light of the Keystone Pipeline issue this Administration will not delay or ultimately reject the project in the name of more study and more tribal input? The Administration's apathetic view of the mine is disgraceful and frustrating, and should trouble every member of this body who has land exchange legislation pending before this committee.

Mr. Chairman, it is time for Congress to put an end to these delays. The people in my State are hurting, and this mine is an economic opportunity that should not be squandered.

Mr. Chairman, I have numerous letters from elected officials from the Governor of the State of Arizona to the mayor of Superior, Arizona, and other towns in the area. I would ask that they be accepted in the record at this time.

Again, I apologize, Mr. Chairman, for any emotion that I have displayed in this, but I would ask the chairman to go to Superior, Arizona where half the homes are shut down, where the businesses are not functioning, where unemployment is close to 50 percent. All these people want is a chance to work and an opportunity to have a better life.

This bureaucracy that you will hear from and this Indian tribe is preventing them from having that opportunity. I am not asking them to agree; I am just asking them to sit down and listen to what we and the Resolution Copper Company have to say.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. We will certainly include all the letters that you referred to in the record.

Senator Kyl.

STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you, Mr. Chairman, and a formal statement of both Senator McCain and I as well.

The CHAIRMAN. We are glad to include those statements in the record.

Senator KYL. Thank you. One of the reasons why this land exchange is necessary is there is something called the copper triangle. It involves cities in Arizona called Globe, Miami, and Superior, and then Winkelman and Hayden. Within that area there is an enormous amount of copper, a lot of it which has been mined. But now this is, as Senator McCain said, the richest ore body—third richest in the world, and it would provide 25 percent of our copper.

The problem here is that—and the copper company has all of the land around the area under which they would be mining. By the way, the mine would be about 7,000 feet underground. This is not surface mining; this is underground mining. But because of the danger of operations, the potential for some possible subsidants, and the safety issues, as I said, it is important for them to also have the little bit of area that would be exchanged here. I think it is about 5,000 acres that would be—excuse me, about 2,000 acres. Excuse me, I will get the exact amount here—2,466 acres, which is kind of right in the middle of it.

The problem here is that the government withdrew a bunch of that land many years ago for a campground, and all it is is just an undeveloped campground for the Forest Service. That would be what would be available for the mining activity.

In exchange for that, over 5,000 acres of incredibly strong environmental land would be transferred to the Federal Government. All of the environmental groups, even though they may not support the exchange, are very strongly in support of the Federal Government acquiring this Riparian area along the San Pedro River. There is an area at the Los Cienegas National Conservation area. There is an area near East Clear Creek, which has been featured in Arizona Highways magazine, and we got the approval to pull this out of the magazine. I am going to pass this up to you. Just take a look at it. This is the kind of land the Federal Government will get in exchange for the land that would go to the development of the mine.

Let me address directly the other items that have been raised in objection. Senator McCain talked about the consultation. Now, we would like for the tribe to be able to sit down and express directly to the folks who would develop the mine why they do not want the employment, why they have a problem with this after all the other protections that have been granted.

The big area in Arizona that is near here that everybody wants to make sure is protected is called Apache Leap. That is a big escarpment, very important in Native American culture and the history of Arizona. Actually this land exchange adds 110 acres of pri-

vate land to Apache Leap and totally protects it. So, that issue is—I mean, there is no issue there.

On the environmental compliance questions have been raised. The reality is that resolution is already working through all of the existing legal requirements. For example, a pre-feasibility activities plan of operations was approved in 2010 after 2 years of NEPA analysis, and appealed by opponents incidentally. The mining plan of operations is expected to be completed and submitted to the Forest Service this year. That will trigger the full NEPA process.

So, nothing can be done here without compliance with all environmental laws, and the legislation does not change an iota of that. There are no waivers, and as of this year, as I said, they will have to begin NEPA analysis on the actual mining plan, even though the mining itself has not commenced yet. So, NEPA is fully satisfied.

On the tribal consultation, the Federal Government will confirm to you that they have been consulting with the tribe since 19—excuse me, since 2004. That is the Department of Agriculture testimony in the past here. The Tonto National Forest has engaged in both informal and formal consultation with the various tribes. That has been going on for over 2 years. It was upheld on appeal as in compliance with all applicable law, as well as the Forest Service's internal guidance. Nothing in the bill circumvents the consultation that would otherwise be required. That is a red herring.

Fair value. I think we are all beyond the fair value issue. The bill follows uniform appraisal standards, professional appraisal practices. It says that if there is more value after the mine starts than we thought, then the company has to make that up. This is a provision that the BLM supports in the bill. I do not think there is any issue there.

The real question was the issue of this public interest determination, and here it is real simply. You have administrative land exchanges, and you have congressional land exchanges. Congress has ceded some of its plenary authority to the agencies of the Federal Government to do land exchanges, usually smaller ones that really do not need to take up Congress' time. When that happens, because it is an agency doing it, it has to make a public interest determination. That is what it is called.

Congress by our very action every day decides what we think is in the public interest, whether we raise taxes, or lower taxes, or do a land exchange, or, you know, authorize the President to go to war. Whatever it might be, we make a—our own public interest determination. We will do that in this land exchange with all of the hearings. With all of the consultation, with all of the public input, it is a very transparent process the congressional process. There have been 6 hearings, House and Senate action. Everybody gets in on it. Congress eventually makes it decision. That is a public interest determination.

This is not an administrative land exchange. We have not delegated this one to the Department of Agriculture to make. If we did, the Secretary of Agriculture would make a public interest determination. That is not what is going on here.

So, Mr. Chairman, I know that 2 years ago the committee amended the bill that was before it at the time and imposed a condition of public interest determination after Congress has done all

the other things that we do in the legislation, imposed a condition that the Secretary of Agriculture, on his own, one person, decide whether the development of this mine and the land exchange is in the public interest. That is not acceptable, and that is not something Congress should do. It is not something we need to do.

For these folks to put over a billion dollars into a mine and then go to whoever this appointed Secretary of Agriculture is and say, now, do you in your sole judgment believe this is in the public interest. I mean, why have legislation? They could have gone through the administrative land exchange had they wanted to do that.

There is no reason to cede that to the Secretary. I mean, frankly if you are going to put a billion dollars into something, you would be crazy to agree to something like that. We have always been the ultimate arbiter of what we believe is in the public interest, and we should retain our authority to do that.

Senator McCain referred to Keystone. I will tell you, if you want evidence of what one person can do in a situation like this, there is a good bit of evidence. Why would Congress—and that is a case where the Secretary of State actually has authority. She does have to approve or disapprove that particular project. Here it is already in the Congress' hands. We have the authority. Why can we not make this determination?

All of the work has been done. The law is clear. Every NEPA requirement will have to be satisfied. I just respect the folks that are trying to develop this mine and the community that supports them for their willingness to take a chance on us. They have now got $750 million sunk in a shaft that is over 5,000 feet deep. It is 30 feet wide. They will tell you about it. What they found is there is an incredible potential here to be developed. We give up nothing by providing the land on the surface above a piece of this mining activity in exchange for some incredible environmental benefits that all Americans will be able to take advantage of.

I just urge the committee to put all of this into perspective, and understand what our rights are, what our authority is. Now, we may have some disagreements. Mr. Chairman, you and I might disagree of whether it is in the public interest to go here, and that would be a legitimate disagreement for Members of Congress. But we do have the authority to make the decision. I just hope at the end of the day we will agree that we should.

The legislation that came over to the Senate from the House is perfectly good legislation. It has all of the protections in it, and it has Congress making the decision. We are not delegating it to the Secretary, that is true. But I would submit that as between the approach that the committee took 2 years ago and the approach that the House has taken in passing this bill, the House passed bill is the right way to go. Congress should proceed with this. It is an important project, and I implore the committee to move forward with it.

Thank you, Mr. Chairman, for holding a very quick hearing on this. I appreciate that very much.

The CHAIRMAN. Thank you very much. We appreciate your testimony.

[The prepared statements of Senators McCain and Kyl follow:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Mr. Chairman and members of the Committee, I appreciate you making the "Southeast Arizona Land Exchange and Conservation Act of 2011" the sole focus of today's hearing. I'm pleased the Committee recognizes that this bill is a top-priority for the people of Arizona and the nation. As you know, the bill would facilitate a complex land exchange that will ultimately protect 5,000 acres of environmentally sensitive lands throughout Arizona while allowing for the Resolution Copper Project to develop the third largest copper ore body in the world.

The benefits of this project are clear:

- The mine would employ 3,7000 Americans;
- Produce 25% of U.S. copper supply;
- Generate $61 billion in economic growth;
- Provide $20 billion in federal, state and local tax revenue.

My colleague, Senator Kyl, and I first introduced this bill in 2005, seven years ago, and today marks the bill's sixth hearing before a Congressional Committee. At every hearing, the project's tremendous economic and environmental values are reaffirmed, and yet at each hearing we see the same agitators trotted out to play the tired role of the industry obstructionist. This vocal minority is so philosophically opposed to any mining in Arizona that they are willing to throw away the future of young families along with the best hope for long-term prosperity in the Town of Superior, Arizona, and on the San Carlos Apache Indian Reservation.

Unfortunately, Mr. Chairman, today's testimony by the Administration includes no meaningful recognition of the Mine's national importance aside from passively mentioning, quote, "potential economic and employment benefits." Instead, the Administration's testimony feeds unsubstantiated claims that the Mine imminently threatens the area's environment quality and cultural resources. This Committee has spent years analyzing, discussing, and evaluating this land exchange. We've had representatives of the Administration, including Interior Secretary Ken Salazar, visit the proposed mine site. The Forest Service began conducting preliminary evaluations of mine area as far back as 2004. The Resolution Copper Company has invested $750 million to collect engineering data to develop its Mine Plan of Operation which is now nearly complete. And yet no "compromise" is acceptable to the opponents who continue to demand more tribal consultation and more environmental study.

Mr. Chairman, for all of today's talk about the importance of tribal consultation, I want to point out that the leaders of the San Carlos Apache Tribe have never met with Resolution Copper to learn about the project or discuss their cultural concerns. Attempts by the company to reach out to the tribe have continuously been ignored. On multiple occasions, I've personally asked the Chairman of the Tribe to be briefed on the project and to engage in constructive dialogue, and each time my request has been declined.

So are we to believe that the mining opponents genuinely want tribal consultation? Are we to assume that in light of the Keystone Pipeline issue, this Administration won't delay or ultimately reject the project in the name of more study and more tribal input? The Administration's apathetic view of the Mine is disgraceful and frustrating, and should trouble every member of this body who has land exchange legislation pending before this Committee.

Mr. Chairman, it's time for Congress to put an end to these delay tactics. The people in my state are hurting for jobs and this Mine is an economic opportunity that must not be squandered. I wish to submit for the record several resolutions and letters of support for this land exchange issued from dozens of local governments and officials, including the Governor of Arizona.

Congress is long overdue in moving forward with this proposal, and I urge my colleagues to support this land exchange. I thank the Chairman and the Committee for their attention to this issue.

PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Chairman Bingaman, Ranking Member Murkowski, and members of the committee, thank you for the opportunity to appear before you today to discuss the Southeast Arizona Land Exchange and Conservation Act with you.

As many of you know, I am disappointed that the chairman noticed this hearing to consider not just the recently House-passed H.R. 1904, but also a bill before this committee two years ago. That old text was a committee amendment in the nature of a substitute adopted by this committee in March 2010. The Senate did not act on S. 409, as amended, and when the 111th Congress ended, the bill died. The com-

mittee text has not been introduced as a bill in this Congress and, therefore, is not even before the Senate.

That said, however, I plan to cover both the House-passed H.R. 1904 and the committee-reported text of S. 409 in my testimony.

H.R. 1904, THE SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT

I support H.R. 1904 as passed by the House of Representatives. The bill's sponsor, Representative Paul Gosar, has crafted a bill that enjoys strong support in our home state of Arizona. H.R. 1904 directs a land exchange in southeastern Arizona between Resolution Copper Mining, LLC (Resolution Copper), the secretary of agriculture, and the secretary of the interior. Specifically, the bill directs the secretary of agriculture to convey a 2,422-acre parcel of land located on the Tonto National Forest, in a known mining district called the "Copper Triangle" to Resolution Copper. The federal parcel, commonly called "Oak Flat" after the primitive camping site located there, will be traded to Resolution Copper to facilitate future exploration and development of what has been characterized as the largest copper-ore deposit ever discovered in North America, which is located some 7,000 feet below the surface.

Oak Flat is intermingled with, or abuts, private lands already owned by Resolution Copper Company. Resolution Copper's unpatented mining claims blanket the parcel except for the 760-acre area that includes the Oak Flat Campground. Oak Flat Campground was withdrawn from mining in 1955 by Public Land Order (PLO) 1229 along with 24 other campgrounds, lookouts, roadside zones, and administrative sites on National Forest lands. Oak Flat and these other sites were withdrawn to protect the federal capital investment in those sites—not because of any unique resource values. It is common practice to lift a PLO in a legislated land exchange.

Given the ownership patterns, the public safety issues that may be associated with the mining activities, and the significant investment Resolution Copper must make to develop this mine (more than $6 billion), it is important for Resolution Copper to own, in fee, the entire mining area.

In return for conveying the federal parcel to Resolution Copper, the Forest Service and Bureau of Land Management will receive eight parcels of private land totaling 5,344 acres. These parcels have been identified by—and are strongly endorsed for acquisition by—numerous conservation organizations, as well as these very two agencies themselves. They include lands along the San Pedro River—an important, internationally recognized migratory bird corridor, riparian, and wetland habitat for threatened and endangered animal and plant species, including the southwestern willow flycatcher and the hedgehog cactus. These lands also include important recreational areas, cultural resources, and magnificent canyons and forests that are home to big game species. Most of the parcels are inholdings that will allow more effective management of the federal land. I would be remiss if I did not point out that this bill actually adds 110 acres of private land to the federally controlled Apache Leap, a cliff formation above the Town of Superior that is considered culturally and historically significant to several Indian tribes. There is no doubt that it is in the public interest to bring these lands into federal ownership for the enjoyment of future generations.

Although the bill focuses primarily on the land exchange I just mentioned, H.R. 1904 also includes provisions that would permit the conveyance of federal lands to the Town of Superior. These lands include the town cemetery, lands around the town airport, and a federal reversionary interest that exists at the airport site. These lands are included in the proposed exchange to assist Superior in providing for its municipal needs, as well as in expanding and diversifying its economic development.

The mine project this bill seeks to facilitate would open up the third-largest undeveloped copper resource in the world, making a major contribution to our nation's mineral production. According to a January 2011 U.S. Geological Survey (USGS) report, the United States currently imports more than 30 percent of our national copper demand. Not only is it estimated that the mine project could produce enough copper to equal as much as 25 percent of current U.S. demand, but our demand is only expected to increase in coming years. This is so because of copper's status as a critical metal in alternative energy infrastructure and vehicles; so the need for this mine project is clear.

The project would also have a tremendous economic impact in Arizona and our nation at large in the form of both jobs and revenue. The mine is expected to create 3,700 mining-related jobs alone, not to mention the hundreds more it will create in related sectors. I do not need to remind this committee of the need for more jobs in our country; moreover, many of the mining-related jobs would be created in an

area of the state with some of Arizona's highest unemployment rates. Over the life of the mine, the project is expected to contribute more than $61 billion to the economy, including $19 billion in tax revenues to federal, State and local government coffers.[1]

Despite the fact that this bill is overwhelmingly supported in Arizona, there is a vocal minority that is now resorting to scare tactics in an effort to kill this bill. They say that allowing this project to go forward would circumvent environmental review, destroy cultural resources, and give away a valuable mineral resource. I want to assure everyone here today that none of this is true.

ENVIRONMENTAL COMPLIANCE

Environmental compliance is a critical element of this project. In 2008, Resolution Copper submitted to the Forest Service a pre-feasibility activities plan of operations. Those activities included exploration drill sites on the federal parcel that would be conveyed to Resolution Copper as part of the exchange. In 2010, after a full NEPA review that concluded with a Finding of No Significant Impact, not to mention an appeal by many of the vocal minority I mentioned earlier, the Forest Service approved the plan. Under House-passed H.R. 1904, Resolution Copper would be required to take the next step and submit a mining plan of operations to the Forest Service that would be the basis for an Environmental Impact Statement (EIS). That EIS would have to be completed prior to commencing production in commercial quantities of any valuable minerals. Resolution Copper has already started the development of the mining plan of operations and expects to submit it later this year, beginning this process. Additional environmental compliance requirements in federal and state law would also have to be addressed in order for the necessary permits to be obtained that would allow development of the mine. Resolution Copper is also active in sustainable development efforts that include voluntarily reclaiming and remediating impacts of historic mining in the area.

TRIBAL CONSULTATION AND CULTURAL RESOURCES

Tribal consultation, protection of cultural resources, and respect for Native American customs and traditions in the land exchange area are a priority. The bill contains an entire section that would permanently protect Apache Leap; it also requires, as a condition precedent to the land exchange, that Resolution Copper surrender to the United States, without compensation, the rights it holds under law to commercially extract minerals under Apache Leap.

It is important to note that there appear to be some inconsistences in the Forest Service's testimony and the realities on the ground in terms of tribal consultation. It is my understanding, based on past testimony by the Forest Service before this committee, that consultation with the tribes began on a formal and informal basis as early as 2004.[2] In addition, the Forest Service consulted with the tribes more than two years before approving the pre-feasibility plan of operations in the land exchange area in 2010.[3] On appeal, the reviewing officer found that a good faith government-to-government consultation with the tribes had occurred and should continue.[4] Nothing in this legislation will short-circuit required tribal consultation under applicable law.

FAIR VALUE EXCHANGE FOR THE TAXPAYERS

Ensuring this is a fair value exchange for the American taxpayer is an obvious prerequisite. For this reason, the bill requires that appraisals be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions issued by the Department of Justice, as well as the Uniform Standards of Professional Appraisal Practice issued by the U.S. Appraisal Foundation. To ensure that Resolution Copper does not receive any minerals that were not anticipated in the appraisal, Section 6(b) of H.R. 1904 requires Resolution Copper to pay the United States an annual cash payment called a "value adjustment payment" on any production from the mine that exceeds the production assumed in the appraisal.

---

[1] Pollack & Associates, Resolution Copper Company Economic and Fiscal Impacts Report Superior, Arizona, (September 2011).

[2] Honorable Mike Johanns, Secretary of the Department of Agriculture, Answers to Senator Bingaman on S. 2466—the Southeast Arizona Land Exchange (2006).

[3] U.S. Forest Service, Decision Notice and Finding of No Significant Impact, Resolution Copper Mining Pre-Feasibility Activities Plan of Operations. http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5200237.pdf

[4] Decision on Appeal #10-03-00-0020-A215, Resolution Copper Mining Pre-Feasibility Activities Plan of Operations, Tonto National Forest, August 20, 2010. http://www.fs.fed.us/appeals .

TEXT OF S. 409, AS REPORTED BY THE COMMITTEE

Now I will turn to the text of S. 409, the bill the committee worked on in the last session. I have two primary concerns: (1) the delegation of the public interest determination from Congress to the Department of Agriculture and (2) the pre-exchange NEPA requirement.

Public Interest Determination

In Section 3 of the committee amendment to S. 409, there is a provision that would delegate to the secretary of agriculture the determination as to whether this land exchange is in the public interest. Only if the secretary determines that the public interest will be well served by making the exchange can it go forward. Importantly, this provision is not in H.R. 1904—and with good reason. It, in effect, cedes Congress' constitutional authority to make decisions about whether a land exchange is in the public interest to an unelected political appointee—giving this one person final say over the exchange.

A public interest determination is a requirement applicable to administrative land exchanges processed by the secretaries of the interior and agriculture under the limited authority they were granted by Congress in the Federal Land Policy and Management Act (FLPMA). It does not, and should not, apply in congressionally legislated land exchanges. Supporters of this provision claim that the provision is necessary in this land exchange because, in their judgment, Congress does not have the information or the expertise to determine whether the public interest would be well served by making this exchange.

This is a shocking assertion. Congress is and always has been the ultimate arbiter of what is in the public interest. Congress, as representatives of the people, renders its final judgment on what is in the public interest through its passage or rejection of legislation. This is the very job we were elected to do, after all. Congress is and has always legislated land exchanges and, as elected officials, we use our best judgment to decide which land exchanges are in the public interest. We can delegate our plenary power to an administrative official, but need not do so. If the parties believed an administrative exchange was suitable, they could have gone that route. It is their right to ask Congress to exercise its superior authority to affect the exchange.

In a legislative land exchange, Congress uses the legislative process to determine whether the exchange is in the public interest. That process, as you know, begins even before a bill is introduced. Legislated land exchanges are considered in hearings, markups, and other proceedings in both the House and Senate. In most cases, testimony from the administration, public, and other stakeholders is provided, along with CBO analysis. Town halls and fact-finding field visits are often conducted as well. Moreover, the public has opportunities to communicate with Congress throughout the entire legislative process via meetings, email, telephone calls, and letters. I would assert that this process is more transparent and thorough than anything the secretary would do on his own, without the public scrutiny inherent in Congressional action.

According to the Government Accountability Office, the agencies' land exchange programs are plagued with problems. In 2000, GAO characterized the administrative land exchange process as a game of insider trading, and called on Congress to consider halting all administrative land exchange programs[5]. In a subsequent review in 2009, GAO noted some improvements in the agencies' administrative land exchange programs, but still found that significant problems existed. One of those problem areas remained in the public interest determination. In GAO's sample of 31 land exchanges, it found that a third of the exchanges had a documented problem in the agency's public interest determination.[6]

Over the last seven years, Congress has reviewed every aspect of this land exchange proposal. Legislation has been introduced and considered in both the Senate and House. There have been multiple public hearings (six including this one, four in which the chairman has participated) and numerous town halls, including one in the last Congress with Secretary Salazar that also included field visits to the mine and land exchange area. We have also heard input from all concerned stakeholders: state and local officials, tribes, federal agencies, conservation groups, and the public at large, both those for this exchange and those against it. In my judgment, this land exchange is quite clearly in the public interest.

---

[5] G.A.O., BLM and the Forest Service: Land Exchange Need to Reflect Appropriate Value and Serve the Public Interest, http://www.gao.gov/archive/2000/rc00073.pdf (June 2000).

[6] G.A.O., BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions are Needed, http://www.gao.gov/assets/300/290765.pdf (June 2009).

The fact is, the U.S. Constitution gives Congress plenary authority "to dispose of and make all needful rules and regulations" concerning federal lands.[7] Pursuant to this authority Congress has routinely legislated land exchanges including some that do not necessarily adhere to all of the specific requirements that bind the land management agencies. House-passed H.R. 1904 is the norm in legislative land exchanges, as it is grounded in Congress' plenary authority.

Pre-exchange NEPA

Both House-passed H.R. 1904 and the old committee text include provisions that impose National Environmental Policy Act (NEPA) compliance requirements. While the old committee text applies the NEPA to the land exchange itself, H.R. 1904 instead requires the company to submit to the secretary of agriculture a proposed mine plan of operations, and requires it to conduct an environmental analysis for any federal actions or authorizations related to the proposed mine and mine plan of operations.

This difference is rooted in the amount of discretion afforded to the agency regarding the land exchange. Since the old text would essentially legislate an administrative exchange, the land exchange decision is completely discretionary. Discretionary decisions of a federal agency are subject to a full review under the NEPA. In the case of House-passed H.R. 1904 and most other legislated land exchanges, Congress directs the land exchange, thereby limiting the agency's discretion and the NEPA review on the exchange itself. This makes sense. Why would Congress have the agency go through the NEPA process of developing a range of alternatives to the land exchange when it has already made the decision to consummate the exchange? Besides, the exchanging of lands does not have a significant environmental impact. This provision's only real purpose is to significantly delay the exchange. After all, the NEPA itself imposes no substantive environmental obligations—it is simply a procedural statute.[8]

The NEPA compliance requirements in H.R. 1904 focus on the federal actions and authorizations related to the proposed mine and mine plan of operations that would be made after the land exchange. The Forest Service, in its testimony on H.R. 1904, has acknowledged that these provisions are consistent with existing NEPA requirements.[9]

It is important to note that there are numerous other substantive federal, state, and local environmental laws that the mine project would have to comply with before it could be permitted to operate. H.R. 1904 does not waive the application of any of these environmental laws.

CONCLUSION

In conclusion, Mr. chairman, I think the rationale for this land exchange is clear.

By transferring the land it currently holds to the federal government, Resolution Copper will help to conserve some of Arizona's most vulnerable natural wonders and enable future generations of Americans to experience their immense beauty for years to come. In effect, the transfer of the land Resolution currently holds constitutes an investment in the environment and in our future.

Likewise, by transferring the land it holds to Resolution, the federal government is making an investment in our country's most immediate economic development. The significant jobs and revenue impact of this mine project will help Americans who are desperately seeking employment today. Moreover, it will help cash-strapped state and local governments provide those public services that have never been more in demand. I think it also goes without saying, Mr. chairman, that the federal government could use a few extra dollars these days too.

So, now we face a choice. This land exchange has been vetted and debated, it has been reviewed and revised. Every feasible stakeholder has had his say. I think it's time to wrap up the debate and simply state the obvious: this proposed exchange is quite firmly in the public interest. Indeed, if this one is not, then what exchange could ever hope to be? I doubt there is a more thorough process we could design if we tried, Mr. chairman.

---

[7] Article 4, Section 3, Clause 2 of the U.S. Constitution gives Congress "plenary" authority to make decisions on the public lands. Under that authority, Congress has routinely passed laws directing non-discretionary public land actions including land exchanges.

[8] Robertson, Chief of the Forest Service, et al. v. Methow Valley Citizens Council et al., 490 U.S. 332, at 349.

[9] Statement of Mary Wagner, Associate Chief, U.S. Forest Service, U.S. Department of Agriculture, Before the Subcommittee on National Parks, Forests and Public Lands, Natural Resources Committee, U.S. House of Representatives (June 14, 2011).

Punting this exchange proposal to an unelected official for yet another review process and unilateral decision is not the answer. We were elected by our constituents to determine, on their behalf, what constitutes the public interest. We do it every day—on a myriad of issues, many more difficult and even more important than this land exchange. If we cannot even perform that most basic a function, then what exactly are we all doing here in Washington anyway?

Let's do our duty. I urge your support for House-passed H.R. 1904.

The CHAIRMAN. We have 2 panels today. We have Administration witnesses, both representative of the Forest Service, Department of Agriculture, who is the manager of this property that is the subject of the exchange, and also a representative of the Department of the Interior that would be the manager of much of the land that is the subject of the exchange. So, that is our first panel.

Our second panel is a representative from Resolution Copper, Vice President Jon Cherry, and also Mr. Shan Lewis, who is the president of the Inter Tribal Council of Arizona.

Why do we not go ahead, Ms. Wagner? Why do you not begin and give us the Forest Service view on the proposed legislation and the issues that are involved?

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Ms. WAGNER. Thank you, Mr. Chairman, and members of the committee. I appreciate the opportunity to be with you today to provide the Department of Agriculture's views on H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011, as passed by the House, and S. 409, the Southeast Arizona Land Exchange Conservation Act of 2009, as reported by the committee during the 111th Congress.

I am Mary Wagner, Associate Chief of the Forest Service.

I know you have had an opportunity to review the detailed written testimony. I am going to focus on just a few key points in my oral remarks.

First, I will offer remarks on the overall purposes of the bill. The Department supports environmentally sound mineral development. We recognize the benefit copper mine development has to economy and employment conditions in the State of Arizona. We acknowledge the environmental benefits and qualities of the non-Federal parcels considered in this exchange. We appreciate the efforts of the committee to resolve land use issues for the town of Superior, and we support the recognition and protection of the important values of Apache Leap.

The primary difference between H.R. 1904 and S. 409 is that the House bill makes a public interest determination and requires NEPA, after the land exchange, for authorizations to use, adjoining national forest system land for ancillary activities related to the mining development, such as rights of way for electric lines, pipelines, transportation, roads, in support of the mine plan of operations.

S. 409 would address the principle concerns of the Department because it would require the Secretary to make a public interest determination on the merit of moving forward with the exchange based on an environmental analysis to be conducted before the land exchange would proceed. It also mandates consultation with affected Indian tribes as part of that process.

The Department cannot support H.R. 1904 as written, but will continue to work with the sponsor on the committee to resolve concerns.

The purpose of preparing an environmental analysis before consummating the land exchange would be to analyze the effects of the transfer of Federal land to Resolution Copper, any activities that are reasonably foreseeable to occur on the transferred land, including mineral development, and the acquisition of the non-Federal land resulting from the exchange.

The agency would use the environmental analysis to make a decision on whether and how to proceed with the land exchange and what mitigation conditions would be required to mitigate identified impacts.

NEPA conducted in advance of the exchange would create an opportunity for a meaningful tribal consultation where tribal concerns and interests would be identified and addressed and possibly mitigated. The Department believes that adhering to the Federal Land Policy Management Act and other laws that guide land exchanges ensures a sound process for determining the public interest and to disclosing environmental impacts.

Of course Congress has the authority to waive any or all part of NEPA or to mandate the implementation of an act in a manner that waves application of NEPA. Unless such a mandate is passed in legislation, the Administration takes a position of complying with existing laws as written.

We have a number of concerns about both versions of the bill that we would like to clarify and reconcile, things such as the parcels to be included in the acquisition, the appraisal provisions, value adjustment provisions, the purpose of funds for value adjustment payments, and the timeframes to complete the land exchange. We would like to work with the committee to resolve these concerns.

This concludes my oral testimony, and I am happy to answer any of your questions. Thank you.

[The prepared statement of Ms. Wagner follows:]

PREPARED STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on H.R. 1904, the "Southeast Arizona Land Exchange and Conservation Act of 2011" as passed by the House and S. 409, the "Southeast Arizona Land Exchange and Conservation Act of 2009," as reported by the Committee during the 111th Congress. I am Mary Wagner, Associate Chief of the U.S. Forest Service. Both H.R. 1904 and S.409, as reported, would direct the Secretary of Agriculture to convey federal land for use as an underground copper mine in exchange for environmentally sensitive non-federal land in Arizona. We defer to the Department of the Interior on provisions relating to lands to be managed by the Bureau of Land Management (BLM).

H.R. 1904: THE "SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2011"

H.R. 1904 would direct the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), a 2,422 acre parcel of land on the Tonto National Forest. The federal land to be conveyed, known as Oak Flat, contains a potentially sizeable copper ore body and adjoins an existing copper mine on private land owned by Resolution Copper. In exchange, Resolution Copper would convey five parcels of land to the Forest Service and three parcels of land to BLM. The total non-

federal acreage that would be conveyed by Resolution Copper is 5,344 acres, all of which are in Arizona.

The Bill calls for an equal value exchange in section 4(e). If the value of the federal land (including the ore body) to be conveyed exceeds the value of the parcels to be acquired, the Bill would allow for a cash equalization payment by Resolution Copper in excess of twenty-five percent. Under current law, cash equalization payments may not exceed twenty-five percent (section 206(b) of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)). A cash equalization payment resulting from the exchange would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land for addition to the National Forest System within the State of Arizona.

Section 6(b) of the Bill would require Resolution Copper to make value adjustment payments if, as the mine is developed, production of the mine exceeds expectations documented in the appraisal. Those funds would be deposited in a special account in the Treasury to be used, upon appropriation by Congress, for maintenance, repair, and rehabilitation projects on BLM and National Forest System lands. The Department's position is that any value adjustment payments should be used for land acquisition.

The Bill also would provide for the sale of: a 30 acre parcel of land currently being used as a cemetery; a reversionary interest and reserved mineral rights in a 265 acre parcel; and 250 acres near the Superior Airport at market value to the Town of Superior. Sale proceeds would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land to the National Forest System in Arizona.

H.R. 1904 would require Resolution Copper to pay all costs associated with the exchange, including any environmental review document. The Bill provides that it is the intent of Congress that the exchange be completed not later than one year after the date of enactment. At the request of Resolution Copper, the Bill would require the Secretary, within 30 days of such request, to issue a special use permit to Resolution Cooper to carry out mineral exploration activities under the Oak Flat Withdrawal Area, from existing drill pads located outside the area, if such activities would not disturb the surface of the Area.

At the request of Resolution Copper, within 90 days, the Bill would require the Secretary to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), if the activities are conducted from a single exploratory drill pad which is located to reasonably minimize visual and noise impacts to the Campground.

H.R. 1904 would require the Secretary of Agriculture to complete an environmental review document after the exchange, and after the above-noted activities were permitted to take place, but before Resolution Copper's commencement of commercial mineral production on the land it would acquire in the exchange. Specifically, once the land exchange is consummated, and these lands are in the private ownership of Resolution Copper, Resolution Copper is authorized to submit a mine plan of operation to the Secretary. Thereafter, the Secretary must complete an environmental review document within three years that is limited to section 102(2) of the National Environmental Policy Act of 1969 (NEPA). The environmental document would be used as the basis for any federal action or authorization related to the proposed mine and mine plan of operations of Resolution Copper, including the construction of associated power, water, transportation, processing, tailings, waste dump, and other ancillary facilities. After the exchange, Resolution Copper may need to use the adjoining National Forest System land for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads. As we understand the Bill, it would require the Forest Service to prepare an environmental analysis before issuing authorizations for such activities, which would be consistent with existing requirements under NEPA.

The Bill would add five parcels of land totaling almost 1,200 acres to the National Forest System. Most of these parcels include riparian areas which are somewhat rare in Arizona. One of the parcels that would be acquired adjoins the Apache Leap area on the Tonto National Forest. Additionally, as a condition of the land exchange, Resolution Copper would surrender its rights to commercially extract minerals under Apache Leap.

While the Department understands and appreciates the potential economic benefits and the value of the lands to be acquired by the American public, the Department cannot support the Bill as written but is looking forward to working with the Sponsor and the Committee. The principal concern is that the Bill would require the agency to prepare an environmental review document under NEPA after the land exchange is completed. Also of concern is the fact the Bill would immediately

authorize mining exploration activities under an area that is considered sacred by the San Carlos Apache Tribe without a review or study or consultation with Tribes.

NEPA is a forward looking statute setting out procedural obligations to be carried out before a federal action is taken. It requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action and alternatives of such action. It is this Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement congressional direction.

The purpose of the requirement in the bill that the agency prepare a limited NEPA review after the exchange, when the land is in private ownership, is unclear because the bill provides the agency limited discretion to exercise. An environmental review document after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. In addition, the U.S. Forest Service does not have an understanding of the impacts the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could and should be obtained by the Forest Service with NEPA analysis before the exchange. A NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership.

The Bill should be amended to require the preparation of an environmental analysis before the land exchange is completed. The purpose of preparing an environmental analysis before consummating the land exchange would be to analyze the effects of the transfer of the federal land to Resolution Copper, any activities that are reasonably foreseeable to occur on the transferred land (including mineral development), and the acquisition of the non-federal land resulting from the exchange. The agency would use the environmental analysis to make a decision on whether and how to proceed with the exchange and what mitigation conditions would be required to mitigate the identified impacts.

The legislation states that it is Congressional intent that the exchange be completed within one year. Based on our experience with complex land exchanges, this is an insufficient amount of time to complete the exchange. Given the requirement of mineral reports, appraisals, title documents, environmental analysis and government to government consultation with local Tribes, a two to three-year timeframe is much more realistic.

The agency also understands that a number of federally recognized Indian tribes and regional and national tribal organizations are concerned that the H.R. 1904 circumvents various laws, policies, and Executive order that directs the Federal land managing agencies to engage in formal consultation with the interested Indian tribes. Indian tribes have also raised important concerns that the Bill is contrary to various policies and Executive Orders that Federal land managing agencies protect and preserve sites that are sacred to Native Americans. The Forest Service understands that the land is considered sacred by the tribe and holds significant traditional and historic value. Because of these expressed concerns and because this specific site has been the focus of historic Government protection it is important that this Bill provide for the process of formal tribal consultation to ensure both tribal participation and protection of this site.

The Bill would require the Secretary to prepare a management plan for Apache Leap. Further, the federal lands to be exchanged (Oak Flat) hold significant cultural values to Indian Tribes. Although the Bill would require government-to-government consultation, any consultation would not be considered meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", because the Secretary's discretion regarding the land exchange is limited. The focus of the consultations would likely be the management of those areas over which the agency would have discretion, namely, the federal land adjacent to the mine and Apache Leap.

For example, the Secretary would not have discretion over the conveyance or on-site management of the Oak Flat site, which under the legislation would be conveyed to Resolution Copper. The San Carlos Apache Tribe considers the Oak Flat area to be a sacred site. They have expressed concerns that block cave mining would cause subsidence that would impact the fundamental religious nature of the site. They have also expressed concerns regarding potential impacts on water quality. They have detailed in correspondence to Secretary Vilsack, the importance of traditional acorn gathering and religious ceremonies which still occur on this site. The Department has a responsibility to consider the Tribes' concerns and these can only be adequately addressed if a pre-exchange environmental analysis is the first step.

S.409, THE SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2009, AS REPORTED BY THE COMMITTEE DURING THE 111TH CONGRESS

With the exception of the "Pond Parcel," S.409, as reported, describes the same lands to be considered for exchange and many of the same provisions as H.R.1904. However, in contrast to H.R. 1904, S.409 would address the principal concerns the Department has with H.R.1904. S. 409 would require the agency to make a public interest determination on the merit of moving forward with the exchange based on an environmental analysis to be conducted before the land exchange would proceed. It also mandates consultation with affected Indian tribes as part of that process. S.409 requires government-to-government consultation prior to making a determination as to whether the exchange is in the public interest. The Administration believes that the timing of government-to-government consultation prior to the Secretary of Agriculture's public interest determination would allow for meaningful consultation and coordination with interested tribes.

We have a number of significant concerns with both versions such as parcels to be included for acquisition, valuation of the parcel to be conveyed, etc. We would like to work with the Committee to resolve these concerns.

There is no doubt that the lands that would be acquired and managed by the U.S. Forest Service under either bill have important resource values that should be protected. There are also potential economic and employment benefits from the proposed mining operation. However, it is important to understand and address environmental concerns and impacts on sites considered sacred and important by the Tribes. In addition to the concerns expressed in testimony, the Department would like to work with the Committee on a number of technical concerns with H.R.1904, as passed by the House, or a Senate version of the Bill.

This concludes my statement and I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much. Mr. Farquhar, we are glad to have you here. Go right ahead.

STATEMENT OF NED FARQUHAR, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. FARQUHAR. It is an honor to be here, Mr. Chairman. Thank you very much. I will present testimony—oral testimony—and ask that the written testimony be submitted for the record.

At the committee's request, we will address both H.R. 1904 as passed by the House on October 26 of last year, and S. 409 as reported out by the committee on March 2, 2010. Both bills provide for the exchange of U.S. Forest Service managed land to a private company in exchange for a number of other parcels within the State of Arizona.

In general, the Department of the Interior defers to the Forest Service on issues directly related to Forest Service managed lands and associated valuation issues.

Both bills provide for the conveyance of 3 parcels to the Secretary of the Interior to be managed by the BLM, Bureau of Land Management. The acquisition of these lands advances important conservation goals associated with this unique and special natural resource. The parcels identified include 3,050 acres along the lower San Pedro River near Mammoth, Arizona, 160 acres within Dripping Springs near Kearney, Arizona, and the 940–acre Appleton Ranch parcel adjacent to the Las Cienegas national conservation area near Sonoita, Arizona.

The Administration has several concerns with the Arizona Land Exchange and Conservation Act and cannot support the bill as written.

The Administration's first concern with H.R. 1904 is the requirement for the Forest Service to prepare an environmental review

document under NEPA after the land exchange is completed rather than in advance of the exchange as provided in S. 409, which you worked so hard on 2 years ago.

In addition, concerns have been raised by Indian tribes that H.R. 1904 is contrary to the laws and policies and executive orders that direct Federal land management agencies to engage in formal consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans.

Many of the lands to be exchanged in both bills hold significant cultural values to Indian tribes. In particular, the Apache Leap area, the Oak Flat campground, and Devil's Canyon are culturally significant to the San Carlos Apache tribe and the Fort McDowell Yavapai Nation. There are also other neighboring tribes with cultural interest in the area.

The Administration is concerned that any consultations under H.R. 1904 cannot be meaningful under Executive Order 13175 and consultation and coordination with Indian tribal governments because the Secretary of Agriculture's discretion regarding the land exchange is limited. The tribal consultation provision in section 3(d) of S. 409 as you worked it up in the committee is significantly better than section 4(c) of H.R. 1904.

Thank you for the opportunity to testify today. The exchange proposed in both these bills is complex, and the Departments of Agriculture and the Interior seek to assure that the Federal Government's interest is appropriately protected in any final legislation.

[The prepared statement of Mr. Farquhar follows:]

PREPARED STATEMENT OF NED FARQUHAR, DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

1Thank you for the opportunity to present testimony on the Southeast Arizona Land Exchange and Conservation Act. At the Committee's request, we will address both H.R. 1904, as passed by the U.S. House of Representatives on October 26, 2011, and S. 409, as reported by the Senate Energy and Natural Resources Committee on March 2, 2010. Both bills provide for the exchange of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the U.S. Forest Service (FS) and the Bureau of Land Management (BLM). Three of the private parcels are identified for transfer to the Secretary of the Interior.

In general, the Department of the Interior (DOI) defers to the FS on the issues directly related to FS-managed lands and associated valuation issues. We believe that the intent of the legislation is to facilitate an exchange of land with Resolution Copper Mining, LLC. Resolution Copper has indicated its intention to develop a copper mine near Superior, Arizona, and wishes to acquire the 2,422-acre FS parcel overlying the copper deposit as well as the Federal subsurface rights.

CONVEYANCE OF PARCELS TO THE BUREAU OF LAND MANAGEMENT

Both bills provide for the conveyance of three parcels to the Secretary of the Interior to be managed by the BLM. The parcels identified are located in Gila, Pinal, and Santa Cruz Counties and include:

- 3,050 acres along the lower San Pedro River near Mammoth, Arizona;
- 160 acres within the Dripping Springs area near Kearny, Arizona; and
- the 940-acre Appleton Ranch parcel adjacent to the Las Cienegas National Conservation Area near Sonoita, Arizona.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance key migratory bird habitat along the San Pedro River. The bills provide for the lower San Pedro parcel to be managed as part of the BLM's existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the NCA, but it is at least 60

miles downstream (north) of the existing NCA and has substantially different resource issues and needs. If this parcel is conveyed to the Secretary of the Interior and incorporated into the NCA, the Department recommends that the existing 80 acres of adjacent BLM-managed public land likewise be included within the NCA to facilitate the efficient and effective management of this important riparian corridor.

The legislation also proposes to transfer 160 acres in the Dripping Springs area near Kearny, Arizona, to the Secretary of the Interior. This private parcel is an inholding within a larger block of public lands and has important resource values, including sensitive Desert Tortoise habitat.

Finally, the bills provide for the transfer of the 940-acre Appleton Ranch parcel to the Secretary of the Interior. This parcel is located on the southern end of the BLM's Las Cienegas NCA. These lands lie within the "Sonoita Valley Acquisition Planning District" established by Public Law 106-538, which designated the Las Cienegas NCA. That law directs the Department to acquire lands from willing sellers within the planning district for inclusion in the NCA to further protect the important resource values for which the Las Cienegas NCA was designated. These lands are part of a significant wildlife corridor. The acquisition of these lands advances important conservation goals associated with this unique and special natural resource.

GENERAL CONCERNS

The Administration has several concerns with the Southeast Arizona Land Exchange and Conservation Act and cannot support the bills as written. The Administration's principal concern with H.R. 1904 is the requirement for the Forest Service to prepare an environmental review document under the National Environmental Policy Act (NEPA) after the land exchange is completed rather than in advance of the exchange as provided in S. 409 as reported. It is this Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement congressional direction. In addition, concerns have been raised by Indian tribes that the legislation is contrary to laws and policies and Executive Orders that direct Federal land management agencies to engage in formal consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans.

Many of the lands to be exchanged in both bills hold significant cultural value to Indian tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring tribes with cultural interests in the area. The Administration is concerned that any consultations under H.R. 1904 would not be meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," because the Secretary of Agriculture's discretion regarding the land exchange is limited. The tribal consultation provision in section 3(d) of S. 409 is significantly better than section 4(c) of H.R. 1904. The Senate bill requires government-to-government consultation prior to making a determination as to whether the exchange is in the public interest. The Administration believes that the timing of government-to-government consultation prior to the Secretary of Agriculture's public interest determination would allow for meaningful consultation and coordination with interested tribes. This Administration is committed to work with Tribes to ensure that views and values are seriously heard and considered.

Section 4(i) of H.R. 1904 expresses the intent of Congress that the exchange be completed within one year. This provision most notably differs from section 3(i) of S. 409, which provides for a three-year period to complete the environmental reviews and public interest determination on the land exchange. Based on our experience with exchanges, we believe the amount of time provided in H.R. 1904 is insufficient to review and finalize the necessary environmental documents, mineral report, and appraisals, as well as to conduct the final verification and prepare title documents. We are also concerned that one year may not be sufficient to complete analysis of any historic and sacred sites in the exchange area as required by the Native American Graves Protection Act and the National Historic Preservation Act. The three-year completion period included in S. 409 provides a more reasonable timeframe for completing the necessary analyses and documentation.

Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides important information about the Federal mineral deposit. Neither H.R. 1904 nor S. 409 addresses access to confidential exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure a timely and accurate appraisal. Such in-

formation is essential for the mineral report, particularly in the context of this exchange, because of the size of the proposed mining operation and the proposed mining technique.

Section 6 of both H.R. 1904 and S. 409 provides for an annual value adjustment payment to the United States if the cumulative production of locatable minerals exceeds the projected production used in the appraisal required by section 4 and section 3, respectively. These provisions recognize that an accurate projection of future production as part of the appraisal process will be difficult to develop, and provide a mechanism for additional payments to the United States if the actual production exceeds the projected production. The Department generally defers to the FS on the specific provisions of section 6 of both bills. However, we note that section 6(d)(1) of H.R. 1904 creates a new fund in the U.S. Treasury for the deposit of these value adjustment payments. In contrast, section 6(d) of S. 409 requires that these payments be deposited into the account established under the Sisk Act (Public Law 90-171). The Department supports the Senate bill's approach for the use of these funds. We believe that these funds should be dedicated to Federal land acquisition in the same manner as the initial land equalization payments provided for in section 4(e)(2)(C) of H.R. 1904. Because these funds are to compensate for a possible initial inadvertent under-appraisal of land values, it is appropriate that the value when captured be used in the same manner as if it had been included in the initial appraisal.

Finally, there are a number of issues of a more technical nature, including appropriate map references, which we would welcome the opportunity to discuss as this legislation moves forward.

CONCLUSION

Thank you for the opportunity to testify. The exchange proposed in H.R. 1904 and S. 409 is complex. The Departments of Agriculture and of the Interior seek to assure that the Federal Government's interest is appropriately protected in any final legislation.

The CHAIRMAN. Thank you very much. Thank you both. Let me ask a few questions, and then defer to others, Senator Murkowski and others on the committee.

Ms. Wagner, in the bill that the House has passed, H.R. 1904, there is a section 4(h) that says that Resolution Copper can mine and conduct related activities on the Federal land prior to its conveyance, "in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land and private ownership." What is your understanding of that provision?

Ms. WAGNER. Our review of that suggests that we could work together to provide some additional clarity. It suggests that once the land becomes private, the mineral development, the mineral activity would be guided by the laws for private lands as opposed to the laws that are guided for Federal land activity. It is just a little confusing in the text. At what point would mineral development be available to Resolution Copper?

We would interpret the bill to mean that the mine development would be available to Resolution Copper after the conveyance was complete, meaning after the Federal became private land.

The CHAIRMAN. So, where it talks about the Federal land, prior to the conveyance of the Federal land, it can be mined. Is that your understanding of it, or am I misreading it?

Ms. WAGNER. I think it is a provision that could do with some more clarity. Our assumption would be that the mining activity contemplated by Resolution Copper would only happen on that piece of land after the conveyance was complete. So, it is uncertain what the provision actually is directed to.

The CHAIRMAN. OK. Let me also ask you, Ms. Wagner, the bill, H.R. 1904, requires Resolution Copper to submit a mine plan of op-

eration to the Secretary prior to commencing production in commercial quantities from the land that it acquires from the United States. What authority would the Secretary have to react to that plan of operation, to either approve it, or ask for modifications, or reject it? If the land has already been exchanged and is now privately owned by the company, what authority would the Secretary have?

Ms. WAGNER. The Secretary would have the authority to address the mine plan of operations activities on the national forest system lands. So, we would be anticipating that there would be ancillary activities on adjacent national forest system lands, might require power lines, transportation routes, roads, waste dumps, talenes, et cetera. So, the mine plan of operation would detail what would be the impacts on other national forest system lands that we would need to address, and the bill imagines doing NEPA to address those concerns.

The CHAIRMAN. So, your thought is that the Secretary would not have the ability to require any modification of the mine plan on the land that has been exchanged, but would be able to require modification of the mine plan to the extent that it required some of these activities on forest service land that still had not been exchanged. Is that accurate?

Ms. WAGNER. Yes. Yes, sir, that is our understanding as well.

The CHAIRMAN. OK. Let me ask on tribal consultation, H.R. 1904 has a provision that requires the Secretary of Agriculture to "engage in government to government consultations with affected Indian tribes concerning issues related to the land exchange." I am just unclear in my mind what the purpose of those consultations would be since the statute directs the Secretary to proceed to exchange the land. What is your thinking on that?

Ms. WAGNER. Right. The bill authorizes and directs the Secretary to complete the land exchange. There would be no environmental analysis necessary to support the land exchange activity. So, the benefit of tribal consultation would be limited due to the limited discretion of the Secretary in this case.

The CHAIRMAN. It would be limited, but you think it would still be meaningful? I am just not clear what it would consist of. What would they consult about? I mean, if the Secretary no longer had any authority, the land has been exchanged, it is now private land, what would they consult about?

Ms. WAGNER. The ancillary activities would be one piece of the work that we could absolutely discuss with the tribes because there would be—with a mine plan of operation submitted, we would expect there would be other activities. The management plan for Apache Leap would be another thing that we would work with the tribes directly on. But directly related to the land exchange, I think we would submit the consultation would be somewhat limited and not particularly meaningful because of the limited discretion of the Secretary.

The CHAIRMAN. All right.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you to both of you for being here this morning.

I want to direct my questions primarily to this issue of the finding of public interest determination. It is my understanding that the real difference between H.R. 1904 and S. 409 is that requirement. I do find it interesting and actually quite unusual that we would have a bill before the committee that the sponsors have not asked us to have hearing on, and that was moved out of the committee in a prior Congress. I think it is pretty unusual, and I would like to understand from the Administration's perspective where we are going as a policy initiative when it comes to this issue of a finding of a public interest determination.

I think Senator Kyl led, or laid it out relatively clearly in terms of the ceding of jurisdiction, ceding of authority here. You have congressional conveyances. I am assuming that both within Department of Agriculture and Department of the Interior that the dozens of land exchanges and land conveyances and land allocation bills that we have here in Congress, that the Administration does not have any problem with the fact that we have that congressional authority to move forward with conveyances and exchanges and allocations, is that correct? An agreement that that is appropriate. We have been doing that because, if not, we are going to have some real problems with some of the bills that we advance because there is a congressional authority route, and then there is the administrative route, is that correct?

Ms. WAGNER. We implement the laws Congress passes.

Senator MURKOWSKI. I understand, but you do not think it is inappropriate for Congress to be making the public interest finding by directing such exchanges, or conveyances, or allocations.

Ms. WAGNER. Congress has the discretion to make the finding of public interest.

Senator MURKOWSKI. So, as we have that authority, then is it not, I guess, somewhat disingenuous for either Department of Agriculture or Department of the Interior to recommend to the public that they pursue their land exchanges through the congressional route, which they are very often directed to do, but then support a provision that would require a public interest finding, because that is the real difference between the 2 processes. Do you agree?

Ms. WAGNER. So, in this case, Congress gives the Forest Service and the Department of the Interior laws that we have administrative processes that guide mineral development and land exchanges. So, we tend to say that following those laws is a good process.

In this particular proposal, it would still have needed congressional action because it included BLM lands in the acquisition. We had the 25 percent cash equalization payment, and there was an exception in this bill that the cash equalization could be larger than 25 percent. There was a provision for capturing the excess value in the mineral estate. So, there would have been a need in this particular bill to require Congress to authorize those activities.

So, the 2—the difference——

Senator MURKOWSKI. Then why would we not have just gone the congressional route as opposed to the administrative route?

Ms. WAGNER. So, the differences between the 2 bills include the provisions for NEPA as well as the public interest determination. So, the House bill finds a public interest determination, and basically waives NEPA for the land exchange. S. 409 requires the Sec-

retary to make the public interest determination based on an environmental analysis. So, those 2 things are what we are commenting on.

Senator MURKOWSKI. I understand that, but we are also going through the congressional approval route. So, basically you are taking it down—you are requiring it to do 2 hurdles instead of just one.

Ms. WAGNER. If Congress passes a law that waives the provisions in FLPMA or NEPA, we would follow the provisions in the law as authored by Congress.

Senator MURKOWSKI. Let me ask you this. In terms of timing, if, in fact, the S. 409 had passed in the last Congress, where would we be today in terms of the timing? Given the requirements that are contained in that, how long would it have taken to complete the NEPA? How long would it take to complete a finding of public interest? How long is this further extended in terms of a process?

Ms. WAGNER. When we are directed and authorized by Congress to complete a land exchange, we work expeditiously to complete that exchange, 2 to 3——

Senator MURKOWSKI. I wish that I could agree with you. It is not happening in Alaska, I can tell you that for a fact, and maybe we define "expeditious" differently, but go ahead.

Ms. WAGNER. I will certainly take your concerns back to the Department, Senator.

So, we would estimate that 2 to 3 years as a general rule of thumb would be a timeline necessary, but frankly it would also depend on the complexity and what we discovered in the environmental analysis document, the public comment, the consultation procedures. So, it could be longer. Certainly——

Senator MURKOWSKI. You have indicated in your testimony that this is a pretty complex—I believe those were your words.

Ms. WAGNER. They were the words in the testimony of the Administration, yes.

Senator MURKOWSKI. OK. So, you do not really have an understanding, but it could be in excess of several years, given the complexity.

Ms. WAGNER. Yes, Senator.

Senator MURKOWSKI. If we are required to go this route. Do you think it is reasonable that here in Congress we wait that long to see an exchange when it has already been directed that it be completed?

Ms. WAGNER. If Congress wants the disclosure of environmental impacts and consultation provisions adhered to in this particular case, that would be the time necessary to complete that work.

Senator MURKOWSKI. I do think, Mr. Chairman, that this is an issue that we as a committee are going to have to figure out how we work through this. There have been over the past 4 or 5 years, there have been a handful of measures that have come before us where, again, we are dealing with legislation that is seeking the congressional approval. You know, I thought that that was kind of what we did through this process, was we determined that public interest. Then yet another layer is added where a Secretary has that, again, sole discretion to say yea or nay to it.

It would seem to me that not only is this ceding some authority from the Congress to the executive branch, but, in fact, you are adding additional time, additional delays, and, of course, that translates to additional costs for whatever the project may be.

My time has expired. Thank you.

The CHAIRMAN. Let me just clarify my understanding. I mean, one way to characterize the difference between the House passed bill and the bill we developed in the committees in the last Congress is that one has the public interest determination made by the Secretary, and the other has the public interest determination made by the Congress.

A different way to characterize the difference between the 2 bills is that one requires an environmental analysis and opportunity for public comment before there is a transfer of the land. The other does not.

Is that an accurate description of the differences as you see it, Ms. Wagner?

Ms. WAGNER. Yes, Senator.

The CHAIRMAN. All right. Let me ask one other line of questions. This is on one of the points that was referred to was Apache Leap. I believe it was Senator Kyl who said that the legislation that has come over from the House totally protects Apache Leap.

As I read the legislation, it includes a provision in section 8(c) that exempts Resolution Copper's mining activities adjacent to Apache Leap from the provisions that are otherwise intended to protect Apache Leap. Is this a correct reading of it as you read it, Ms. Wagner? Have you focused on that part of the bill?

Ms. WAGNER. If I understand your question, Senator, it is do the provisions of the bill provide protections for Apache Leap, and what mining activity could take place adjacent to Apache Leap that might impact Apache Leap? Is that your question, sir?

The CHAIRMAN. Yes. The question is whether or not is—am I right that the legislation exempts mining operations from the protections that are otherwise provided to Apache Leap, that the mining operations that might occur here—yes. Here is the—yes, this is this section 8(c), I believe it is. It says, "The provisions of this section shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to or outside of the Apache Leap area beyond those otherwise applicable to mining activities on privately owned land under Federal, State, and local laws, rules, and regulations."

Ms. WAGNER. I think the laws that govern private land mineral development would protect adjacent land owners from impacts of that activity. So, in the case of Apache Leap, it would have those protections.

The CHAIRMAN. So, it would have protections that would be in place by virtue—even as though it were private land. Is that what you are saying?

Ms. WAGNER. The private mining activity adjacent to Apache Leap could not impact Apache Leap if it was held in public ownership or other ownership. The provisions under the mining laws for private lands is not to impact adjacent land ownership. So, in the case of Apache Leap and Federal ownership, the intention would be not to impact it negatively from mining activity adjacent.

The CHAIRMAN. All right. Thank you both very much for your testimony. We appreciate it. Why do we not go to our second panel?

Mr. Jon Cherry, who is the vice president with Resolution Copper in Superior, Arizona, and Mr. Shan Lewis, who is president of the Inter Tribal Council of Arizona.

Mr. Cherry, why do you not go right ahead, and we will hear from you and then from Mr. Lewis, and then have questions for both of you.

STATEMENT OF JON CHERRY, VICE PRESIDENT, RESOLUTION COPPER COMPANY

Mr. CHERRY. Very good. Mr. Chairman and members of the committee, thank you for the opportunity to speak with you today about this very important land exchange bill.

This bill will result in the creation of 3,700 full time jobs and $61 billion in economy benefit to the State of Arizona, while generating more than $14 billion in Federal tax revenue without any Federal financial assistance. It will give the BLM and Forest Service high value conservation lands to add to the public endowment.

My name is Jon Cherry, and I am vice president of Resolution Copper Company, a U.S. corporation headquartered in Superior, Arizona, and an indirect subsidiary of Rio Tinto, PLC.

I am here today in support of H.R. 1904. This bill seeks congressional direction to complete a land exchange to consolidate ownership of land where we plan to invest over $6 billion of private capital to develop the third largest underground copper deposit known in the world today.

Based on current demand, we estimate that the copper produced from this project will be the equivalent of more than 25 percent of current U.S. demand for copper for more than 40 years, and come from a secure and environmentally responsible domestic source.

This land exchange transfer is over 2,400 acres of national forest land to Resolution Copper. The land in question is underlain or surrounded by current and historic mining operations and mining claims, some of which are more than 100 years old.

This picture to my right here is the copper triangle. Historic mining activities for over 100 years have occurred in this area. Our project is right in the middle of that. We are actually looking at an extension of an existing old mine magna mining operations in Superior. Although it is 7,000 feet deep, it is an extension of ore in the area and a significant mining history.

If you could pick any place to build a mine in the United States, you could not pick a better place to build one than right here.

It is land that has been significantly impacted by human activities for decades. Resolution already owns valid mining claims on roughly 70 percent of this land. In return, we will transfer approximately 5,300 acres of high quality conservation lands, privately held by the company, to the BLM and Forest Service.

By the end of this year, we will have invested more than $750 million exploring and studying this project. In fact, we will be prepared to submit a mine plan of operations to the Forest Service in the second quarter of this year, which will begin the formal NEPA EIS permitting process for the entire project, including the area discussed in the land exchange.

These exchanged parcels to be received by the United States are often forgotten in the debate, but their significance cannot be overstated. These parcels were purchased by Resolution for the express purpose of this exchange with input from the government agencies and respected conservation organizations, such as the Nature Conservancy.

At the center of the debate over this land exchange is the question of environmental oversight. On this point, let me be clear. Since the beginning of this project, Resolution has repeatedly stated that it would complete a full review of the project under the National Environmental Policy Act. Many of our activities to this point have been in preparation for that reality, which will shortly culminate, as I indicated earlier, in the submittal of a mine plan of operations to the Forest Service and begin this permitting process.

The point is that under any circumstances, a complete NEPA analysis of the project, including impacts on lands to be acquired under the exchange bill, will be completed. Under no circumstances does this bill exempt Resolution Copper from any other environmental laws, including the National Historic Preservation Act, section 106 Consultation with Native American Tribes, Clean Water Act, Clean Air Act, and any other environmentally statutes.

Since 2009, we have spent an additional $300 million exploring the mine area, drilling our first mine shaft to a depth of over 5,000 feet, and conducting various environmental and engineering studies. By the end of this year, our total investment will be far in excess of $750 million.

We have attempted to obtain this land exchange since 2005, and built in extra time into our schedule to achieve the land exchange while we completed the various studies. The extra time has now been consumed, and the study is completed, and the project is at a significant decision point.

By the end of 2012, Resolution Copper will be in a position to begin construction of additional mining shafts and infrastructure to keep the project on schedule. However, to make a financial investment of more than $6 billion to build this project, we need certainty of a congressional action which directs transfer of Federal land to us before we can make this type of investment.

With 2 years and an additional $300 million spent since S. 409, Resolution Copper must have certainty before investing billions of additional dollars. Simply stated, we must be able to acquire the Federal land under which we will operate.

Furthermore, with a mineral deposit of this magnitude and with the huge private investment that will be required to develop it, we believe that it is appropriate that Congress, and not the Federal agencies, determine that the land exchange is in the public interest.

If we as a Nation are truly serious about creating new jobs with private investment, producing long term budget deficits, and producing here at home rather than abroad, the base metals that serve our national interests and the land exchange embodied in H.R. 1904 should be advanced at its earliest possible date.

Thank you again for the invitation to share our views with you, and I would be happy to take any questions.

[The prepared statement of Mr. Cherry follows:]

PREPARED STATEMENT OF JON CHERRY, VICE PRESIDENT, RESOLUTION COPPER COMPANY

INTRODUCTION

Thank you for the opportunity to speak with you today about this very important bill. My name is Jon Cherry and I am Vice-President of the Resolution Copper Company, a US Corporation headquartered in Superior, Arizona and an indirect subsidiary of Rio Tinto plc. The Company is the Manager of Resolution Copper Mining LLC, which is jointly owned with the US-based BHP Copper Inc., a subsidiary of BHP Billiton Limited. Rio Tinto and BHP are two of the largest and most advanced mining companies in the world. I am here today on behalf of RCML which I will refer to as Resolution Copper. I am here in support of H.R. 1904, which seeks Congressional direction to complete a land exchange to consolidate ownership of the land where we plan to invest over $6 billion of private capital to develop the third largest underground copper deposit known in the world today, while creating over 3,700 badly needed jobs in Arizona and nearly $20 billion in tax revenue, $14 billion of which is federal. Based on current demand, we estimate that the copper produced from this project will be the equivalent of more than 25 percent of the current US demand for copper for more than 40 years from a secure and environmentally responsible domestic source.

Minerals are where you find them and we believe that when a critical mineral deposit of this magnitude is discovered, there are appropriate and compelling reasons for the Congress to make Federal land use decisions to facilitate their development as you have on many other issues in the past.

THE LOGIC OF THE EXCHANGE

The land exchange of H.R.1904 transfers 2,422 acres of National Forest land to Resolution Copper. The land in question is underlain or surrounded by current and historic mining operations and mining claims, some of which are more than 100 years old, and has been significantly impacted by human activities for decades. In addition, Resolution Copper already owns valid mining claims on roughly 70 percent of the land we are seeking to acquire. Simultaneously, Resolution Copper will transfer approximately 5,300 acres of environmentally important lands in eight privately held land parcels to the government to be managed by the USFS or BLM. With these eight properties, this land exchange will result in very significant net gains to the United State in:

1) river bottoms and riparian lands, including seven miles along the renowned and free flowing San Pedro River;
2) habitat for several threatened, endangered or sensitive plant and animal species;
3) nationally and internationally identified important bird habitat by the Audubon Society and Bird Life International;
4) new public recreational opportunities;
5) year-round water resources—a rarity in many parts of Arizona; and
6) protection of the important geographic feature of Apache Leap.

The logic of the land exchange itself is simple. It consolidates our land ownership where we will be developing and operating our mine, and where we will be making a private investment in excess of $6 billion dollars. To state it in its simplest terms, when we are making an investment of that magnitude, we believe that it is imperative and prudent to own and control the land where our mine and facilities will be located. And of course, the federal government benefits because it receives in return a portfolio of high-quality conservation lands and more than $14 billion in federal tax revenue.

As Figure 1* shows, the current fragmented land ownership pattern between Resolution Copper and the Forest Service is a logistical and regulatory jumble. It serves neither public nor private interests, and due to operational and safety considerations, continued Forest Service ownership of the land will not benefit the public, recreationally, or any other way, once the physical mining operation begins.

Figure 2 shows how our mine is located within the heavily developed area known as "The Copper Triangle" in Arizona. The three points of the triangle are anchored by the mining towns of Globe/Miami, Hayden/Winkleman and Superior. The old

*Figures 1–5 have been retained in committee files.

Magma mine at Superior is the platform from which Resolution Copper is launching its new project. Our project incorporates some of the existing surface, underground workings and infrastructure of the Magma Mine. In the center of the triangle you can see Asarco's very large Ray Mine at the bottom of Devil's Canyon, then Asarco's Smelter and tailings in Hayden to the south, the Christmas Mine to the east of Winkleman, the Globe and Miami area open pit mines to the north including the very large Freeport-McMoRan mine, Carlota and BHP Pinto Valley Mines—the latter of which is a possible location for the tailings from our mining operation, where we could fill up existing open pits and reclaim them.

This display, and the others which will follow, should dispel any notion that we are proposing to operate in a pristine location. Indeed, our mine will be located in an area that has been very heavily developed with roads, mines, transmission lines and other facilities.

Another key point is that the Superior area already has excellent existing infrastructure to support our mine. For example, the mine will be located almost immediately adjacent to State Highway 60, lies along other existing access roads, near an existing railroad line, power transmission lines and other nearby developed facilities. The area also has the towns of Superior, Miami and Globe within a short drive of the mine site. Those three towns are long-established mining towns with a skilled work force experienced in mining and with existing housing and related infrastructure. This will greatly reduce the amount of new infrastructure needed to develop the mine, and thereby minimize impacts on the environment.

Figure 3 is a close-up of the Resolution Copper project site which shows even more of the existing infrastructure in detail, including all of the various drill holes in the area, including the 78 new exploratory holes that have been drilled since 2001 highlighted by pink dots. It is important to note that the majority of these drill holes were drilled and roads constructed in the same area included in the proposed land exchange—all following NEPA permitting and tribal consultation by the United States Forest Service with the San Carlos Apache Tribe. Also shown on the figure is the nearest San Carlos Apache Reservation boundary located approximately 20 miles east of the project site.

Finally, I have two aerial photos (Figures 4 and 5) of the mine site itself which were taken just last summer. Figure 4 shows the mine site in the center, with the Town of Superior to the right, Asarco's very large open pit Ray Mine to the south. . .(which has been continuously producing copper since 1880). . . and other mines to the north. Figure 5 is a panorama which shows various other mines, roads, transmission lines, the large power substation near the mine and the Town of Superior. As you can see, one could hardly find a better place to build a new mine, while at the same time minimizing the need for new infrastructure. It simply makes good sense from planning, logistical and environmental perspectives.

TEXT OF THE COMMITTEE-REPORTED VERSION OF S. 409

Now, I realize that this Committee also seeks testimony on the text of the Committee Substitute to S. 409, that was reported to the Senate in March 2010 in the last Congress. The Senate did not act on the Committee-reported version of S.409 before the Congress ended and that text has not been introduced as a bill in this Congress so I am not sure why that text is relevant here. Regardless, Resolution Copper did not oppose the Committee-reported version of S. 409 in the last Congress. The circumstances at that time, however, were very different than they are today. Let me explain:

Since 2009, we have spent an additional $300 million exploring the mine area, drilling our first mine shaft to a depth of over 5,000 feet and conducting various environmental and engineering studies. By the end of this year, our total investment in the project will be more than $750 million dollars. We have been trying to obtain a land exchange since 2004 and built in extra time in our schedule to obtain this while we completed our various environmental and engineering studies. This time has now been consumed and the project is at a significant decision point.

During the second quarter of 2012, we will be in a position to file our Mine Plan of Operations which will begin the NEPA EIS process over the entire project area including the area of the subject exchange. We will also be in a position by the end of 2012 to begin construction of additional mining shafts and infrastructure on private land adjacent to the federal land we would acquire through the land exchange, which overlies the ore body, to keep the project on schedule. However, to make a financial investment of more than $6 billion, we need the certainty of a Congressional law which directs that the 2,422 acres of Federal land be transferred to us before we can make this type of investment. Two years after S. 409 and an addi-

tional $300 million, Resolution Copper must have certainty before investing billions of additional dollars.

As you know, H.R. 1904 provides that we must still undergo NEPA processing on our mine plan after we receive the Federal land. Resolution Copper has always recognized that such a review under NEPA will be required prior to commercial mining and have committed to do so. As mentioned earlier, we will be prepared to submit our Mine Plan of Operations to begin the NEPA process during the second quarter of this year. However, after spending in excess of $750 million we are reluctant to add additional risk. We must be able to acquire the Federal land where we will operate;

ECONOMIC AND NATIONAL IMPACT

Last year Resolution Copper commissioned prestigious Arizona economists Pollack & Associates to conduct a new study to evaluate the impacts of our project to the local and state economy. A copy of the executive summary of this report* is included with the written testimony, but I would like to highlight a few important statistics from this report. Namely, that our project will:

- produce a very large amount of a critical metal right here at home that is the fundamental building block for the new green economy including hybrid and electric cars, solar panels, wind turbines and smart grids;
- create more than 3,700 mining related jobs that are desperately needed in an area of high unemployment;
- generate more than $19 billion in tax revenues to Federal, State and local government coffers—including $14 billion in Federal taxes; and
- benefit the economy of the state of Arizona by $61 billion over the life of the project.

CONCLUSION

Our nation has been struggling through the worst economic downturn since the Great Depression. We have lost many manufacturing jobs, raw materials production and tax revenues to overseas endeavors. Thus, we believe that when an opportunity comes along to develop a very large mine from a reliable domestic source that produces a metal that is vital to our national security and modern lifestyle; and that source is in a location where significant development infrastructure already exists; and where there appear to be minimal environmental conflicts, Congress should avail itself of the opportunity to cut through red tape and approve transfer of the Federal land needed to operate the project. It is the exact type of Congressional action that can generate desperately needed jobs, $14 billion in Federal tax revenues and show the public that Congress is willing to promote the public interest.

Copper, the metal that will be produced from this mine, is the fundamental building block for the new green economy including hybrid and electric cars, solar panels, wind turbines and smart grids.

We know that the temptation always exists for some to say "put it over there, not here", and that there is no place where a large development can be located without some impact on the environment. However, you can only mine where the mineral is found and we believe we are truly fortunate to have found such a large mineral resource in an area where a great deal of developed infrastructure already exists, and where developing a mine will have minimal adverse impacts and at the same time such tremendous benefits.

If we as a nation are truly serious about creating new jobs with private investment, reducing long term budget deficits, and producing here at home rather than abroad the base metals that serve our national interests, then the land exchange embodied in H.R. 1904 should be advanced at the earliest possible date. To do otherwise, and to continue to subject it to prolonged study and delay will only serve the interests of those who, while perhaps well intentioned, cannot see their way to any significant natural resource production, and in so doing, ship our jobs, tax revenues and resource production overseas. I know that is a strong statement, but I believe it comports with today's realities.

Thank you again for the invitation to share our views with you today and I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.
Mr. Lewis.

---

*Document has been retained in committee files.

STATEMENT OF SHAN LEWIS, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA, VICE CHAIRMAN, FORT MOJAVE TRIBE

Mr. LEWIS. Good morning, Chairman Bingaman, Ranking Member Murkowski, and members of the committee. My name is Shan Lewis. I am the president of the Inter Tribal Council of Arizona and vice chairman of the Fort Mojave Indian Tribe. On behalf of the 20-member tribes of ITCA, thank you for letting me testify.

I would like all tribal leaders here today to stand if they could. We are here today to bring a united front and strong opposition to H.R. 1904.

The CHAIRMAN. We welcome all of the tribal leaders. I see we have representation from New Mexico. We are glad to have them here as well. But go right ahead.

Mr. LEWIS. Tribes from New Mexico, the Great Plains, the Northwest, California, the South, the Navajo Nation, and many other tribes join us against this bill.

With the committee's permission, I would like to include for the record tribal letters and resolutions that oppose this bill, and I have those with me today.

The CHAIRMAN. We will certainly include those in the record.

Mr. LEWIS. Also I would like to include a statement from the San Carlos family about its upcoming sunrise dance at Oak Flat, celebrating a young woman's coming of age. This is just one example of the great significance of Oak Flat to families who have held ceremonies there for centuries.

I have 3 fundamental points in my remarks. One is the destruction of sacred sites, 2, Federal protection that will no longer apply if this land becomes privatized, and regional water resources that will permanently be altered, depleted, or contaminated.

Since 2005, Resolution Copper has done everything it can to pass this legislation that would direct the Forest Service to transfer sacred land in the Tonto National Forest so that it can develop a massive block cave copper mine. To protect our holy places, it saddens us that we have to defend their legitimacy.

Oak Flat is one of the holy places of Western Apache and Yavapai tribes where Gaan or spiritual beings reside. The Gaan are considered angels. Just as a church is a special place for Christians, Oak Flat is the equivalent for Apaches, Yavapais, and others. Many tribes go to these places for prayer, ceremonies, to gather ceremonial items, or for peace and personal cleansing. These places are holy.

Federal laws and policies that protect sacred sites currently protect Oak Flat. But if this land is transferred to Resolution Copper would become private land, Federal protections would disappear, and this sacred site area could be destroyed.

To give you an idea of the Federal land that would be conveyed to the company, I have some maps. Here, the first map shows the Tonto Forest in relation to the San Carlos Apache Reservation in Arizona. These lands are ancestral lands. Over here to my right, the second map shows Oak Flat and the forest outlined in red. The black outline shows land withdrawn from mining by President Eisenhower.

Resolution Copper wants these sacred lands to extract one cubic mile of ore located over one mile beneath the surface. To give a

mental picture, it would take over 1,400 Cowboy stadiums to hold one cubic mile of ore. The company plans to use the block cave method to extract ore because it is far cheaper than other methods.

Here to my left is a diagram that depicts the block cave mining process, what it is. The company would dig a tunnel downward over a mile long and then dig another tunnel to the ore body. Once at the ore, they would blast away and extract massive amounts of ore using robotic technology a mile deep, technology that has not even been developed yet.

The next diagram to my right, this shows what happens once they start pulling out the ore. At some point, the surface starts to cave in. This is called intact zone. Given the massive amounts of earth the company plans to extract, the surface will eventually collapse and the area will become an open pit. This is called cave zone. We think cave zone could be 2 miles in diameter. This open pit would be visible from outer space.

We have requested Federal and independent studies on this project since 2005 without success.

Another grave concern is the permanent damage to surface and ground water. This mine will deplete enormous quantities of water and pollute it, which will devastate our communities. The water is a sacred element in tribal religious ceremonies. Arizona is a desert, and we all have the right to know what happens to our water. Again, there have been no Federal or independent studies to this issue.

Here is a picture of a perennial spring in Oak Flat. Mining here would dry up or contaminate this spring and other water sources of Oak Flat. On my right is a picture of Oak Flat campground, an ancient oak tree that has nourished us for centuries with acorns.

This area is protected under the Eisenhower withdrawal order. This area is the cave zone that would be destroyed.

Last, I would like to make 3 points. This bill is a special deal or earmarked for one company who is foreign owned. The company claims that the project will create many jobs; however, no money can replace the loss of sacred sites.

The company claims that the mine would be an extension of the old Magma Mine in the area. This is not true. Magma was developed in the 1880s with a much smaller blueprint. Nevertheless, Magma destroyed our holy places. Back then we were POWs until the early 1900s and did not have the right to vote in Arizona until 1948. We cannot turn back the clock, but we can say no to this mine.

This bill would violate our government to government relationship and result in the destruction of a holy place. Senators, you simply will not be able to mitigate what this mine will destroy.

Thank you.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF SHAN LEWIS, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA, VICE CHAIRMAN, FORT MOJAVE TRIBE

Chairman Bingaman, Ranking Member Murkowski, and other Committee Members, thank you for the opportunity to testify today. My name is Shan Lewis, Vice Chairman, Fort Mojave Tribe, and President of the Inter Tribal Council of Arizona ("Inter Tribal Council" or "ITCA"). My Tribe is a member of the Inter Tribal Council of Arizona.

VAST TRIBAL OPPOSITION TO H.R.1904—DUE TO SACRED SITE CONCERNS

I speak today on behalf of the Inter Tribal Council of Arizona which consists of 20 federally recognized Indian Tribes, Nations and Communities with lands within the State of Arizona, New Mexico and California. We join together on matter of tribal, national, and statewide importance to the Tribes. Today we stand in opposition to H.R.1904. These 20 tribal governments include the Ak-Chin Indian Community, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Quechan Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, and the Yavapai Prescott Indian Tribe.

Further, many other tribes and tribal organizations from across the country strongly oppose H.R. 1904, including the National Congress of American Indians, the All Indian Pueblo Council, the Inter Tribal Council of Nevada, Inc., the Affiliated Tribes of Northwest Indians, the Great Plains Tribal Chairman's Association, the Eight Northern Indian Pueblos Council, the United South and Eastern Tribes, Inc., the Mescalero Apache Tribe, the Navajo Nation, the Jicarilla Apache Nation, the Pueblo of Tesuque, the Susanville Indian Rancheria, the Shoshone-Bannock Tribes, and the Confederated Tribes of Siletz Indians.

H.R. 1904, as passed by the House of Representatives on October 26, 2011, would allow Resolution Copper Mining (RCM)—a joint venture of foreign mining giants Rio Tinto and BHP Billiton—to secure private ownership of over 2,400 acres of U.S. Forest Service lands and the ore and other minerals located underneath these lands in order to facilitate an unprecedented large-scale block cave copper mine in the Oak Flat region (collectively called "Oak Flat"), which is bounded by portions of Apache Leap (referred to as Gohwhy Gah Edahpbah by the Yavapai) and Gaan Canyon (also referred to inappropriately as "Devil's Canyon" by non-Indians mistaking the Apache Angel dancers as devil dancers), and contains the 760-acre Oak Flat Withdrawal. Oak Flat is located within the aboriginal lands of, among others, the Western Apache and Yavapai tribes.

Oak Flat has always been and continues to be a place of profound religious, cultural, and historic significance to the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Fort McDowell Yavapai Nation, the Yavapai-Apache Nation, the Tonto Apache Tribe, and many other Native Nations. See attached February 2, 2012 letter to the Tonto National Forest, Globe Ranger District informing same of an upcoming Apache Sunrise ceremonial dace to be held at Oak Flat May 2-6, 2012.

Federal laws and policies are designed to protect Native sacred sites such as Oak Flat. The proposed land exchange that would be mandated by H.R. 1904 would circumvent these laws and policies and transfer ownership of federal land containing a sacred site of Apache, Yavapai, and other Native people to a company for mining activities that will destroy this sacred site. Although ITCA is not opposed to mining in general, mining in this location that will result in destruction of a sacred site is offensive to us and should not be condoned. The 20 member Tribes of ITCA, therefore, strongly oppose H.R. 1904, S. 409 from the 111'1' Congress, and any and all legislation that would convey Oak Flat to private interests whose proposed activities would cause irreparable harm.

Under the United States Constitution, treaties, federal law, and executive orders, the United States has a trust responsibility to consult with tribes on a government-to-government basis about federal actions that impact tribes. The United States must consult with tribes before making any decision on whether to convey Oak Flat, federal land, to Resolution Copper. For consultations to be effective, the tribes and the United States need to have objective information about the proposed mining activities and its impacts. To date we do not have this information. Further, the United States has a responsibility to protect sacred sites located on federal lands. Tribes ceded millions of acres, including Oak Flat, to the United States in return for protections set forth in treaties.

Because of its continued importance to Indian tribes, nations and communities, Oak Flat, as well as specific places within Oak Flat, are eligible for inclusion in, and protection under, Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et seg. ("NHPA"). Further, Oak Flat meets the criteria as a "sacred site" within the meaning of Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 ("E.O. 13007"), as well as pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, et. seq. ("AIRFA"), and related laws, regulations and policies.

Indeed, as recently as June 2011, in testimony before the House Natural Resources Subcommittee on National Parks, Forests and Public Lands on H.R. 1904,

the Deputy Director of the Bureau of Land Management, Ms. Marcilynn Burke, stated that BLM "could not support the bill as written," noting that "[m]any of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes." Deputy Director Burke went on to state her understanding that "the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation." USDA Secretary Vilsack has also acknowledged the importance of Oak Flat and the threat that block and cave mining would bring to this special place in his letter to ITCA dated June 27, 2011: "I understand your concerns related to the potential effects of block cave mining on the religious, cultural, historic, and environmental character of Oak Flat. Clearly, this area is vitally important as a traditional and cultural site to the Apache people and Arizona Tribes."

Oak Flat should remain under federal jurisdiction for continued protection. Transfer of these federal lands located in the Tonto National Forest to RCM for mining purposes is almost certain to deplete and contaminate water resources from nearby watersheds and aquifers. These water sources play a critical role in Apache and Yavapai religion and religious ceremonies. According to the Tonto National Forest's website, it was created in 1905 to protect the watersheds around reservoirs. The website also states, "the forest produces an average of 350,000 acre feet of water each year. Six major reservoirs on the forest have the combined capacity to store more than 2 million acre-feet of water. Management efforts are directed at protecting both water quality and watershed and riparian area conditions." H.R. 1904 would harm these valuable watersheds, violating the very purpose of the forest. Also, the mining activities will result in the collapse of the Earth, irrevocably damaging the landscape of Oak Flat, and the wildlife, plants and other natural features of its ecosystems and, thereby, the very integrity of Oak Flat relative to its crucial and continued role in American Indian religion, traditions, and culture.

H.R. 1904 would lift the Oak Flat Withdrawal Order, which has protected these publicly owned lands for all Americans since 1955 when President Eisenhower first signed BLM Public Land Order 1229. This Order specifically put Oak Flat off-limits to all future mining activity, despite its presence in a known mining district. In fact, even when President Nixon issued BLM Public Land Order 5132 in 1971 to modify PLO 1229, he expressly precluded any form of appropriation of Oak Flat "under the U.S. mining laws."

CULTURAL AND RELIGIOUS IMPACT ON FREE EXERCISE OF RELIGION OF THE PROPOSED EXCHANGE

Congress has enacted laws to protect the religious and cultural integrity of Indian people. This was to ensure (among other things) that the policies and procedures of various Federal agencies, as they may impact the exercise of traditional Indian religious practices, are brought into compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion.

American Indians' right of continued access to Oak Flat and their right to maintain the religious and cultural freedoms that Oak Flat supports is also recognized in the United Nations Declaration on the Rights of Indigenous Peoples. See, e.g., Article 12 (recognizing that "[i]ndigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies: the right to maintain, protect, and have access in privacy to their religious and cultural sites"); Article 19 (requiring 'free, prior and informed consent" of indigenous peoples where the United States adopts or implements legislative or administrative measures which may affect them); Article 24 (clarifying that indigenous peoples have "the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals."); Article 25 (emphasizing "the right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources ....").

The religious and cultural importance of the Oak Flat area does not only reside in isolated spots or particular locations or archeological sites, but rather in the integrity of the ecosystem and environment of the area as a whole. Thus, impacts to any part of Oak Flat have an impact on the religious and cultural integrity of the area as a whole—both as a holy and religious place and as a place of continued traditional and cultural importance to Apache, Yavapai, and other indigenous people.

For example, Apache People call Oak Flat "Chich'il Bildagoteel," or "a Flat with Acorn Trees" and it lies at the heart of T'iis Tseban Country, which is associated with at least eight Apache clans and two Western Apache bands—the Pinal Band and the Aravaipa Band. Oak Flat is called Gaan by the Yavapai people. Oak Flat

has, for generations, played a crucial role in the exercise of their religious, traditional, and cultural practices, and these practices continue to this day. Oak Flat has long been used—and is used today—for religious ceremonies and its existence continues to enhance the lives of Apaches and Yavapais. See attached February 2, 2012 letter regarding an upcoming Apache Sunrise ceremonial dace to be held at Oak Flat May 2-6, 2012.

The oak groves at Oak Flat have always provided an abundant source of acorns that serve as an important food source for the Apache people. There are also hundreds of traditional Apache plants and other living things in the Oak Flat area that are crucial to Apache religion and culture. Some of these plants are common and some are among the holy medicines known to and harvested by only gifted Apache herbalists. Similarly, Yavapais also have relied on the abundance of Oak Flat for physical and spiritual sustenance. While these plants can be gathered in other areas, only the plants within the Oak Flat area are imbued with the unique power of this area.

Allowing RCM to conduct block cave mining at Chich'il Bildagoteel (Oak Flat) will destroy the living things and ecosystems that are associated with the Holy Beings that Apaches depend on, in particular a certain kind of Gaan—all powerful Mountain Spirits—with whom the Oak Flat area is associated. It is believed that these Holy Beings, these Angels, are among the most powerful, and they must be respected if the Apache people are to receive their power. Without their power, the Apache people cannot conduct their ceremonies and they become vulnerable to a wide variety of illness. Similar concerns exist for the Yavapai people as well.

OAK FLAT SHOULD NOT BE SACRIFICED IN EXCHANGE FOR OTHER LANDS SELECTED BY RMC AND OFFERED TO THE UNITED STATES

RCM proposes to convey a handful of parcels in southern Arizona as part of the land exchange set forth in H.R. 1904. While some of these offered lands may have value for the American public, none of these parcels have been recognized as important as Oak Flat. The parcels that RCM would convey have not been subject to previous withdrawals by Executive Order and do not possess the totality of values as a sacred site or traditional cultural property recognized by American Indians.

Moreover, if the offered parcels are as meritorious and deserving of conversation and public use, those who seek the conservation of these parcels should look for funding help from such potential resources as the Land and Water Conservation Fund, The Conservation Fund, The Nature Conservancy, The Trust For Public Lands, the Paul Allen Foundation and others—not by sacrificing lands at Oak Flat. No one should attempt to, nor can they, put a price on the protection of spiritual, religious, cultural, and archeological values. The United States, as Trustee for all American Indians should not trade away these priceless values in order to facilitate the cheapest method of mining, which has as its sole purpose the exclusive goal of benefiting Rio Tinto and BHP and their shareholders and investors, including China.

It is highly disappointing, and indeed disturbing, that H.R. 1904 and S.409 from the 111th Congress would simply cast aside the valid concerns of American Indians regarding the need to protect the religious, cultural and traditional relationship of indigenous peoples to the Oak Flat region.

BLOCK CAVE MINING COLLAPSE AND DESTRUCTION OF THE OAK FLAT AREA

RCM has stated that block and cave mining is "cheaper." While bottom line considerations are clearly important to RCM, the United States, as our Trustee, must not let such factors pressure it into agreeing to destructive practices—mining to unprecedented great depths and block and cave mining with unproven technology. There is no assurance once the ground starts subsiding in a block and cave mining operation that it will not collapse from the bottom of the operation up to the surface. In fact, substantial surface collapses have been witnessed in block and cave mining operations around the world, sometimes leaving large pits and craters dotting the landscape which often suffer the same pit lake problems as open pit mines.

Under the normal requirements for a land exchange in accordance with the National Environmental Policy Act ("NEPA") and the Federal Land Policy Management Act ("FLPMA"), decision makers would be required to conduct interdisciplinary studies and closely scrutinize the inevitable and destructive impacts of the mining project to the region, including to nearby Apache Leap, Gaan Canyon, Queen Creek and the Oak Flat Withdrawal area. They would be required to consult with the American Indian Tribes and interested members of the public throughout the process and would have the obligation to consider the impacts of a potential surface collapse from a mine on Oak Flat. As part of this process, the federal decision mak-

ers would also be required to evaluate the depletion and potential contamination of the region's water supplies, as well as the resulting damage to the integrity of Oak Flat as a sacred site and traditional cultural property. Yet, in H.R. 1904, RCM seeks to have Congress exempt it from virtually all these important requirements of the federal law and instead turn these lands over to RCM in private ownership, where almost no protections exist for Oak Flat under the laws of the State of Arizona.

Apache Leap is not adequately protected by H.R. 1904 even though H.R. 1904 appears, on its face, to exclude it from this land exchange. Neither, of course, is the rest of the Oak Flat area. It should also be noted that while H.R. 1904 would purport to prohibit "commercial mineral extraction" from under Apache Leap, it does not prohibit RCM from tunneling under Apache Leap or from conducting other below ground operations directly below the escarpment. Furthermore, because the purported protections for Apache Leap under H.R. 1904 are subject to all "valid existing rights," there is nothing in H.R. 1904 that would prohibit the commercial extraction of minerals and the destruction of Oak Flat by other claim holders, perhaps even including those who might be in partnership with RCM, Rio Tinto, or BHP. Given the existence of numerous mining claims to the Apache Leap area, this is almost certain to be the case, despite the promises of protection outlined in H.R. 1904.

In addition, nothing in H.R. 1904 or in the "NEPA" like review of RCM's "mining plan of operations" would require RCM to cease its mining operations and block caving activities at Oak Flat should these operations and activities show signs of a more extensive surface collapse than anticipated, including the potential damage or violation of Apache Leap. Indeed, this is likely to be quite difficult, if not impossible, once RCM acquires Oak Flat and the copper and other deposits beneath the surface of this land.

Apache Leap is part of the larger holy and sacred site that is encompassed by Oak Flat. Under this proposed legislation, even if Apache Leap were to be protected from harm, it would eventually be bordered by thousands of acres of land that have been irretrievably harmed and defiled by the proposed mining project. This is not acceptable to the members of the Inter Tribal Council of Arizona, and it should not be acceptable to this Congress.

THE MINING PROJECT WILL DANGEROUSLY DEPLETE GROUNDWATER AND SURFACE WATER SUPPLIES THROUGHOUT THE REGION

Water is a source of life for all people. The existence of water at Oak Flat, including life-giving springs, seeps and surface supplies, is fundamental to the health of Oak Flat's ecosystems and therefore, to the religion, culture and very identity of both the Apache and the Yavapai people. Water is fundamental to, indeed holds the survival of the economic future of Globe, Superior and Miami and other adjacent communities.

As noted briefly above, however, the massive mining operation to be facilitated by H.R. 1904, threatens to dangerously deplete surface and groundwater supplies and federally reserved water rights, and ground water sources beneath Globe, Superior and Miami and throughout the region—water supplies that are already relied upon and desperately needed by others in Arizona. H.R. 1904 does not require Rio Tinto to perform any modeling or proper studies of the impact of their project on the regional water supply and hydrology, despite the fact that the Inter Tribal Council and other Arizona tribes and nations, including the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation, have repeatedly requested that an independent agency of the federal government, like the U.S. Geological Survey or another federal agency or department, conduct such studies.

The copper ore body at Oak Flat is estimated at its highest point to be located 7,000 feet below the surface of the Earth or approximately 3,000 feet below sea level. Given the depth of the ore body, as well as its immense size, throughout the 40 plus years of the mining project, RCM will have to aggressively conduct extensive "dewatering" activities in order to continually pump and remove the surface water and the groundwater from both the shallow alluvial aquifer at Oak Flat and the deeper aquifers in the area whose water supplies will increasingly migrate into the enormous cavity created by the removed ore and waste rock (and the extensive tunnel system needed for the mine), nearly all of which will be located well below the elevation of the streams in the region, and will cut through the region's groundwater aquifers.

Surface water, tributary groundwater, and aquifers that are located where the copper ore body would be excavated and where the mining tunnels would be located. Thus, throughout the mining process, water will constantly migrate to and from the vacant ore body and mining tunnels. As this process continues over the decades long life of the project, the necessary mine dewatering process will deplete many billions

of gallons of water from the surface water and groundwater throughout the region, resulting in the loss of important seeps, springs and other surface water features, and resulting in the gross depletion (and likely contamination) of important and unique perennial pools in Gaan Canyon, (referred to as Devil's Canyon) flows to Queen Creek and other surface water features—all of which is crucial to maintain the healthy ecosystem of Oak Flat and the surrounding area, and, therefore, the integrity of this place as a sacred site and traditional cultural property. RCM does not have the legal right to disrupt, deplete or contaminate this water under any law.

Further, the alteration of both the subsurface and the surface geological structure of this area as the result of the block caving process and imminent surface collapse will alter the natural state of the aquifers and surface drainage of the watersheds throughout the region forever. Despite the fact that this legislation has been introduced in the Congress over the past seven years, to date ITCA has never seen any meaningful studies conducted by the federal government or independent agency regarding potential impacts to the water supplies of the region. Instead, for over seven years, RCM has claimed that it is urgent for Congress to pass this legislation and that there is no time for studies. Studies could have been done by now but for the fact that RCM adamantly opposes such studies.

In fact, in the USDA/Forest Service's prior testimony on H.R. 1904 in the House Subcommittee on National Parks, Forests and Public Lands, Associate Chief of the Forest Service, Mary Wagner, observed that the Forest Service lacked "an understanding of the impacts the proposed mine will have on local and regional water supplies, water quality, or possible dewatering of the area. " Ms. Wagner also warned that there had yet to be any "studies or assessments" of the water supplies, though she noted that this is information that the Forest Service would require under NEPA if NEPA were properly utilized before the exchange. However, Ms. Wagner warned that, under H.R. 1904, "NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership."

The gross depletion of the local aquifers and the local springs, seeps and other water supplies of the Oak Flat area and neighboring communities of Globe, Superior, Miami and others, cannot be remediated by "banking" Central Arizona Project water elsewhere, including in storage facilities near Phoenix and in Pinal County.

Ironically, at the same time that ITCA and other Indian tribes, nations and communities have raised these and related concerns before Congress, RCM has maneuvered and manipulated political interests in Arizona to change laws and regulations which have been in place for decades in order to except itself from vital public safeguards and conditions normally used to protect Arizona's water supplies. See, e.g., H.B. 2289, 49th Leg., 2d Reg. Sess. (Ariz. 2010); H.B. 2617, 49th Leg., 2d Reg. Sess. (Ariz. 2010); S.C.R. 1046, 49th Leg., Reg. Sess. (Ariz. 2010).

This Committee should oppose H.R. 1904. The United States should maintain federal ownership of these lands and exercise its federal control necessary to ensure that the surface water and ground water supplies of this region are protected in both quantity and quality, and that federal, tribal, private, and public water rights are protected in perpetuity from the interference, diminishment and degradation presented by this massive mining project.

H.R. 1904 REQUIRES A MANDATORY CONVEYANCE OF FEDERAL LANDS CIRCUMVENTING FEDERAL LAWS

H.R. 1904 dictates that the Secretary of Agriculture convey the federal lands to RCM within one year of enactment of the Act after which time a vast majority of federal laws will no longer apply because the lands will become private lands, not federal lands. Section 4(i) of the bill states, "the land exchange directed by this Act shall be consummated not later than one year after the date of enactment of this Act. " (Emphasis added). Similarly, Sec.4(a) states, "the Secretary is authorized and directed to convey to Resolution Copper, all right, title, and interest of the United States in and to the Federal land" when RCM offers to convey the non-federal lands to the United States.

There is nothing in H.R. 1904 that calls for Congress or the USDA/Forest Service to review the proposed land exchange itself, prior to RCM's acquisition of the Oak Flat lands. H.R. 1904 fails to require or even permit the Secretary to take a "hard look" at the land exchange itself under NEPA or other laws, before the exchange is consummated, and seemingly fails to vest any discretion in the Secretary of Agriculture to consider possible alternatives to the exchange. H.R. 1904 also does not call for or permit the mitigation of impacts related to the land exchange and it would not permit the Secretary to avoid consummating the exchange should the Secretary determine, under FLPMA and other laws, that the exchange is a bad deal

for the American taxpayer or the American public or in the event he finds that the religious, environmental, cultural, water supply and other harms of the mining project are simply too great.

Further, HR. 1904 is contrary to various laws, policies, and Executive Orders, such as Executive Order 13175, that direct federal land managing agencies to engage in meaningful formal consultation with interested Indian tribes and that protect and preserve sites that are sacred to American Indians, such as the First Amendment of the United States Constitution, the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, the National Historic Preservation Act, the American Indian Graves Protection and Repatriation Act, and Executive Order 13007. None of these laws, policies, or Executive Orders would apply after the federal lands are conveyed to RCM under H.R. 1904.

H.R. 1904 CONTAINS SHAM NEPA REQUIREMENTS AFTER THE EXCHANGE

The limited "NEPA" process outlined by Sec. 4(j) of H.R. 1904 (which is to be conducted only after the lands are exchanged) is little more than a futile exercise on the part of the Secretary. Under H.R. 1904, the Secretary would have no discretion to exercise any meaningful authority over RCM's mining plan of operations or mining activities on private land after an the exchange, absent a federal nexus. There is also no requirement in the bill for the Secretary to examine the direct, indirect and cumulative impacts of interim exploratory activities, pre-feasibility and feasibility operations, or mine facility construction that will be conducted by Rio Tinto after the exchange, but before production of commercial quantities of minerals. Sec. 4(f) mandates that the Secretary "shall" provide RCM with a special use permit within 30 days of enactment of the Act to engage in mineral exploration activities underneath the 760-acre Oak Flat Withdrawal and, within 90 days, the Secretary is required to allow RCM to begin mineral explorations within the Oak Flat Withdrawal itself.

In fact, under H.R. 1904, the integrity of Oak Flat could be harmed so substantially by exploratory activities before the limited NEPA requirements found in Sec. 4(j)(2) are triggered, that any NEPA review conducted upon the submission of the mining plan of operations would have little to no benefit in any event. Similarly, the Secretary would also seemingly lack any authority under this bill to even consider alternatives to these interim activities, which may include alternatives necessary to protect the integrity of Oak Flat as a traditional cultural property and sacred site, including its water resources, landscape, plants and ecosystems. Allowing the immediate exploration on and under Oak Flat prior to the NEPA review contemplated by Sec. 4(j) will constitute an "irretrievable commitment of resources" in contravention to NEPA.

Under H.R. 1904, there is no definition of "mining plan of operations", and there is nothing to make clear what form the "plan of operations" required by Sec. 4(j)(1) of the bill would take, as this term is not tied to the requirements of 36 C.F.R. Part 288. There are no guarantees that the "plan of operations" provided by RCM will be sufficiently detailed or contain a complete description of the type of mining to be conducted on the lands, the subsurface information for the area, the length of operations, or the measures that RCM will take to meet the environmental and cultural resources protections that would normally be required by the law if these lands were not exchanged into private ownership.

Deputy Chief of the U.S. Forest Service, Joel Holtrop, has warned, in response to prior legislation for this land exchange, that a plan of operations which contains, in particular., subsurface information is "essential in order to assess environmental impacts, including hydrological conditions, subsidence, and other related issues." See Deputy Chief of the U.S. Forest Service, Joel Holtrop, August 2009, written response to questions by the Senate Subcommittee on Public Lands and Forests on S. 409. However, H.R. 1904 would not provide the Secretary with sufficient discretion or authority to reject the plan of operations submitted by RCM if the information contained in the plan is insufficient to conduct even the limited review called for under Sec. 4(j)(2) of the bill. Similar concerns were expressed by the U.S. Forest Service in their testimony on H.R. 1904 on June 14, 2011, when Associate Chief of the Forest Service, Mary Wagner, noted that the Department could not support the bill as written because, among other flaws, H.R. 1904 "limited the discretion" of the Forest Service under NEPA and because it would "preclude the Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal." These concerns were echoed during this same hearing by BM Deputy Director Burke.

The Secretary is also only given 3 years under H.R. 1904 to conduct his review after submission of a "plan of operations." Under this limited time frame, the Secretary would have little time to demand that Rio Tinto refine its plan, even if this was necessary to conduct a meaningful review, rendering this provision a de facto waiver for RCM to comply with federal laws.

Indeed, USDA Secretary Vilsack has previously objected to similar sham NEPA provisions contained in previous legislation for this land exchange (S.409, 111th Congress), warning:

> The purpose of a requirement [in S.409] that the agency prepare the EIS after the exchange, when the land is in private ownership, is unclear because the bill provides the agency with no discretion to exercise after completing the EIS. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency retains the discretion to apply what it learns in the EIS to its decision about the exchange. It seems completion of the exchange prior to the EIS would negate the utility of the EIS. (Emphasis added).

Finally, H.R. 1904 does not allow for the preparation of a supplemental EIS document if additional review is called for in order to examine the direct, indirect and cumulative impacts of future activities by RCM. Sec. 4(j)(2) makes clear that the Secretary may only use the single environmental review document which is to be prepared within 3 years of the plan of operations as the basis for all future "decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations related to the proposed mine or plan of operations."

In sum, the "NEPA" provisions contained in H.R. 1904, do not comply with the purposes of NEPA and they fail to vest any real discretion in the Secretary of Agriculture to address (or even meaningfully consider) the many concerns presented by the block cave mining operation proposed for this place.

THE RCM PROMISE OF SIGNIFICANT JOBS CREATION IN THE LOCAL ECONOMY IS NOT WORTH THE DESTRUCTION OF OAK FLAT

The ITCA, like all Americans in today's difficult economy, recognizes the need for job creation; and, while ITCA member tribes are working hard to create jobs and other economic opportunities on their Reservations and for the benefit of their surrounding communities, the ITCA understands that leaders of the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation (among others) have been told by their Elders that any job opportunities that might be created by the proposed mine are not worth watching the destruction of Oak Flat, especially given that preservation of tribal religion, culture, and sacred sites is directly tied to preserving tribal identity and health. Further, the promise of jobs (especially the "boom and bust" jobs mining provides in the region) is also not worth risking the potential harm this massive mine presents to the drinking and groundwater supplies of the region—in particular the groundwater supplies that support the western side of the San Carlos Apache Reservation. Without a source of clean and healthy water, the Apache People will lose a means to sustain their lives and livelihoods on the Reservation as a permanent homeland. Neighboring communities of Globe, Superior, Miami and others could not survive the loss of this water supply needed to sustain the local economy and support local jobs.

We also understand that the proposed mine is likely to be highly automated, require advanced degrees to work there, and likely will be run from a remote operating center far away from the San Carlos Apache Reservation or the Town of Superior, making the promise of jobs in exchange for the destruction of Oak Flat questionable at best. Further, RCM admits that it does not even have the technology it needs to extract the ore given how deep beneath the Earth the ore is and that it may take at least a decade to develop this technology. Thus, RCM's claims that significant number of jobs will be created in the region in the short-term are questionable.

If RCM does build and operate the mine as they propose, the potential negative impact to the local economy (including on the nearby San Carlos Apache Reservation) through a loss in recreation and tourism, particularly ecotourism and heritage tourism, could be substantial, as the area of Oak Flat and the surrounding lands of the Tonto National Forest will be destroyed by the mine. In 2009 alone, detailed direct travel impact estimates for Pinal County totaled $421 million dollars, with over $16 million spent by those visiting the nearby campground areas. See Arizona Travel Impacts 1998-2009p, July 2010 Report, Arizona Office of Tourism, Phoenix,

Arizona. Many of these dollars were spent in and around the area of this proposed mine.

The loss to the economy could be even greater as the mine is likely to deplete and contaminate billions of gallons of water from the Superior area and potentially the San Carlos Reservation, leaving these nearby communities with a limited water supply, without which, any hope of future economic development will have little chance.

PAST ENVIRONMENTAL AND HUMAN RIGHTS RECORD OF RIO TINTO AND BHP BILLITON PROVIDE A FRIGHTENING WINDOW INTO THE FUTURE CONDUCT OF RESOLUTION COPPER

The sub-standard environmental track record and history of shameful human and labor rights practices by Rio Tinto and BHP Billiton are well known. Resolution Copper Mining (RCM) is a joint venture of foreign mining giants Rio Tinto and BHP Billiton.

Both companies' operations over the years have left a wake of environmental destruction, human rights complaints, and lawsuits filed worldwide. Here in the United States, the Greens Creek Mine in Alaska (owned by Rio Tinto and two other companies) is alleged to be that state's second largest discharger of toxic waste, releasing 59 million pounds of toxic chemicals in one year, and violating the Clean Water Act 391 times. In the United Kingdom, Rio Tinto's Capper Pass smelter dropped an estimated 1.3 pounds of lead and other emissions on area residents each week during its operation, leading to a settlement agreement with hundreds of claimants in which the company refused to accept blame, but provided compensation to those with cancer and other illnesses.

On the other side of the world, current and former residents of Papua New Guinea were compelled to file suit in federal court against Rio Tinto, alleging violations of international law, including war crimes and crimes against humanity in Rio Tinto's operation of a large-scale mine in that country. Just last fall, the United States Ninth Circuit Court of Appeals revived this lawsuit when it reversed a lower court's dismissal of certain of these claims, including those related to the complaint's allegations of "purposeful conduct undertaken by Rio Tinto with the intent to assist in the commission of violence, injury, and death, to the degree necessary to keep its mines open."

In relation to another mining operation in Papua New Guinea, villagers sued BHP Billiton for more than $4 billion in damages for the destruction of the Ningerum people's traditional lands in which they have lived since time immemorial. BHP Billiton eventually was forced to abandon the destructive mining project after studies showed that the operation was causing great environmental harms, but the company is accused of failing to oversee that the project was properly managed upon its departure. Villagers may no longer be able to safely eat locally harvested fish or food grown from their own gardens. It is estimated that it will take 300 years to clean up the area.

More recently, Rio Tinto locked out 570 miners from its borates mine in Boron, California. For 107 days, the miners and their families struggled to make ends meet without a paycheck from Rio Tinto. The company allegedly locked out the miners in retaliation for their refusal to agree to a contract that threatened to turn decent, family and community-supporting jobs into part-time, temporary or contracted jobs. Rio Tinto brought in replacement workers to do the jobs of longtime, experienced miners, some of whom have worked at the mine and processing plant for 30 to 40 years. It appeared that Rio Tinto was simply using the replacement workers to help the company starve out the locked-out families. However, after Rio Tinto got word that their product would not be shipped out of the docks because it was "scab" cargo, they decided to negotiate with the miners and on May 24, 2010, the miners returned to work. And finally, in the House of Representatives Hearing on H.R.1904, serious concerns were voiced over potential Rio Tinto connections to Iran. These connections need to be clarified.

It is often stated that history is prophecy. In this case, the historical conduct of Rio Tinto and BHP Billiton is the best predictor of future behavior, and certainly this conduct provides no assurances that these companies will keep their promise to protect Oak Flat, Apache Leap and the water supplies and ecosystems of this region or to preserve the environment and respect the traditional culture and religious values of American Indians. Indeed, there are no enforcement provisions in H.R.1904 to force these companies to keep their promises, such as bonding provisions, stiff penalties, or statutory causes of action.

THE 20 MEMBER TRIBES OF THE ITCA OPPOSE H.R. 1904, S. 409, AND ANY AND ALL LEGISLATION THAT WOULD TRADE THESE LANDS TO RCM FOR MINING INTERESTS

ITCA continues to oppose H.R. 1904, S. 409, or any other legislation that would convey Tribal ancestral lands at Oak Flat to a private company that will destroy a holy and sacred site of ITCA member Tribes.

ITCA also understands that the purpose of the current hearing is to consider the text of S. 409, as reported by the Committee during the 111th Congress. The 20 member Tribes of the ITCA also opposed S. 409, as marked up in the 111th Congress, for the following reasons: (1) S. 409 did not contain any guaranteed protections for areas of significant religious, historical, cultural, and archeological value to Indian tribes and Indian people located on the federal lands even if the Secretary makes a determination to convey the lands to RCM; (2) S. 409 did not make it explicit that the Secretary must consider, in USDA's public interest determination, laws and policies critical to protecting sacred sites; (3) S. 409 did not contain any provisions to protect water sources in the area even if the Secretary makes a determination to convey the lands to RCM; (4) S. 409 did not contain any provisions allowing for continuing government-to-government consultation after conveyance; (5) S. 409 did not provide any protections from impacts from mining activities for areas adjacent to the federal lands, such as Apache Leap, Gaan Canyon, and Queens Creek; (6) S. 409 did not provide for any penalty or bonding provisions in the event damages occur due to RCM's activities and did not contain a cause of action for suit in the event there is harm to the land, water, or sacred sites due to RCM's mining activities; and (7) S. 409 was unclear on whether RCM's mining plan of operation must be submitted for NEPA and other environmental review and whether mitigation would be required.

CONCLUSION

We appreciate this opportunity to provide testimony to the Committee. Again, ITCA continues to oppose S. 409, H.R. 1904, and any other legislation that would convey the Tribal ancestral lands commonly referred to as "Oak Flat" to RCM for mining that would destroy a sacred site of tribes and Indian people. If enacted, H.R. 1904 will permanently destroy Oak Flat and possibly surrounding areas of importance to tribes and Indian people. The area will never recover from RCM's mining activities. In other words, H.R. 1904 is like Pandora's Box. Once you open it, you can not undue it.

With the Committee's permission, I would like to submit for the hearing record all the letters and resolutions we have received from tribes and tribal organizations across the country opposing H.R. 1904.

ATTACHMENT 1

February 6, 2012.

Tonto National Forest,
Globe Ranger District, 7680 S. Six Shooter Canyon Rd., Globe, AZ.

Tonto National Forest Supervisor,

This letter is to inform you that we and our families are very proud to announce the dates of our upcoming Apache Sunrise ceremonial dance which is to be held at Oak flat. The dates we have scheduled are May 2 through May 16, 2012. We are requesting to meet with you and your office as soon as possible to discuss arrangements so that our use of Oak flat is a priority among any and all requests that may be submitted for the area.

As you are aware, Oak flat was and has always been the home to us, Apaches, as well as being a sacred place that Usen(God) had blessed the world in the beginning of time. History, both written and oral, tell of the wrongs that took place, the extermination and removal of our people to the reservation as prisoners of war, this being mandated because of federal policies to remove us from this place. Our Sunrise dance is one of the oldest religious practices in North America which celebrates a young woman coming of age. The ceremony brings teaching of life's blessings for the girl, and for all people, it brings blessings, healing and visions of things to come. The ancient songs are sung to communicate with all God's creations. We are very fortunate, and blessed that the religion was able to survive and overcome all the obstacles and forces that were against it. We conunend those before us who made every effort in keeping and preserving Oak flat as a sacred place, those who prayed, those who came for blessings, the holy people, the medicine men, the elders, and the Mount Graham sacred runners.

So this is to notify you that we will be in Oak flat to exercise our religious rights and human rights, as your forefathers claimed for all U.S. citizens. We appreciate your assistance in advance.

Respectfully,

LOREN PINA, SR.
MICHELLE RANDALL.
VANSLER NOSIE.
ELAINA NOSIE.

ATTACHMENT 2

TRIBAL NATIONS & ORGANIZATIONS, and other Groups that oppose H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011 (as of 2.8.12)

1. National Congress of American Indians
2. Inter Tribal Council of Arizona, Inc.
3. San Carlos Apache Tribe
4. United Southern and Eastern Tribe, Inc.
5. Jicarilla Apache Nation
6. Pueblo of Tesuque
7. Pueblo of Zuni
8. White Mountain Apache Tribe
9. Pascua Yaqui Tribe
10. Yavapai-Apache Nation
11. Susanville Indian Rancheria
12. Ft. McDowell Yavapai Nation
13. Arizona Mining Coalition
14. Concerned Citizens and Retired Miner's Coalition
15. Religious and Human Rights Organizations
16. Concerned Climbers of Arizona
17. Mescalero Apache Nation
18. All Indian Pueblo Council
19. Eight Northern Indian Pueblos
20. Hopi Tribe
21. Save the Scenic Santa Ritas Association
22. Tohono O'odham Nation
23. Azee Bee Nahagha of Dine Nation
24. Karuk Tribe
25. Affiliated Tribes of the Northwest Indians
26. Navajo Nation
27. Inter-Tribal Council of Nevada, Inc.
28. Great Plains Tribal Chairman's Association
29. Picuris Pueblo
30. Ramona Band of Cahuilla

The CHAIRMAN. Thank you very much. Let me start with a few questions.

Mr. Cherry, has Resolution Copper made a determination as to whether the development of the mine is technically and economically feasible, or, if not, when would you expect to be able to make that determination?

Mr. CHERRY. Based on the studies that we have conducted over the last 7 or 8 years, the $750 million that we have spent, we believe that this project is technologically and economically feasible.

The CHAIRMAN. All right. You indicated you are preparing to file your plan of operation or mine plan. Is that correct?

Mr. CHERRY. Correct. We are nearing the completion of our studies, and by the second quarter of this year, we will be prepared to submit a mine plan of operations for the entire project site and area, including the area of the land exchange.

The CHAIRMAN. Right. That would be submitted to the Forest Service——

Mr. CHERRY. That is correct.

The CHAIRMAN [continuing]. For consideration? Then what authority do they have once that is submitted, as you understand?

Mr. CHERRY. That is the formal NEPA EIS environmental impact statement permitting process that they go through. So, under the National Environmental Policy Act, whatever authority they have under that act to follow a NEPA permitting process, that is the process that we are entering into.

The CHAIRMAN. OK. But you are not willing to enter into that same process with regard to the land that is the subject of this legislation, as I understand it. You would like to have this land transferred to the company without NEPA having been complied with, and then go ahead and do a NEPA process on the remainder of the land that is required for the mining operation? Is that right?

Mr. CHERRY. We need the certainty that comes with a directed exchange, not an administrative decision down the road. In order to invest that much money, we need that business certainty. We are not trying to sidestep NEPA or any other environmental provisions.

The legislation is clear. It does not waive any other environmental statutes or provisions that are on the books right now. We intend to fully comply with all those. They are still applicable, including section 106 consultation. That is all still there. That all still needs to happen.

The CHAIRMAN. I guess that the part that I am not able to sort of comprehend very well is that NEPA, the way Congress enacted NEPA requires the preparation of an environmental impact statement before any "irreversible and irretrievable commitment of resources." The thought was that that would be an appropriate thing to have done, that environmental assessment or analysis, before the transfer of the property. But you say that is not an acceptable course. You think the property needs to be transferred and become privately owned by the company before NEPA should be invoked.

Mr. CHERRY. Correct. The way we look at this is that by the simple act of exchanging properties, there is not an environmental impact of switching ownership on those properties. But that is the certainty we need to make the investments to go forward.

Nevertheless, going through the NEPA process to construct and operate that mine, we have to do that. We fully expect to do that, and we need to make sure that we do that in the right way. We are very confident we can do that and receive the authorization to move the mine forward under NEPA on the mine project.

The CHAIRMAN. If you are confident that you can do that and persuade the Secretary, the Forest Service, to go ahead once the NEPA analysis has been done, why would you not be confident that you could persuade the Secretary similarly with regard to this transfer of property?

Mr. CHERRY. It is as Senator Murkowski mentioned. It is a function of time. We have been at this a long time. We can do certain things in parallel with additional engineering studies and some construction in some areas while we are doing this. But dragging that exchange—excuse me, dragging that public interest determination out for an unknown period of time with an uncertain outcome does not give us the confidence we need to make that investment.

The CHAIRMAN. But now, you are not able to, as you understand it, you are not going to be able to proceed to do any mining unless you are successful in completing the NEPA analysis and persuading the Secretary that this is an environmentally acceptable thing to do. Is that right?

Mr. CHERRY. That is correct. The project site will still have to—it is essentially surrounded by Forest Service land. In order to connect conveyors and pipelines and utilities, there will be connected actions that will still have to be approved by the Forest Service. Until those can be completed, we would not be able to move the—to actually begin production of the ore.

The CHAIRMAN. It just seems to me that if that is the case, that you are confident you can gain that acceptance down the road. You are confident you can persuade the Secretary of Agriculture that this is in the public interest to proceed. It would seem you would have the same confidence that you could persuade the Secretary of Agriculture to proceed with the exchange. I am missing something obviously there.

Mr. CHERRY. Maybe the way to look at this is from the NEPA perspective. There is a process that you go through, and you can make your points, go through the process, have the hearings, everything you need to do, and you get to an end point in that, whereas the public interest determination, to a great extent, ends up being an arbitrary decision by a political appointee, and that is a risk that we just cannot afford.

The CHAIRMAN. Let me try to understand that answer, and I will defer to Senator Murkowski while I am thinking about it. Thanks.

Senator MURKOWSKI. Let me just continue on with that, Mr. Cherry. You have been in this process for some time. You were aware that in the last Congress, if the Senate bill had passed, you would have been in a situation where you would have been subject to an arbitrary decision in terms of the process. I should not say it is an arbitrary decision, but in terms of certainty with the process, it clearly is not there when you go the administrative route.

I asked Ms. Wagner this, how long it would take if you go through that process for the determination of the public interest finding. She indicated it could be a couple of years, maybe a few years. What did you estimate it would take in terms of timing?

Mr. CHERRY. We thought it would be at least 2 or 3 years to do that. But since that time we have learned more about our ore body. We have learned more about our project. We spent that additional funding, and based on what we know and how we want to move forward in this project, we absolutely need that certainty.

I guess a specific example would be to the south of us by roughly 10 miles is the ASARCO Ray Mine. They have been pursuing an administrative land exchange to expand their mine for nearly 14 years and have not been able to get a determination to move that forward.

Senator MURKOWSKI. Fourteen years.

Mr. CHERRY. That is what scares us.

Senator MURKOWSKI. Yes, 14 years, and that is not only time, but as I mentioned earlier, that is considerable resources.

Other than the administrative withdrawal of the Oak Flat campground land, am I correct that Resolution Copper could pursue this

mine without legislation, without going this route, given that you—the extent of the patent and mining claims that you hold within the area? Is that correct that you could proceed without legislation?

Mr. CHERRY. Yes, there is that possibility.

Senator MURKOWSKI. Then if that were to proceed, what would happen to—and we got the nice brochure here that details the protections for Apache Leap and the surrounding areas. If you were to give up on this, if the Arizona delegation would say, look, this just is not worth it, or you all would say that is not worth it, what happens to these lands that have been singled out for protection then?

Mr. CHERRY. Essentially the company would be under no obligation to divest those properties. We would hang on to those properties for whatever purpose that we would need.

Senator MURKOWSKI. So, we would not then—we, the American public, would not see that benefit there in terms of——

Mr. CHERRY. That is correct.

Senator MURKOWSKI [continuing]. Having exchange for public lands. So, those would remain with the company to do whatever the company would want to do with it——

Mr. CHERRY. Yes.

Senator MURKOWSKI [continuing]. Is what you are saying.

Mr. Chairman, I do not have any further questions. Yes, I do.

Mr. Lewis, Senator McCain in his statement was really quite direct in terms of his frustration, I guess I will—I hate to use—put words in his mouth, but he appeared to me to be frustrated, and he specifically singled out the lack of willingness to sit down by the tribes with—I do not whether it is individuals such as Mr. Cherry or others with Resolution Copper. Can you just speak very quickly to what efforts have been made to sit down and try to work through some clearly controversial issues?

Mr. LEWIS. Sure. As you know, the trust responsibility of the United States as implemented through numerous Federal law, the executive orders, policies, calls for advanced government to government consultation on matters that impact Indian tribes. In regards to sitting down with Resolution Copper, Resolution Copper is a private company or vendor that wants what they want. They have no obligation to San Carlos or any other tribe.

So, we are focusing on our government to government relationship, consultation trust responsibility with the U.S. Government to get these independent studies done that we have been asking for over the last several years. So, that is kind of why there has not been that direct relationship.

Senator MURKOWSKI. So, the tribes have not sat down with Resolution Copper.

Mr. LEWIS. No.

Senator MURKOWSKI. OK. I think that that is unfortunate, and I clearly understand that trust relationship, believe me. On so many of Alaska's issues, whether we are trying to advance development, it always comes down to consultation. Clearly you have got to have all the parties at the table. But it does sound to me like this is one area where if we could everybody at the same table, including Resolution Copper, including the tribes, perhaps we could work through some of these concerns here.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Franken.

Senator FRANKEN. I guess I would kind of like to follow up on the ranking member's question. We both sit on the Indian Affairs Committee, an appointment I requested because of the value I place on protecting the rights of native peoples.

This land exchange concerns me for a number of reasons. One major concern is the fact that it authorizes immediate mining exploration in an area that is considered sacred by Indian tribes. If this were not reason enough for concern, H.R. 1904 would authorize this land exchange without meaningful government to government consultation between the U.S. Government and the affected Indian tribes. Such consultation was ordered, was promised, to fully recognize Indian tribes under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

I would be interested in hearing from Mr. Cherry why his company thinks that your land exchange is a special case that does not warrant meaningful consultation between governments, or is this setting a precedent for cutting out tribal governments from contentious decisions in the future?

Mr. CHERRY. My understanding of H.R. 1904 is that it does not waive any applicable statutes that are out there. So, under the National Historic Preservation Act, section 106, which is the consultation, the government to government consultation, that would still occur prior to the exchange happening.

Senator FRANKEN. That is not our reading, but, if the Secretary of Agriculture has absolutely no discretion over the land exchange, I am not sure how that would be a meaningful consultation. The Secretary cannot even negotiate alternate terms to the exchange that are not already outlined in the bill. The consultation, I think you are referring to in H.R. 1904, is essentially just the U.S. Government telling the Indian tribes, this is how it is going to be. Is that your understanding, Mr. Lewis?

Mr. LEWIS. Yes. We think meaningful consultation with the government that would provide these independent studies that would be needed for the meaningful government to government consultation are in order here. Without those studies, without those independent studies, without looking into the economic impact, without looking into the environmental issues that may come with this type of project, it is hard to determine. It is hard to sit down and talk about, you know, what impacts this mining company would bring.

Senator FRANKEN. You know, look, I think we can all agree that creating American jobs is a good thing. Reducing our dependence on foreign minerals is a good thing. But we must do these things in the responsible way, and it baffles me that anyone could think it is a good idea to move ahead with a mining project without gathering the necessary information to make an informed decision and understand any potential consequences.

Mr. Cherry, it is my understanding the Resolution Copper supported S. 409 when it came before this committee last Congress. You supported the idea of performing a NEPA study before going forward with the land exchange. If I understand you correctly, now you do not want a NEPA study prior to the exchange because you

have invested more money in the project since 2009. You want certainty that the project will continue and nothing will slow or halt it, such as an unfavorable NEPA study. Is that correct?

Mr. CHERRY. The company did not oppose the requirements in S. 409 when it was before the committee last year. We are at a different place now. We are a couple more years down the road. We have spent an additional $300 million since then. We have learned more about the project, and as we get closer to the decision point to invest the $6 billion in this project, we need the certainty of that land tenure.

We learned that a mine not that far from us had been trying to acquire a land exchange, and administrative exchange, for over 14 years and is still at it, that gives us not a lot of confidence in that process and in the public interest determination.

Senator FRANKEN. OK. But the purpose of a NEPA study is to use that information to make an informed decision, and then once it is done then you will have the information from the NEPA study that you can use.

But I take it then essentially the answer to my question is yes. So, and I understand. Thank you. I really appreciate that, and I appreciate both your testimony. Thank you both, Mr. Cherry and Mr. Lewis.

The CHAIRMAN. I think maybe Senator Risch is coming back, I am not sure. But while we are waiting, let me ask a couple more questions.

Mr. Cherry, let me just be clear in my own mind. You are getting ready to file a mine plan with the Department of Agriculture, with the Forest Service, and this will be in the next few months. Is that accurate?

Mr. CHERRY. We are targeting the second quarter of this year for that plan.

The CHAIRMAN. The second quarter? So, the 1st of April to the 1st of July, sometime in there you will file a mining plan. If the Secretary of Agriculture does the NEPA analysis, which will be required under that, and determines that there is a problem, and that it is not in the public interest to give you the rights of way you need to run lines and pipes or whatever you need to operate that, then presumably that would become a problem for your future plans for mining this area. Am I right so far in that?

Mr. CHERRY. Yes, but there is a process to address those concerns under NEPA.

The CHAIRMAN. I guess the question is, you do not think there is a similar process to address concerns that might arise in a NEPA analysis related to the exchange of the land?

Mr. CHERRY. We believe that our environmental designs for this project will support the project moving forward. We have no problem with NEPA. Our concern is the public interest determination, the uncertainty that is created by that determination.

The CHAIRMAN. But is there not a public interest determination made as part of the NEPA process that follows the review of your entire mine plan?

Mr. CHERRY. My understanding is, yes, there is. But it is the acquisition of the land tenure that gives us the confidence to move

forward into that process and the NEPA for the entire mining project.

The CHAIRMAN. Let me ask you about when we had our hearings before on this, in 2009, we asked about the impact the mine might have on the water in the area. Resolution Copper at that point responded that it was continuing to collect baseline information. It was seeking to install some additional monitoring wells on national forest land to gather the information necessary to complete the studies. Can you tell us when those wells were drilled, when you would expect those pre-feasibility groundwater studies to be complete, or maybe they are complete. What is the status of that?

Mr. CHERRY. A couple of answers to your question. That is a lot of the work we have been doing the last couple of years. The money that we spent is directed toward environmental and engineering studies on the project. So, we believe that we will have pulled together enough data, studies, modeling results, et cetera, to put together this mine plan of operations and submit that so everyone can see the data and the modeling and offer their opinion or their critique or support of that application.

So, we have essentially completed the well installations. We are gathering data. We are going to continue to gather data from those wells for decades. But we have enough information now to move the permitting process forward. That is kind of on the front end.

The other thing that I would like to note because I know there have been some concerns expressed about water quantity issues. Our goal on the project is to have enough water banked in hand before we start this mining project. We have already barred 50 percent of our long-term water needs for the 40-year life of the mine.

The CHAIRMAN. Let me ask you on this Apache Leap issue, this provision that I referred to before in the House passed bill, H.R. 1904, that says that it exempts Resolution Copper's mining activities. As I understand, it exempts those from the protections of Apache Leap. What is your understanding of that, Mr. Cherry?

I asked Ms. Wagner about this, and she was saying that there are protections so that even if the company were to acquire this land and become a private land holder of this land, it would be limited in what it might do that could impact Apache Leap.

My understanding is that Resolution Copper would be subject to civil liability for damages that it did, but there would be no ability on the part of the Forest Service or the Federal Government to in any way restrict what the company could do on its private land prior to those damages occurring. Am I wrong about that?

Mr. CHERRY. My interpretation of this particular section, it applies to things such as hours of operation, for example. There can be a constraint put on the hours of operation for the mine site out there, those type of activities.

The CHAIRMAN. So, your thought is that it is not intended to convey the idea that the mining operations could go ahead and damage Apache Leap. You are saying that that would still be prohibited.

Mr. CHERRY. Absolutely. We would not—we have committed to, and that is part of the reason why we included that 110 acres of our own private land to be added to Apache Leap. We fully intend to protect Apache Leap. Even our mine design where we are start-

ing with the mining activities as far away from Apache Leap and slowly moving in that direction so that we can control and manage those to ensure that protection.

The CHAIRMAN. Let me ask Mr. Lewis, there is language in H.R. 1904 that requires the Secretary of Agriculture to engage in government to government consultations with affected tribes concerning issues related to the land exchange within 30 days of enactment of the statute of H.R. 1904. Does that give you any confidence that you are going to be adequately consulted? Have you focused on that provision?

Mr. LEWIS. I do not think as president of Inter Tribal Council of Arizona and the 20 tribes that that represents, I think that question would probably be best under the consultation process be for San Carlos Apache, which is, you know, the tribe that is being affected. Obviously 30 days at that point concerns tribes as not being an adequate amount of time.

The CHAIRMAN. OK. I guess the other concern that I had in reading that was even if the Secretary is directed to consult with you, the Secretary, upon the enactment of this legislation, would have no authority to in any way change the conditions of the transfer of the land. So, it would not really matter a whole lot what San Carlos raised by way of objections at that point. Is that your thinking?

Mr. LEWIS. I believe that would be our thinking. Once that land is transferred, privatized and taken away, those Federal protections that when it is under the Federal guidelines would be diminished.

The CHAIRMAN. All right. Mr. Cherry, I did have another question, which I may just submit for the record and see if you could get us an answer back. It's related to an issue that was raised in the House of Representatives with regard to Rio Tinto's partnership with an Iranian foreign investment company in a mine in Namibia. I do not think that is central to our hearing today, but it is one that our Banking Committee, I think, has been focused on somewhat. So, I wanted to just submit a question for the record, and maybe you could get us an answer back on that.

Mr. CHERRY. We would be happy to clarify that for you.

The CHAIRMAN. All right. That would be helpful.

Senator Franken, did you have additional questions?

Senator FRANKEN. No, thank you.

The CHAIRMAN. All right. I gather that Senator Risch may have left, so why don't we conclude the hearing? Thank you both very much for being here. I think it has been a useful hearing.

Mr. LEWIS. Thank you.

[Whereupon, at 11 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF MARY WAGNER TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Would you have your lands staff develop a spreadsheet of every administrative land exchange proposal received hy the agency over the last decade and provide the following information: 1) when (what month and year) the agency first received the exchange proposal; 2) where each of those administrative exchanges are in your process; and if completed the monthand date the lands in each exchange were transferred to the receiving parties.

Answer. See Attached Spreadsheet.

Question 2. Would you have your lands staff develop a spreadsheet of every legislated land exchange signed into law by Congress in the last two decades and provide the following information: 1) when (what month and year) Congress directed, or authorized each land exchange addressed in each lands related bill it passed; 2) where each of those exchanges are in your process; and if completed the month and date the lands in each exchange were transferred to the receiving parties. Also, please indicate whether the exchange was directed or authorized.

Answer. See Attached document: Forest Service Land Exchanges and Conveyances by Public Law (1990 to 2012).

Question 3. In your testimony under general concems you state that: "It is the Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement Congressional direction."

Are you suggesting that if Congress makes a decision on public lands that this Administration should have the right to modify or qualify that decision under NEPA?

Answer. In those situations where the decision made by Congress requires further Federal agency decisions to implement the Congressional direction, those subsequent agency implementation decisions would determine the scope of any Federal agency review and consider the statutory requirements and the need for any implementing conditions.

Question 4. Are you saying that NEPA, which is the law that we in Congress wrote, is somehow superior to Congresses constitutional authority to legislate on the public lands?

Answer. No

Question 5. Is it your belief that NEPA applies to Acts of Congress? Could provide this Committee with the specific language from the CEQ regulation that you believe imposes NEPA on laws passed by Congress?

Answer. NEPA applies to Federal agencies and not to Congress—the CEQ Regulations Implementing NEPA at 40 C.F.R. § 1508.12 clearly state that NEPA does not apply to Congress. However, a Federal agency is required by law to analyze the impacts of a federal action as part of the process of implementing congressional direction unless Congress provides otherwise.

Question 6. The land exchange process, as contemplated in the old text to S. 409, would give the Secretary the responsibility to determine if the exchange contemplated by the bill serves the public interest. The Secretary may only complete the exchange if a determination is made that the public interest will be well served. It is my understanding that the agencies typically apply the Federal Land Policy and Management Act and its implementing regulations at 36 CFR 254.3(b)(l) to determine whether a land exchange is in the public interest.

a. Would this Administration apply FLPMA and its implementing regulations to the Secretary of Agriculture's public interest determination on this land exchange?

Answer. Yes. The language in section 206 of the Federal Land Policy and managment Act (FLPMA) (P.L. 94-579 as amended) specifically requires the Secretary to determine that the public interst would be well served. Therefore, 36 CFR 254.3 is required and the Secretary shall carry out the exchange in accordance of Sec 206 of FLPMA, therefore all steps of the exchange process are to be followed, including NEPA.

Question 6b. There is a non-exclusive list of public objectives and resource factors to be considered in making the public interest determination at 36 CFR 254.3(b)(1). Please explain how the Secretary of Agriculture would apply the non-exclusive list of public objectives and factors, the relative weight the Secretary would assign to each objective or factor, and what other factors, if any, would the Secretary apply to make this determination?

Answer. Land exchanges are very expensive and time consuming due to the conveyance of public land. The intent of the public interest determination is to conduct a preliminary analysis of the resource effects of a land exchange and the benefits to the public as a whole versus a sole benefit to the proponent. Evaluating the factors and related issues helps the agency determine the worthiness of exchange and committing the resources to proceed with the proposal. Questions to be considered would include:

1) Would the land exchange be in compliance with the applicable forest land and resource management plan?

2) What are the resource benefits of the land coming into federal ownership equal or enhance the resources leaving federal ownership?

3) Does consolidation of Federal ownership and overall reduction of boundary management produce a cost savings?

4) Is there overall public/political/Tribal and local government support?

5) Are title and the description of the estates clean?

6) Are there adequate funds and staffing to process the exchange?

7) Does a preliminary market valuation estimate that if the proposed properties to be exchanged are close to being equal in value?

Another key factor is in 36 CFR 254.3 (2) (ii) the intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands. The agency would need to evaluate these factors to determine if the public interest is well served by conducting the Southeast Arizona Land Exchange.

Question 7. During the bearing there seemed to be some confusion about compliance with the National Environmental Policy Act and making a determination that the public interest will be well-served by the exchange or as proposed in

a. Is it the Administration's position that a decision arrived at through an environmental analysis under NEPA, is the "same as" a public interest determination in a land exchange? If so, please explain the basis for that assertion. If not, please explain bow the two are different

Answer. No. To the extent that a land exchange could potentially have significant environmental impacts, the public interest determination in a land exchange would include consideration of environmental, economic, and social consequences. No public interest determination is the same as a NEPA review and a NEPA review can inform the broader public interest determination. Thepurpose of NEPA is to "insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;" (Sec. 102 (A), 42 § 4332)

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Region 1				
North Butte	Beaverhead-Deerlge	1/6/2004	In progress	-
CB Ranch	Bitterroot	1/9/2009	In progress	-
Upper Lochsa	Clearwater, Nez, IPNF	1/9/2008	In progress	-
Pine Creek	Gallatin	1/3/2011	In progress	-
Bear Canyon/Trail Creek	Gallatin	1/8/2010	Completed	1/1/2012
Snowy Range Ranch	Gallatin	1/3/2009	Completed	1/12/2011
Hope/Sagle	Idaho Panhandle	01/09/09	Completed	1/12/2011
Mt Dept. Natural Resources	Lolo	01/02/05	Completed	1/12/2011
Penfield	Dakota Prairie Gr.	1/2/2010	Completed	1/2/2011
Taylor Hills	Lewis & Clark	1/12/2007	Completed	1/3/2010
Spring Hill	Helena	1/9/2005	Completed	1/4/2009
Grandmother Mountain	Idaho Panhandle	1/5/2005	Completed	1/1/2009
Ward	Beaverhead-Deerlge	01/03/06	Completed	1/4/2007
Bennett Creek	Gallatin	1/5/2002	Completed	1/3/2007
Bracket Creek	Gallatin	1/5/2004	Completed	1/8/2006
Dry Range	Helena	1/3/2005	Completed	1/5/2006
Cox	Kootenai	1/4/2004	Completed	1/6/2005
Seminole Ranch	Nez Perce	1/4/2003	Completed	1/4/2005
Boatman	Beaverhead-Deerlge	1/2/2003	Completed	01/11/04
Region 2				
Chihuahua (Snake River)	White River	12/21/2007	In progress	-
Breckenridge	White River	4/8/2011	In progress	-
Moskee Land Corp/Watson Land	Black Hills	3/11/2009	In progress	-
Capstone (Greyhound)	Black Hills	4/19/2006	In progress	-
Smith (Laughlin)	San Juan	7/23/2004	In progress	-
Whitcher (Sand Creek)	Nebraska/Ogtala NG	5/3/2010	In progress	-
Treat, etal (Salida)	Pike/San Isabel	n/a	In progress	-
State of Colorado, etal (Eagle Valley)	White River	10/21/2010	In progress	-
Leavell-McCombs Joint Venture (Wolf Creek)	Rio Grande	1/31/2011	In progress	-
SCC Partners Group (Sweetwater Lake)	White River	5/27/2011	In progress	-
Spear Colorado LP (Hotchkiss Reservoir)	GrandMesa/Uncompahgre/Gunnison	1/5/2012	In progress	-
Catspaw (Banded Peaks)	Rio Grande/San Juan	12/21/2005	Completed	03/14/2011
Hermosa Park Properties	San Juan	6/7/2007	Completed	12/15/2010
Misholding (Poudre Canyon)	Arapaho/Roosevelt	5/28/2009	Completed	11/10/2010
Northern Colorado Water Conservancy District	Arapaho/Roosevelt	2/9/1998	Completed	11/14/2008
Dakota Partnership (Indian Creek)	Nebraska/Buffalo Gap NG	10/18/2004	Completed	12/09
Thomson (Cow Creek)	MedBow&Routt NFs/Thunder Basin NG	6/6/2002	Completed	07/10
Cockrell (Taylor River)	GrandMesa/Uncompahgre/Gunnison	3/4/2008	Completed	08/10
Homestake (Grizzly)	Black Hills	11/29/2006	Completed	03/26/2009
Kempfe (Adventure Experiences)	GrandMesa/Uncompahgre/Gunnison	10/23/2007	Completed	09/28/2009
Nebraska Game, Fish & Parks (Middle Loup)	Nebraska	7/5/2006	Completed	03/19/2009
Hahn, Eugene D. & Sharon	Arapaho&Roosevelt NFs/Pawnee NG	11/20/2007	Completed	07/30/2008
Sides Ranch (Courtney Creek)	Nebraska/Buffalo Gap NG	7/1/2004	Completed	02/19/2008
Denver Water (Round Hill)	Pike/San Isabel	12/12/2002	Completed	04/26/2006
Morgan Land & Cattle Co	San Juan	1/11/2005	Completed	12/21/2006
Telluride Regional Airport Authority	GrandMesa/Uncompahgre/Gunnison	7/6/2008	Completed	07/13/2007
Diehl	Arapaho&Roosevelt NFs/Pawnee NG	8/18/2005	Completed	09/28/2006
Stroup (Missouri Breaks)	Nebraska/Ft. Pierre NG	12/15/2003	Completed	04-14-2006
Kent/Lindsay	GrandMesa/Uncompahgre/Gunnison	11/5/2004	Completed	09/29/2006
Vail Assoc (South Game Creek)	White River	11/2/2004	Completed	04/26/2006
Jung (Columbine)	San Juan	3/1/2004	Completed	01/30/2006
Needmore Ranch (Big Creek)	Routt/Rio Grande	4/27/2004	Completed	12/30/2005
Bragg, T.A.	Medicine Bow	6/26/1998	Completed	04/19/2005
Mann	Routt/Pike	5/22/2002	Completed	07/19/2005
City of Buffalo	Bighorn	9/30/2001	Completed	08/16/2005
Diits	MedBow/Routt NFs/Thunder Basin NG	7/30/2001	Completed	05/10/2005
Edoff, Scott M & Veronica	Nebraska/Buffalo Gap NG	10/15/2002	Completed	06/13/2005
Faraway Foundation	GrandMesa/Uncompahgre/Gunnison	8/30/2003	Completed	03/04/2005
Circle Ranches	Arapaho&Roosevelt NFs/Pawnee NG	5/9/2002	Completed	09/21/2004
B & H Land & Cattle Co	Pike&SanIsabel NFs/Comanche NG	8/6/2001	Completed	04/29/2004
Levine, S. Robert	White River	8/22/2002	Completed	01/13/2004
Goodrich, Thomas	Pike&SanIsabel NFs/Comanche NG	8/6/2001	Completed	11/25/2003
Eagle-Vail Metro District (Vassar II)	White River	5/22/2000	Completed	11/12/2003
The Conservation Fund (Vassar I)	White River	5/22/2000	Completed	09/02/2004
Loveland Rural Fire Prot. Dist.	Roosevelt	5/29/2002	Completed	10/17/2003
Sanders Ranch	Nebraska NF/Buffalo Gap NG	11/21/2001	Completed	12/18/2003

State of Colorado	Pike/Arapaho/Routt +	File at NARA	Completed	06/03/2003
Summit Joint Venture	White River	07/07/98	Completed	06/25/03
Town of Dolores, Colorado	San Juan	08/28/02	Completed	09/20/03
Hunter, Darrell, etal	Nebraska/Buffalo Gap NG	04/25/02	Completed	09/15/03
Sachs, Donald	Black Hills	01/15/99	Completed	09/30/03
Pacer Corporation	Black Hills	10/1/1999	Completed	04/30/03
Lindner	San Juan	4/27/1999	Completed	4/12/2002
Dakota Blossom Enterprises	Nebraska/Buffalo Gap NG	12/6/2001	Completed	9/30/2001
Dillard Cow Camp	GrandMesa/Uncompahgre/Gunnison	10/26/1999	Completed	3/11/2002
Johnson (Joe Dollar)	Black Hills	04/16/1998	Completed	9/12/2002
City of Fort Collins	Arapaho/Roosevelt	04/03/98	Completed	12/27/2001
Region 3				
Forest Ring	Coconino	n/a	Proposal Withdrawn	-
Willard Spring	Coconino	n/a	Proposal Withdrawn	-
Drake	Prescott	n/a	In progress	-
Yavapai Apache	Prescott/Coconino	n/a	In progress	-
Camp Tatiyee	Apache-Sitgreaves	n/a	In progress	-
Show Low South	Apache-Sitgreaves	n/a	In progress	-
Black River	Apache-Sitgreaves	n/a	On Hold	
Pine Springs	Lincoln	1/14/2008	Completed	6/12/2009
Clear Creek 820	Coconino	10/18/2005	Completed	9/19/2008
Tonto Apache Tribe	Tonto	1/14/2000	Completed	4/8/2008
Gray Wolf	Prescott	11/2/2001	Completed	6/19/2007
Dry Lakes	Apache-Sitgreaves	3/31/2003	Completed	6/19/2007
Ellison Creek	Tonto	2/22/2002	Completed	10/4/2005
Lone Mountain	Coronado	6/30/2000	Completed	9/9/2004
Hancock Ranch	Coronino	7/23/2002	Completed	2/27/2004
Unit 99	Kiowa	5/20/2002	Completed	9/29/2004
Show Low Airport	Apache-Sitgreaves	1/28/2002	Completed	11/3/2004
Mule Park	Coconino	1/24/2001	Completed	11/4/2004
Region 4				
Wasatch Wilderness Bill	Uinta Wasatch Cache	2/1/2011	In progress	-
Region 5				
- No Administrative Exchanges in Previous 10 Years -				
Region 6				
Gabriel, George S. and Helen L.		12/20/2007	Proposal Withdrawn	3/18/2011
Clearwater (Blue Mountain)	Malheur, Umatilla, Wallowa, Whitman	5/3/2002	Proposal Withdrawn	10/31/2007
Zinn	Okanogan	7/1/2011	In progress	-
Cougar Bluffs LEX	Umpqua	12/1/2010	In progress	-
City of Portland Water Bureau	Mt Hood	3/29/2010	In progress	-
Hardie LEX	Deshutes	6/1/2008	Completed	10/31/2011
Walton Ranches, Inc	Umatilla	9/24/2010	Completed	9/8/2011
Jensen, Karl	Umatilla	4/20/2009	Completed	7/28/2010
Sulste, Francis L. & Virginia L. Behm	Umatilla	7/6/2009	Completed	7/7/2010
City of Cle Elum	Wenatchee	4/29/2005	Completed	11/23/2005
Blake, Britt W. (Tripartite)	Colville	10/31/2005	Completed	9/26/2006
Thompson, Chad M.	Colville	6/28/2004	Completed	1/6/2005
Shaffer, Terry R. and Karen	Okanogan	8/31/1994	Completed	9/19/2002
Sanders, Raymond (Tripartite)	Colville	6/18/2002	Completed	6/19/2002
Stevenson County	Gifford Pinchot	8/3/1998	Completed	2/26/2002
Thonton, L. Lane	Fremont	4/1/1986	Completed	2/19/2002
Region 8				
KRAEMER, DAVID ET UX LEX	Cherokee	9/20/2008	Proposal Withdrawn	-
TNC-Post Office Bay	NF's in Florida	9/11/2009	Proposal Withdrawn	-
DAVIS LAND EXCHANGE	Sumter	5/6/2009	In progress	-
FLEA MARKET/POST OFFICE BAY	NF's in Florida	9/11/2009	In progress	-
POLK LEX - A-55	NFs in Texas	n/a	In progress	-
STILES-BRYANT	NF's in North Carolina	n/a	In progress	-
SUGAR CREEK GAP	NF's in North Carolina	9/22/2008	In progress	-
THE NATURE CONSERVANCY (TIBWIN)	Francis Marion	n/a	In progress	-
CRAWFORD, SHERLIE E ET UX	G.W./Jefferson	2/11/2004	In progress	-
Delta Plantation	Sumter	3/5/2010	In progress	-
DUNN LAND EXCHANGE	Chatt-Oconee	n/a	In progress	-
Georgia Fall Line Properties Tripartite	Chatt-Oconee	1/5/2006	In progress	-
Hugh Bennett	NF's in Alabama	n/a	In progress	-
Knoedl, Michael, et ux	Ozark/St. Francis	n/a	In progress	-
Poss, Edwin C.	Chatt-Oconee	n/a	In progress	-
Ronnie and Judy Campbell	Ozark/St. Francis	3/23/2007	In progress	-
Smith, Lunie and David S.	Ozark/St. Francis	4/30/2007	In progress	-
The Nature Conservancy (Bennett)	Ouachita	11/17/2008	In progress	-
The Nature Conservancy (Webb Fam. Trust)	Ozark/St. Francis	n/a	In progress	-
TRI COUNTY WATER DISTRIBUTION DISTRICT	Ozark/St. Francis	n/a	In progress	-

CARPENTER, RUTH & WESLEY	Cherokee	9/24/2009	Completed	26-Sep-11
VIVEK KHARE A-5709 (5710, 5297A, 5298A)	Ouachita	1/14/2011	Completed	26-Sep-11
The Conservation Fund	Chatt-Oconee	5/16/2007	Completed	17-Dec-10
RABUN COUNTY MULTI PARTY	Chatt-Oconee	11/1/2007	Completed	30-Sep-10
CAMPBELL LEX	Ozark-St. Francis	3/23/2007	Completed	24-Sep-10
THE NATURE CONSERVANCY-TR 3537	Ouachita	6/29/2009	Completed	27-Jul-10
SUDDUTH LEX - O-990.A, B (O-899)	NF's in Alabama	10/23/2008	Completed	10-Feb-10
ROBER AND JANET WAITE	Ozark/St. Francis	01-JAN-0001	Completed	27-Aug-09
CHRIST CHURCH OF MOUNTAIN FORK -	Ouachita	11/25/2008	Completed	14-Aug-09
Marilyn Hicks (Elliot Fam Trust)	Ozark/St. Francis	12/1/2006	Completed	06-Aug-09
PLUM CREEK SOUTH CENTRAL	NF's in Mississippi	4/13/2009	Completed	17-Jul-09
MARILYN HICKS (ELLIOT FAM TRUST)	Ouachita	12/1/2006	Completed	7-Jul-09
MARILYN HICKS (ELLIOT FAM TRUST)	Ozark	12/1/2006	Completed	7-Jul-09
Huckabay M. and Gerard, G.	Ozark/St. Francis	8/24/2007	Completed	07-Apr-09
THE NATURE CONSERVANCY (TURKEY CREEK)	Sumter	2/8/2007	Completed	23-Mar-09
WAYNE AND CHERYL LIMBAUGH	NF's in Florida	n/a	Completed	19-Dec-08
Kiser, David and Betty C.	G.W./Jefferson	8/3/2006	Completed	15-Oct-08
BETTY C KISER	G.W./Jefferson	8/3/2006	Completed	6-Oct-08
Citico Missionary Baptist Church	Cherokee	9/20/2008	Completed	01-Oct-08
W P PARRISH HEIRS	NF's in Florida	n/a	Completed	28-Sep-08
GRACE TABERNACLE BAPTIST CHURCH	NF's in North Carolina	8/18/2006	Completed	15-Sep-08
Kenneth Kelley, et ux	Ozark/St. Francis	5/17/2004	Completed	12-Aug-08
Tom Phillips	Chatt-Oconee	5/25/2007	Completed	30-Jul-08
Sain Properties, LLC	Ouachita	9/18/2006	Completed	30-Aug-07
CITY OF FORTH SMITH	Ozark-St. Francis	4/3/2003	Completed	24-Apr-07
FOREST RIDGE PROPERTIES	Ouachita	6/9/2006	Completed	17-Apr-07
MS RECREATIONAL PROPERTIES	Sumter	11/21/2005	Completed	14-Feb-07
SAIN BOISE MINERALS	Ouachita	8/23/2005	Completed	14-Dec-06
Silvertip Land Exchange	Chatt-Oconee	12/20/2005	Completed	15-Sep-06
American Natural Resources, LLC	Chatt-Oconee	3/25/2005	Completed	17-Aug-06
Myers, Danny Roy & Marvin	NF's in Mississippi	6/2/2005	Completed	25-Apr-06
DeSoto Land & Timber (Double A Firewood, Inc)	NF's in Mississippi	1/27/2005	Completed	19-Apr-06
Hill, Stephen & Van	Ozark/St. Francis	5/2/2005	Completed	17-Apr-06
Walker, Rick	Ozark/St. Francis	10/20/2005	Completed	11-Apr-06
DOYEL O'NEAL	Ouachita	3/28/2005	Completed	05-Apr-06
Trust for Public Land (Phase II) Tripartite	Ouachita	7/22/2005	Completed	30-Mar-06
Kathryn H. Bailey	NF's in Alabama	11/26/2002	Completed	10-Feb-06
Rives, Tommy D.	NF's in Mississippi	6/2/2005	Completed	20-Jan-06
TPL - Alarka Laurel	NF's in North Carolina	8/18/2006	Completed	09-Sep-05
Reed, Charlie & Jordan, Dennis	Ouachita	n/a	Completed	31-Aug-05
Owen, I. W.	Ozark/St. Francis	3/19/2004	Completed	06-Jul-05
Wynn, John K. & Geraldine L. (Siegfried Ex.)	Cherokee	9/26/2005	Completed	06-Jun-05
McElveen, John Henry	NF's in Florida	7/6/2004	Completed	17-May-05
Citrin, Ben, Dr.	Chatt-Oconee	1/6/2004	Completed	14-Sep-04
Patterson, Kirby	Chatt-Oconee	5/10/2004	Completed	05-Aug-04
155 Camp Limited Partnership	Ouachita	7/14/2003	Completed	23-Mar-04
Conservation Fund, The	Ozark/St. Francis	1/28/2003	Completed	14-Jan-04
Poole, James E	NF's in Florida	n/a	Completed	07-Oct-03
[redacted]				
Tofte Administration Site #4505	Superior	2/1/2001	Proposal Withdrawn	-
Cook County-Hungry Jack Lodge #4503	Superior	2/1/2001	Proposal Withdrawn	-
Todd Renk, Tract 5337	Ottawa	1/1/2009	Proposal Withdrawn	-
Stone Creek Golf Club	Shawnee	n/a	Proposal Withdrawn	-
Sean Doyle Exchange Proposal	Wayne	4/1/2011	In progress	-
Board of Commissioners of Public Land	Cheq-Nicolet	11/1/2008	In progress	-
Bye Real Estate & Development, Inc.	Hoosier	9/1/2011	In progress	-
Robert Delich, Tract 5330	Ottawa	1/1/2009	In progress	-
Crane Lake Sustainable Land Corp.	Superior	10/1/2011	In progress	-
Polymet #4544	Superior	9/1/2010	In progress	-
Lake County-Rifle Lake #4516	Superior	5/1/2009	In progress	-
Bartlett Mountain	White Mountain	12/1/2008	In progress	-
Jackson Township Exchange	Wayne	06/11/03	Completed	09/25/06
Good Builders-New Straitsville Exchange	Wayne	08/15/02	Completed	09/16/03
Washington County Commissioners Sisk Act Exchange	Wayne	3/07/07	Completed	08/12/08
Crader, Stanley 328-13	Mark Twain	10/27/2011	Completed	1/13/2012
Long Farms 332-7	Mark Twain	2/7/2011	Completed	11/16/2011
Shell, Floyd	Mark Twain	10/27/2011	Completed	10/24/2011
Harmon, Chris #361-10	Mark Twain	6/13/2011	Completed	7/26/2011
Hoskins, Janet John # 272-2	Mark Twain	8/10/2010	Completed	5/11/2011
J. W. Honeycutt 2711-10	Mark Twain	2/9/2011	Completed	4/1/2011
Richards, Jerry #361E-7	Mark Twain	10/12/2010	Completed	1/25/2011
Peppers, 3206-14	Mark Twain	10/15/2009	Completed	8/12/2010
Hatcher 3202-12	Mark Twain	8/11/2009	Completed	6/22/2010

Jarvis 334E-4	Mark Twain	8/10/2009	Completed	6/22/2010
South Kawishiwi Cabin Group	Superior	6/1/2008	Completed	6/18/2010
Chatham	White Mountain	7/1/2005	Completed	6/1/2010
David Reynolds 274E-12	Mark Twain	5/11/2009	Completed	4/29/2010
Allen, Jack W. & Sharon K. - # 361E-06	Mark Twain	3/6/2009	Completed	12/9/2009
Fischer, Mark - # 325-23	Mark Twain	8/15/2009	Completed	11/24/2009
Sickler, James O. Sr. #381-7	Mark Twain	10/29/2008	Completed	8/28/2009
Houshour, Richard, et ux.	Hoosier	4/1/2009	Completed	7/1/2009
Mittersill	White Mountain	5/1/2007	Completed	3/1/2009
Stolba, Gary C., et al - # 2710-06	Mark Twain	7/22/2008	Completed	2/27/2009
Pattee, James R., et al - # 369-06	Mark Twain	9/27/2007	Completed	1/12/2009
Keith, Richard A. - # 363-01	Mark Twain	4/11/2006	Completed	12/18/2008
Wright, Ronald E. B-0501	Hoosier	1/1/2007	Completed	9/1/2008
Laves, Robert and Randi	Mark Twain	9/25/2007	Completed	7/15/2008
Hudson, Charles and Mary Ann	Mark Twain	6/27/2007	Completed	4/10/2008
Campbell, Kenneth and Vickie	Mark Twain	9/24/2007	Completed	3/21/2008
Evans, David and Paula	Mark Twain	9/24/2007	Completed	2/14/2008
Doe Run Resources Corporation	Mark Twain	10/1/2004	Completed	2/8/2008
Kissee, Derene 7611-10	Mark Twain	3/29/2007	Completed	9/25/2007
Carol McCosker, Tract 5335	Ottawa	7/1/2006	Completed	9/20/2007
Weill, Jeanette 341-7A	Mark Twain	4/20/2006	Completed	9/6/2007
Peschel, Delton L. (L/T)	Mark Twain	10/4/2005	Completed	4/26/2007
Turnbough, Minnie	Mark Twain	7/7/2005	Completed	3/2/2007
Correll, Randy #4517	Superior	6/1/2004	Completed	11/1/2006
Barton, Ray W. (L/T)	Mark Twain	6/15/2006	Completed	10/31/2006
Reeves, David (L/T)	Mark Twain	6/15/2006	Completed	10/23/2006
Cook, Ron and Judy	Mark Twain	5/4/2006	Completed	9/8/2006
Braun, Michael K. T-0406	Hoosier	4/1/2005	Completed	8/1/2006
Poe, Robert (Estate of) (tripartite)	Mark Twain	2/14/2006	Completed	6/1/2006
Everett Allen Tract#5309	Ottawa	3/1/1998	Completed	2/28/2006
Scott Carter, Tract 5307	Ottawa	3/1/2005	Completed	11/7/2005
Cedar Ridge Baptist Church	Mark Twain	7/14/2002	Completed	7/6/2005
Wright #4528	Superior	7/1/2003	Completed	6/1/2005
Lafarge North America, Inc.	Mark Twain	3/17/2004	Completed	5/25/2005
Turner, Billy C.	Mark Twain	4/1/2004	Completed	2/16/2005
Braun, Michael K. T-0210	Hoosier	3/1/2003	Completed	1/1/2004
Hopper, Steve, et ux. T-0301	Hoosier	11/1/2003	Completed	1/1/2004
Keweenaw Land Association, Tract 5283A & 5283B	Ottawa	6/1/1995	Completed	11/6/2002
Ojibaway Inc. - Summer Home Group	Superior	8/1/2002	Completed	11/1/2002
Bonds Chapel Cemetery Association #B-0208	Hoosier	6/1/2001	Completed	7/1/2002
Mckain, Danny B-0008	Hoosier	9/1/2001	Completed	5/1/2002
Tony Andreski, Tract 5300A & 5300B	Ottawa	6/1/1997	Completed	3/13/2002
Edwards, Robert, et al. T-9907	Hoosier	6/1/1999	Completed	3/1/2002
Kennon, Homer L.	Mark Twain	10/1/2000	Completed	11/5/2001
Bye, Larry & Brenda T-0007	Hoosier	10/1/2000	Completed	11/1/2001
Centerpoint Land Exchange	Midewin NTGP	7/1/2000	Completed	8/1/2000
Rock Hill Board of Education Sisk Act Exchange	Wayne	08/13/99	Completed	02/29/2000
[redacted]				
South Arm/Hood Bay, 3x-12	Tongass	1/17/2003	Completed	12/23/2004

QUESTION 2

Every Legislated Land Exchange in the Past 20 Years

Project name	National Forest	Month and Year Directed/Authorized by Congress	Current Status	If complete, month and date of transfer	Was the exchange "Directed" or "Authorized"
Region 1					
Idaho Land Enhancement Act - Boise Foothills Exchange	Clearwater, Idaho Panhandle	1/6/2012	Completed	PH 1-09/08 PH 2-02/10	Directed
Lost Creek	Beaverhead-Deerlodge	11/96	Completed	PH1-10/97 PH 2-02/07	Directed
Lost Creek	Beaverhead-Deerlodge	11/1/1996	Completed	Multiple Final-02/07	Directed
Gallatin Land Consolidation -Wapiti Exchange	Gallatin	10/98	Completed	01/02	Directed
Gallatin Land Consolidation - timber for land	Gallatin	10/1/1998	Completed	Multiple Final-12/03	Directed
Gallatin Land Consolidation - Eightmile/West Pine Exchange	Gallatin	10/98	Completed	09/00	Directed
Gallatin Land Consolidation - BSL Exchange	Multiple Montana Forests	10/1/1998	Completed	02/99	Directed
Gallatin RangeConsolidation and Protection Act	Gallatin, Lolo, Flathead	10/1/1993	Completed	12/1/1993	Directed
Region 2					
Sugarloaf Fire Protection District	Arapaho/Roosevelt	12/23/11	In progress	-	Directed
Pitkin County	White River	12/1/2006	Completed	5/27/2009	Directed
City of Golden	Arapaho/Roosevelt	10/18/2004	Completed	6/7/2006	Directed
Campbell/Miles	Routt	1/27/1998	Completed	10/20/2005	Directed
Mt. Sopris Tree Nursery	White River	n/a	Completed	12/27/1994	Directed
Homestake	White River/Black Hills	11/18/90	Completed	1/24/1992	Directed
Region 3					
Yavapai Ranch	Prescott	11/22/2005	In progress	-	Directed
Pecos NPS	Santa Fe	3/3/2009	In progress	-	Authorized
T'uf Shur Bien	Cibola	3/3/2009	In progress	-	Authorized
Montezuma Castle	Tonto	12/19/2003	Completed	2/10/2007	Directed
Diamond Point	Tonto	12/19/2003	Completed	9/30/2004	Directed
Cloudcroft Schools	Lincoln	n/a	Completed	12/31/1996	Directed
Community Colleges of AZ	Tonto	n/a	Completed	9/23/1996	Directed
Region 4					
City of Bountiful	Uinta Wasatch Cache	3/30/2009	Proposal Withdrawn	n/a	Directed

Carson City	Humbolt Toiyabe	3/30/2009	Completed	9/30/2011	Directed
Boise Foothills	Boise	11/27/2006	Completed	2/5/2010	Directed
OSPG,L.C. (Timpanogo Caves)	Uinta Wasatch Cache	12/1/2002	Completed	4/22/2005	Authorized
Sinclair Oil Corp,Snowbasin	Uinta Wasatch Cache	11/12/1996	Completed	5/24/2000	Directed
State of Utah Exchange	Uinta Wasatch Cache/Manti-LaSal/Dixie/Ashley/Fishlake/Saw tooth/Caribou	6/25/1998	Completed	12/28/1998	Directed
Farminton City, Inc.	Uinta Wasatch Cache	11/19/1988	Completed	4/18/1994	Directed
		Region 5			
Kernville Land Exchange	Sequoia NF	10/11/2000	Completed	11/02/2009	Directed
Sierra Land Exchange	Sierra NF	12/01/2006	Completed	09/18/2008	Directed
		Region 6			
Cooper Spur-Government Camp	Mt Hood	3/30/2009	In progress	-	Directed
Port of Cascade Locks	Columbia River Gorge NSA	3/30/2009	In progress	-	Directed
Hunchback	Mt Hood	3/30/2009	In progress	-	Directed
Chellan PUD	Mt Baker/Wenatchee	8/4/2008	Completed	4/30/2010	n/a
Skamania County (Wind River Nursery)	Gifford Pinchot	10/21/1998	Completed	2/26/2002	Directed
Clearwater Land Exchange Oregon	Malheur, Umatilla, Whitman	n/a	Completed	12/29/2000	n/a
Rosboro Lbr. Co. (Opal Creek)	Willamette	11/12/1996	Completed	5/6/1999	n/a
Weyco - Huckleberry (I-90)	Gifford Pinchot/Snoqualmie	7/11/1991	Completed	11/20/1998	n/a
PUD No. 1 of Chelan County	Wenatchee	#/#/1991	Completed	4/25/1997	Authorized
		Region 8			
West, Bill	Ouachita NF	n/a	Completed	08/19/94	Directed
Weyerhaeuser Company	Ouachita NF	1996	Completed	11/18/96	Directed
State of Florida	Osceola NF	2005	Completed	04/18/05	Authorized
State of Florida	Osceola NF	2005	Completed	05/05/05	Authorized
		Region 9			
Bromley Land Sale/Exchange	Green Mountain	5/1/2008	On Hold	-	Authorized
Sugarbush Resort Holdings, Inc.	Green Mountain	9/1/1996	Completed	7/27/2000	Directed
		Region 10			
Haida Land Exchange Act	Tongass	10/1/1992	In progress	-	Directed
Greens Creek Land Exchange	Tongass	4/1/1996	Completed	8/1/1998	Directed
Hood Bay Land Exchange	Tongass	10/1/1997	Completed	4/28/1998	Directed
Haida - Sulzer Portage	Tongass	11/1/1986	Completed	4/12/1995	Directed

RESPONSES OF NED FARQUHAR TO QUESTIONS FROM SENATOR MURKOWSKI

Mr. Farquhar, in your testimony under general concerns you state that: "It is the Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement Congressional direction."

Question 1. Are you suggesting that if Congress makes a decision on public lands that this Administration should have the right to modify or qualify that decision under NEPA?

Answer. The BLM is required by law to analyze the impacts of the federal action as part of the process of implementing the congressional direction unless Congress provides otherwise.

Question 2. Are you saying that NEPA, which is the law that we in Congress wrote, is somehow superior to Congresses constitutional authority to legislate on the public lands?

Answer. No.

Question 3. Is it your belief that NEPA applies to Acts of Congress? Could you provide this Committee with the specific language from the CEQ regulation that you believe imposes NEPA on laws passed by Congress?

Answer. The BLM is required by law to analyze the impacts of the federal action as part of the process of implementing the congressional direction unless Congress provides otherwise.

Question 4. You state in your testimony, that many of the lands to be exchanged hold significant cultural value to Indian Tribes. You then list the Apache Leap, the Oak Flat Campground and Devil's Canyon as those culturally significant lands.

a. You do understand, that Devil's Canyon is not part of the exchange and 110-acres of private land are being added to Apache Leap which is being retained in federal ownership, correct?

Answer. It is our understanding that the tribes are concerned about the implications of mining on adjacent land and the effect that could have on Devil's Canyon.

Question 5. You state in your testimony the numerous concerns the Tribes have raised that the "legislation" is contrary to laws and policies that direct the federal land management agencies to engage in formal consultation with Indian Tribes.

a. In the opinion of this Administration are these concerns valid? Does the Administration share these concerns?

Answer. The Administration believes that formal consultation with the tribes before the land exchange is completed, rather than following completion (as envisioned under H.R. 1904), provides for more meaningful consultation and coordination.

RESPONSES OF SHAN LEWIS TO QUESTIONS FROM SENATOR MURKOWSKI

In your testimony, you state that ITCA's opposition to land exchange is largely premised on the lack of "meaningful" government to government consultation with the tribes. Section 3(d) in the text of S. 409, from the last Congress includes a provision requiring government to government consultation before the Secretary makes a public interest determination.

Question 1a. Would this provision from S. 409 provide the "meaningful" government to government consultation the tribes seek? Why or why not?

Answer. To clarify, "lack of "meaningful" government to government consultation" is not the primary reason for ITCA's objections. ITCA opposes both H.R. 1904 and S. 409 for a number of reasons as expressed in ITCA's testimony, including the lack of meaningful government-to-government consultation with affected Indian tribes, nations and communities (see answer to question 3 below). ITCA is joined in this concern by numerous tribes and tribal organizations from across the country because the precedent H.R. 1904 could set with regard to Congress' protections of Tribal sacred sites. Tribal opponents who have passed Resolutions and sent in written opposition to H.R. 1904 include the National Congress of American Indians, the All Indian Pueblo Council, the Inter Tribal Council of Nevada, the Affiliated Tribes of Northwest Indians, the Great Plains Tribal Chairman's Association, the Eight Northern Indian Pueblos Council, the United South and Eastern Tribes, the Mescalero Apache Tribe, the Navajo Nation, the Jicarilla Apache Nation, the Pueblo of Tesuque, the Susanville Indian Rancheria, the Shoshone-Bannock Tribes, the Confederated Tribes of Siletz Indians, and the Puyallup Tribe.

As you know, the United States' obligation to engage in government-to-government consultation with affected Indian tribes stems not only from language of E.O. 13175 pertaining to "sacred sites", but rather arises out of a broader trust obligation

of the United States under the U.S. Constitution, certain statutes such as Section 106 of the National Historic Preservation Act, and other executive orders, presidential memoranda, regulations, department policies and manuals—all of which acknowledge the broad obligation of the United States to engage in meaningful government-to-government consultation on matters affecting Tribal interests, including the religious, cultural, historical and traditional interests of Indian tribes in Oak Flat.

To further clarify, for consultation to be meaningful, it must be informed and it should take place with appropriate members of the United States government whom are involved in the decision making process. Thus, both parties should have sufficient information (such as the requested studies) to understand as best as possible the potential consequences of the action—here the potential enactment of legislation in the form of H.R. 1904 or S. 409 and the potential development of a large scale block cave mine at Oak Flat. Consultation also cannot be segmented and conducted on a piecemeal basis, but rather to be meaningful should involve consideration of the whole action to be undertaken. That is the intent behind the numerous executive orders, memoranda, Congressional Acts, etc.

For a number of years, the ITCA, the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation have requested that the United States perform advanced studies to determine the potential impacts of the mine on the water supplies of the region, the stability of the Earth's surface and the potential for surface collapse resulting from block cave mining at this place. These studies are also needed to understand the impact on federal reserved water rights for tribes and federal lands. Protecting the integrity of Oak Flat as a holy and sacred site requires this much. We believe Congress should ask the cognizant agencies and department to answer these questions through the necessary studies and analysis before Congress takes action on either H.R. 1904 or S.409.

Advanced consultation means that consultation should not come after the fact or so late in the process that input from the tribes will have little to no substantive impact on the outcome. Nor can they be meaningful if only parts of this legislation are consulted on and the timing is dictated by Congress as to specific inclusions and exclusions as to when Tribes should be consulted. Because this is a Congressionally mandated directed exchange meaningful consultation is cannot occur. This point was brought out in ITCA's recent testimony and in Tribal testimonies. Thus, consultation is only meaningful when the outcome is not pre-determined and the consultation process is conducted in good faith, where the concerns of the affected Indian tribes are considered and incorporated by the decision maker. ITCA does not believe that S.409 offers sufficient protections for the consultation process, in particular because consultation is only required after Congress has enacted legislation, not before, and because this legislation directs consultation in a segmented fashion at only certain steps in the process, for example only during the "best interest determination" pertaining to the land exchange (and not necessarily the mining project), and not with regard to the Resolution Copper's exploration of the Oak Flat Withdrawal after S.409 is potentially enacted under Sec. 3(g) of S. 409.

Question 1b. What kind of government to government tribal consultation would the tribes deem adequate for this land exchange to be consummated?

Answer. Please see ITCA Answer 1.a, above.

Question 2a. It is my understanding that the U.S. Forest Service, through the Tonto National Forest, has been engaged in tribal consultation, both on a formal and informal basis, regarding the Resolution Copper mine project and activities in the land exchange area since as early 2004, and that this consultation continues. Formal Consultation was formally documented by the Forest Service from 2008 to 2010 on Resolution Copper's Pre-Feasibility Activities Plan of Operations.

Do the tribes challenge this consultation as a failure to meet tribal consultation requirements under applicable law? Please explain.

Answer. The U.S. Forest Service, through the Tonto National Forest ("TNF"), has not engaged in meaningful "tribal consultation" with the ITCA regarding any legislation pending in Congress, including H.R. 1904. Indeed, in a letter written from Secretary Vilsack to the ITCA, dated June 27, 2011, Secretary Vilsack explained that the Forest Service did not believe that Tribal Consultation over H.R. 1904 was called for saying, "The Forest Service has not proposed the new legislation, and Executive Order 13175 does not require consultation at this time."

The ITCA is unaware of the details pertaining to your suggestion that the TNF may have engaged in "formal or informal" consultation regarding the "Resolution Copper mine project" with any of ITCA's Member Tribes. ITCA is aware that TNF has taken the position that it engaged in "formal" consultation with the San Carlos Apache Tribe with regard to Resolution Copper's Pre-Feasibility Plan of Operations for the approval of the certain exploratory activities within the holy and sacred site

of Oak Flat. We are also aware that the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation appealed TNF's approval of this Plan in part, on the grounds that the TNF did not, in fact, engage in true and meaningful consultation with the Apache Tribe about this project. Further, the Environmental Assessment prepared by the TNF failed to consider the direct, indirect or cumulative impacts of the mining companies Pre-Feasibility Activities on the integrity of Oak Flat as a Traditional Cultural Property under the National Historic Preservation Act, and it denied any impact on the Oak Flat area as a holy and sacred site within the meaning of Executive Order 13007. Finally, consultation by the TNF over Resolution Copper's proposed pre-feasibility activities at Oak Flat cannot be equated to consultation regarding H.R. 1904 or S. 409 or with respect to the proposed mining activities at Oak Flat.

Question 3a. In your testimony you described in great detail the block cave method that you expect Resolution Copper Company will use to develop the mine and in your view what will happen to the Oak Flat area if that method is used to mine the copper ore body. Yet you also indicated in your testimony that the tribes have never received a technical briefing from Resolution Copper Company about the mine project.

Please explain the basis for your assertions about the block cave mining method and how it will be used to develop the Resolution Copper mine?

Answer. Resolution Copper and Rio Tinto has repeatedly acknowledged that they intend to conduct a block cave mine at Oak Flat. See, e.g., http://resolutioncopper.com/project-overview.php. The techniques utilized in block cave mining and the general impacts from this type of mining referenced in ITCA's testimony have been documented by mining companies all over the world for many years. Resolution Copper has also publicly acknowledged that this form of mining will likely result in subsidence at Oak Flat. They also acknowledge that they have already had to dewater many billions of gallons of water from Shaft No. 9 and that they have removed these waters from the regional system by means of a pipeline. It is also understood that additional mine dewatering will be required at Oak Flat over the life of the mine. These basic facts, as well as the general depth and location of the ore body as discussed in ITCA's testimony are not and have not been disputed by Resolution Copper.

However, with this said, the specific and full extent of the impacts resulting from a block came mine at Oak Flat have not been independently studied. As noted above, for a number of years, the ITCA, the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation have requested that the United States perform advanced studies to determine the potential impacts of the mine on the water supplies of the region, the stability of the Earth's surface and the potential for surface collapse resulting from block cave mining at this place. We think Congress should ask these questions and the American people have the right to know the answers to these questions before the land is exchanged to Resolution Copper for mining purposes.

In fact, if the United States had conducted these studies when we requested them, they could easily have been completed by now and Congress would have this information before it today so that it could make a more informed decision on this or other related bills.

Again, as noted above, independent studies of the type requested by ITCA and other tribes are needed for the United States to engage in meaningful government-to-government consultation with tribes. For consultation to be truly meaningful, we need to understand the potential impacts of the mine on the water supplies of the area, and its impact to the land surface and the environment because each of these aspects of the ecosystem found at Oak Flat support the integrity of Oak Flat as a holy and sacred place and as a traditional cultural property for Indian tribes. Indeed, if Resolution Copper was required to conduct this land exchange under the normal administrative procedures required by Federal Law, rather than through Congress, the National Environmental Policy Act and other laws would require at least some advanced studies on the impact of the mine. Resolution Copper seeks to be exempted from requirements of the law that other land exchange proponents are required to follow.

RESPONSES OF JON CHERRY TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Has Resolution Copper conducted any evaluations on whether to mine the deposit around the Oak Flat withdrawal area without mining within the withdrawal area?

Answer. Based on our studies to date RCC strongly suspects that exploration of the underground resource within the withdrawal area will demonstrate that this

area contains ore that should be mined. Furthermore, we have structured our planning to date to facilitate the logical extension of mining into the withdrawal area.

Question 2. Has Resolution Copper determined whether it is technically and economically feasible to mine the deposit around the Oak Flat withdrawal area without mining within the withdrawal area?

Answer. Resolution does not believe that a mine should be developed that does not include the withdrawal area. However, due to the passage of time and inaction on the exchange legislation, RCC is at a point where it must move forward to develop the mine consistent with existing Federal law, regulation, and policy. The Mine Plan of Operation has been structured to facilitate the logical extension of mining under the withdrawal area.

Question 3. Is it potentially technically and economically.feasible.for Resolution Copper to develop a mine if it received title to the Federal land without applying to the Forest Service for any rights-of-way that would be essential to the development of the mine?

Answer. No, it would not be feasible. The Federal parcel proposed for acquisition is virtually surrounded by public National Forest and State of Arizona land. Based on current engineering and mining planning, it is not technically or economically feasible for Resolution Copper to develop a mine if it received title to the Federal land without applying to the Forest Service for any rights-of-way. This is based on the fact that the Federal land in the exchange is not suitable to construct a mill and tailings storage area and other related ancillary facilities. The areas that have been studied and identified as suitable areas for a mill site and tailings site, for instance, require conveyors and/or pipeline utility corridors across Federal land managed by the US Forest Service. No technically and economically feasible routes to the mill and tailings site have been identified that do not cross Federal land managed by the US Forest Service.

Question 4. Please provide the Committee with a copy of each evaluation of the potential impacts of the proposed mine on water and on the structural integrity of Apache Leap that Resolution Copper has conducted, contracted for, or otherwise commissioned.

Answer. Various studies are currently underway and/or complete. Copies of these studies and reports will be provided to the US Forest Service as part of the Mine Plan of Operations as required in Section (4)(j)(1)

Question 5. In 2008, Resolution Copper testified before this Committee that without access to determine the extent and nature of the ore body underneath the Oak Flat Campground, it "would not be able" to develop a mine plan of operations. At the February 9, 2012 hearing, you testified that Resolution Copper nevertheless is preparing to file a mine plan of operations in the second quarter of this year "over the entire project area including the area of the subject exchange," despite the fact that it has not had access to the ore body within the withdrawal area. Can you explain the apparent contradiction in the testimony?

Answer. Please see responses to questions number 1 and 2 above. Since 2008, Resolution Copper has spent over $300 million additional dollars on exploration, mining planning, environmental studies and exploration to obtain more knowledge about the ore deposit. Based on that additional information and current economic conditions, we have been able to develop a mine plan that begins outside of the Oak Flat withdrawal area but, upon the receipt of appropriate approvals and completion of necessary studies and modifications of the mine plan within a reasonable period of time, still provides an opportunity to mine within the withdrawal area. It is also important to point out that lack of access to ore that may exist underneath the Oak Flat withdrawal area would preclude the economic benefits from that ore to both the United States as well as to Resolution Copper.

Question 6. In 2008, Resolution Copper testified before this Committee that without access to determine the extent and nature of the ore body underneath the Oak Flat Campground, "it would not he advisable" to move forward with the mine development. Could Resolution Copper move forward with development of a mine without first having access to determine the extent and nature of the ore body in the withdrawal area?

Answer. Please see responses to questions 1 and 2 above. Since 2008, Resolution Copper has spent $300 million additional dollars on exploration, mining planning, environmental studies and exploration to obtain more knowledge about the ore deposit. The Mine Plan of Operation has been structured to facilitate a logical extension of mining under the withdrawal area.

Question 7. On what date did Resolution Copper determine that it was technically and economically feasible to proceed with the mine?

Answer. There is not an exact date at which Resolution Copper determined "that it was technically and economically feasible to proceed with the mine." Rather it

was the culmination of additional exploration and many environmental and engineering studies that were pointing in that direction. By late 2010, it was becoming apparent that it was technically and economically feasible to proceed with the mine.

Question 8. What is your best estimate of the date on which the pre-feasibility activities authorized by the Forest Service in 2010 will be complete?

Answer. In 2010 Resolution submitted a "Pre-Feasibility Actives Plan of Operations #03-12-02-0006" to the US Forest Service which was approved in October of that year. We expect that the related activities approved as part of this plan by the Forest Service in 2010 are anticipated to be completed by the end of 2014, while access for groundwater testing and monitoring would he maintained through 2025. However, the activities completed to date under the Forest Service's 2010 authorization and other studies have provided us sufficient information for the likely submittal of a proposed Mine Plan of Operations in the second quarter of 2012.

Question 9. Do you interpret section 8 of H.R. 1904 to permit the Secretary of Agriculture to impose restrictions on Resolution Copper's mining activities on land adjacent to Apache Leap to the extent those restrictions are necessary to ensure the preservation of the natural character of Apache Leap?

Answer. As stated in Section 8(a)(1), Resolution Copper agrees that "The Secretary shall manage apache Leap to preserve the natural character of Apache Leap to protect archeological and cultural resources located on Apache Leap". Resolution Copper also agrees with Section 8(c)(1) that "The provisions of this section [8] shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area beyond those otherwise applicable to mining activities on privately owned land under Federal, State and local laws, rules and regulations. Therefore, Resolution Copper interprets Section 8 of H.R. 1904 to permit the Secretary of Agriculture to impose reasonable restrictions on Resolution Copper's mining activities on land adjacent to Apache Leap to the extent that those requirements do not go beyond what is otherwise applicable under Federal, State and local laws to mining activities on privately owned land in similar circumstances.

Question 10. For example, relying on the authority under section 8(a), could the Secretary restrict the areas in which Resolution Copper could mine adjacent to Apache Leap? Could the Secretary restrict the extent of block-caving conducted by Resolution Copper on land adjacent to Apache Leap?

Answer. As noted above, Resolution Copper is committed to protecting Apache Leap and believes that Section 8 is a very important tool for the Secretary to manage and protect Apache Leap. However, Resolution Copper does not believe that the Secretary has authority under Section 8(a) to restrict the extent of, or method of block-caving conducted by Resolution Copper on private land adjacent to Apache Leap (see Section 8(c)).

Question 11. Does Resolution Copper remain unequivocally committed to the protection of Apache Leap?

Answer. Yes. From the very beginning of this project Resolution Copper has been and continues to be on record as being committed to the protection of Apache Leap. That is part of the reason why over 110 acres of private land that Resolution Copper currently owns adjacent to the mine site and Apache Leap is being offered as part of the land exchange that would be conveyed to the US government.

Mining will commence at a point that is measured at more than 1.3 miles to the east of Apache Leap. After several years of mining, subsidence will be seen on surface. As mining continues, the edge of the subsidence zone will slowly progresses towards Apache Leap at an overall rate of 180 feet per year, and after 10 years of mining the subsidence zone will be 4,000 feet from Apache Leap, but only 1,400 feet away from RCM production and ventilation shafts. This means that if our predictions for subsidence are wrong, then our own critical infrastructure necessary for mine operations will be impacted prior to Apache Leap. We will not jeopardize the significant investment in this infrastructure or the project itself.

Question 12. What is the purpose of section 4(h) of H.R. 1904? Do you interpret that provision as making the Federal land available to Resolution Copper for mining and related activities prior to any conveyance of the Federal land to Resolution Copper?

Answer. The intent of section 4(h) was to clearly state the intended uses for the land and does not make the land available for mining prior to conveyance. The only activities authorized prior to conveyance are covered in section 4(f) which would allow mineral exploration activities in the withdrawal area under a special use permit issued by the Secretary.

Question 13. During the House floor debate on H.R. 1904, there was considerable discussion about Rio Tinto 's partnership with the Iranian Foreign Investment Company at the Rossing Uranium mine in Namibia. Is Rio Tinto still the majority share-

holder at that mine, and is the Iranian Foreign Investment Company still a partner?

Answer. Rio Tinto and Rössing Uranium Limited (Rössing) have actively sought to address the issues Rössing faces as a result of the Iranian Foreign Investment Company's (IFIC) 15 percent interest in the company. IFIC acquired and continues to own its shareholding in Rössing in accordance with Namibian law. However, Rössing has taken and will continue to take steps to ensure that IFIC is solely a passive investor in Rössing. Rössing does not sell uranium to Iran. IFIC has no access to technology from Rössing. Rio Tinto has kept the State Department apprised of the situation.

Rössing operates a uranium mine located in Namibia. Rio Tinto is the parent company of the majority shareholder of Rössing Uranium Limited, with 69 percent of the shares. IFIC owns a 15 percent stake in Rössing, which it acquired in 1975 prior to the Iranian Revolution. Rio Tinto manages the mine and controls the marketing and distribution of 100 percent of its production. The other shareholders do not have the right to any portion of production.

RESPONSES OF JON CHERRY TO QUESTIONS FROM SENATOR MURKOWSKI

Mr. Cherry, it is clear to me from the testimony of the Administration that they believe you should not carry forward with fault-block mining of this copper deposit.

Question 1. Can you tell me how much of the deposit would be left in the earth if you developed the underground portion of the mine using alternative mining technologies?

Answer. Resolution Copper has spent more than $750 million on this project to date, including various environmental, economic and engineering studies. As a result, we have determined that the only mining method that is economically feasible is block cave mining because of the size and depth of the ore body located between 5000 and 7000 feet underground. Based on this information, if block caving is not permitted, the entire resource would be left in the earth. Without this project, the State of Arizona would not benefit from a $61 billion economic impact, over 3700 full time jobs would not be created and over $19 billion in tax revenue would not be generated.

Question 2. Would your company even recommend developing the deposit if such restriction where to be imposed by a Public Interest Determination?

Answer. Resolution Copper would not recommend developing this resource if such a restriction were to be put in place. Furthermore, it would be very unlikely that Resolution Copper or any other entity would be able to secure the $6 billion in financing or investment to build this mine if block caving were not the selected mining method.

Question 3a. I recognize that every mine that is developed is unique and the mining method selected must fit the circumstances of the project. It has been reported that Resolution Copper will employ the mining technique called panel caving, a subset of block caving, to mine the copper ore body.

Can you explain how panel caving works, why the company has chosen this mining method and whether the company could/would mine this ore body using another method?

Answer. Block cave mining is a well recognized, large scale, bulk mining method that uses the force of gravity to fracture an orebody, allowing it to be extracted through constructed drawpoints (funnel shaped excavations) at the bottom of the deposit by specialized mining equipment. As additional rock is removed from the drawpoints, the overlying ore continues to break and cave by gravity. This process continues until all of the ore has been vertically extracted from the drawpoints. Typically, this mining method is applied to massive, low-grade orebodies with large horizontal and vertical dimensions and with rock properties that behave properly, breaking into blocks of manageable size. In the United States, there are several block cave mines, such as the Henderson Molybdenum Mine in Colorado, and the older style Climax Mine (which also has an open pit for the near surface ore), also in Colorado. Furthermore Rio Tinto currently operates block cave mines in South Africa and Australia and is in the process of constructing a very large block cave mine in Mongolia.

Ore bodies that are mined by the block caving mining method, but are exceptionally large, must be broken up into a series of smaller, manageable, mining blocks called panels. As these panels are mined, a caving front advances across the orebody, continuously opening up new production areas as the earlier caved sections of the mine are exhausted. Once a mining panel has been completed, another panel commences production and this process continues until the end of mine life.

The mining method chosen for the Resolution Copper deposit is Panel Caving. The selection of the mining method and associated production rate is based largely on the following design criteria:

- Geometry (dimensions, shape, orientation)
- Location (geography, depth)
- Rock properties (ore + surrounding rock)
- Value of orebody (tons and grade)
- Mining and development costs
- Other site specific factors

For the Resolution Copper deposit, the geometry (size and shape), the rock properties and the grade of the deposit make it ideal for panel caving. Figure 1* shows the relative geometries and the tonnage and grade associated with the Resolution deposit, as well as the Magma deposit which was the mine that was active near Superior, Arizona until the 1990's. It can be seen that Magma mined approximately twenty-five million tons at a grade of nearly five percent copper and operated for nearly one-hundred years. The Magma Mine utilized the cut and fill and longhole stoping mining methods, which have lower production rates and significantly higher operating costs, and which are not suitable for the grade or character of the Resolution deposit. The Resolution deposit is in excess of 1.6 billion metric tons with an average grade of 1.47 % copper and is located at more than 5,000 to 7,000 feet below the surface.

Fundamentally, the same factors that make Resolution Copper amenable to panel caving also make it unsuitable to other mining methods. Specifically, size and geometry of the orebody, the lower grade, the engineering properties of the rock, and the location of the deposit really require a mining method that has economies of scale to offset the significant capital investment required to bring this project to fruition. As part of the study of this project other mining methods have been considered, but none are economically viable.

Question 4. Please describe why the Resolution Copper Company is confident that its mine operations will not impact Apache Leap?

Answer. Over the history of the project, significant quantities of geological and engineering data have been collected over the Resolution Project areas. This data has been used in both numerical and empirical engineering analysis to help determine the impacts that the overall mining process and subsequent subsidence will induce in the project area and to Apache Leap. These various analyses have consistently shown that our plans will be protective of Apache Leap. Resolution Copper is continually improving these predictions as our understanding of the geology and rock properties improves through ongoing and future study programs.

Mining will commence at a point that is measured at more than 1.3 miles to the east of Apache Leap. After several years of milling, subsidence will be seen on surface. As mining continues, the edge of the subsidence zone will slowly progresses towards Apache Leap at an overall rate of 180 feet per year, and after 10 years of mining the subsidence zone will be 4,000 feet from Apache Leap, but only 1,400 feet away from RCM production and ventilation shafts. This means that if our predictions for subsidence are wrong, then our own critical infrastructure necessary for mine operations will be impacted prior to any jeopardy to Apache Leap. As noted, our very expensive key production and ventilation shafts are located in an area that likely would be impacted by the block cave long before the structural integrity of the Apache Leap would be affected and we do not intend to let that happen and we will not jeopardize the significant investment in this infrastructure or the project itself.

Given the risk to the mine infrastructure and Resolution Copper's commitment to protecting Apache Leap, the Company will invest in all extensive monitoring system to collect data that will be continually used to test and improve on our predictions of subsidence. This will allow us to identify potential threats to either Apache Leap or our infrastructure long before the impacts would be realized. If our predictions on subsidence are incorrect, we will be able to adjust our mining plan accordingly to protect Apache Leap, even if this requires the loss of mine resource.

---

* Illustration has been retained in committee files.

APPENDIX II

Additional Material Submitted for the Record

PREPARED STATEMENT OF MICHAEL SCHENNUM, STAFF PHOTOGRAPHER, THE ARIZONA REPUBLIC, AND ADJUNCT PROFESSOR, ARIZONA STATE UNIVERSITY

As you know this coming Tuesday is Arizona's Centennial. We have a lot to celebrate in this great state. For one, our natural wonders, such as the Grand Canyon, Sedona and Queen Creek Canyon to name a few.

What then will we celebrate in another 100 years? Sections of the Grand Canyon? A few non-privatized areas in the red rocks of Sedona? A huge pit where Queen Creek's Oak Flats used to be?

We should not exploit our natural resources at the expense of what this state is famous for. Queen Creek offers camping, rock climbing, hiking, bird watching, and vehicular recreation. If it is gone, and the copper all mined out, what will be left for our children and our children's children? What will this great state be known for?

PREPARED STATEMENT OF LINDA S. WHITE, NATIVE OF ARIZONA, MARICOPA, AZ

For the last six years Resolution Copper Mining (RCM) has attempted to gain control of approximately 2,400 acres of land in the Tonto National Forest including the 760 acre Oak Flat Recreation area, which has been specifically withdrawn from all mining activity. These efforts have been via several legislative land exchange bills, in part because this particular form of land exchange would overturn the executive order (PLO 1229) that has been in place since 1955 that specifically prohibits mining activities in the Oak Flat area and because it would effectively serve as a mechanism to bypass the full regulations mandated by the National Environmental Policy Act.

Forest Service records clearly state that an important criteria for selecting various recreational areas to be protected in 1955 was the reasonable expectation of future conflict. This is a critical and often overlooked point because it means that when the Oak Flat area was withdrawn from mining appropriation in 1955 it was actually foreseen that some mining company would eventually propose mining there and in spite of this, the area was deserving of protection. Information uncovered via a FOIA request has revealed that when the NFS was asked by Asarco in 1972 about the possibility of lifting the mining prohibition at Oak Flat, the NFS replied that Oak Flat was still in use as a recreational area and thus the reasons for preserving that area were just as valid then as in 1955. That is certainly still the case today.

Sen. Mccain and Rep. Gosar have been saying this is a Jobs Bill for Arizona, in which the numbers of those jobs keep changing. According to Resolution Copper, most of the jobs will be done by robotics. Locals have only seen a small percent of subcontracted work.

This is bill is not good for Arizonians. Our public land will be destroyed along with all the issues that will result: Loss of Native Sacred lands, Recreational Land loss, Environmental loss, etc. The method this Company wants to use is Block-Cave Mining and it will result in subsidence of this land that is dear to many of us.

Thus we respectfully suggest that removing over 50 years of federal land protection, in favor of this land exchange, represents not only a poor outcome for recreationalists and the environment, but may also be unwise from an overall economic perspective. In our view, a much better solution would be a compromise scenario that would allow responsible mine development to occur but would also maintain the spirit of PLO 1229 and would thus guarantee the continued recreational, cultural and religious use of the Oak Flat area in perpetuity.

Please don't allow this Land Exchange through the Senate. We need you to protect this land and hold Resolution Copper/Rio Tinto accountable for their actions.

PREPARED STATEMENT OF CATHERINE CONNER

I write in opposition to H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011, and S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009, as reported by the Committee during the 111th Congress. I am a concerned citizen who opposes this proposal on behalf of myself, the large entity of other user groups that oppose this bill, the environment, and creatures and plant life that inhabit this land and can't defend themselves. This legislation would direct the Secretary of Agriculture to convey the highly popular public recreational & environmental resource at Oak Flat, Arizona for use as an underground copper mine, effectively reducing it to a large concave sink-hole in the ground.

Native Americans, Birders, climbers, campers, canyoneers, bikers, hikers, and the public in general, enjoy the area throughout the year, all of whom would be greatly harmed if these lands were forever taken from public access, not to mention the flora and fauna that can't speak to this. Native Americans have traditionally used the area for cultural, spiritual purposes, and for sustenance. All Arizona Indian tribes oppose the Land Exchange. The National Congress of American Indians passed a unanimous resolution in June of 2009 opposing all legislation that would allow mining at Oak Flat. In addition, the Concerned Citizens and Retired Miners Coalition in Superior, AZ is opposed to the land exchange and testified in Washington, DC against S. 409 in 2009.Everyone will suffer a huge environmental, spiritual & sacred, historical, and recreational loss if this area is destroyed by mining activities. Oak Flat area stands to subside into an enormous crater if Resolution Copper Mining (RCM) is allowed to proceed, and this would be a terrible travesty.

It has also come to light that The Southeast Arizona Land Exchange and Conservation Act of 2011 fails to require any meaningful environmental analysis prior to the transfer of public land to RCM. This bill would circumvent the public process mandated under the National Environmental Policy Act (NEPA) for prior analysis of any major federal action on public land. Such an analysis would assess the impact mine operations would have on the health of nearby residents, water quality, air quality, cultural resources, transportation, and the overall environment. H.R. 1904 unreasonably requires the exchange to be completed within one year. Such a rushed timetable will eliminate any meaningful analysis of this project and limit a real determination whether this mine is in the public's interest. Because the provisions in H.R. 1904 virtually ensure the development of this mine, and the public has very little information on the environmental implications of this mine, this exchange is not in the public's interest.?

The H.R. 1904 bill is being purported as a "jobs bill". But after reading the article "Rio Tinto says mine automation benefits outweigh costs" in which it is stated "In iron-ore, we are introducing automated trucks, blast-hole drill rigs, sorting machines and trains, all of which are capable of being controlled by our operations center in Perth (Australia), which already integrates our port, rail and mine logistics," said McGagh. Also to note, previously, there were amendments offered to the House Bill by Rep. Raul Grijalva to make sure that the jobs that Rio/RCM was projecting/promising would be located in the local vicinity. This amendment was rejected by the majority in power in the House. Claiming this is a "jobs bill" is only accurate in a short sited vision. This bill doesn't benefit Americans in the long term, except only perhaps in the short term future. With the automation of many supposed jobs, the number of new jobs is questionable, along with the longevity of said jobs. When the company leaves, the environment has been exploited and destroyed, and the foreign interests profit incredibly with no sense of loss once they leave.

RCM plans to mine using the block-cave method, a block-cave mine is designed to ultimately result in the subsidence of the surface, the end result, a giant sinkhole, land rendered a concave, featureless wasteland. One of the great problems of this bill is the lack of demanding RCM to use a different mining method (which exist) in which the environment is not destroyed, and the mining could occur simultaneously. I say to these large foreign companies to mine in this manner is an example of "just because you can, doesn't mean you should." This bill should be re-written so that the environment can remain intact, the mine required to put our (the public and environment) interests parallel to the mining interests, regardless of the possibility of slightly less profits. The mine should have to be accountable to its American hosts for how they impact our environment, not simply have ownership & free reign of this, our public land.

As a taxpaying concerned Arizona citizen, as this bill is currently written, I am opposed. Please find a way to preserve this public land that was set aside by President Eisenhower for all Americans to enjoy. It and the surrounding lands including Apache Leap, Gaan Canyon, and Queen Creek Canyon must be preserved from the

large foreign mining companies that threaten to take public ownership away and destroy the land.

For the past 6 years, these companies have unsuccessfully asked the US Congress to pass legislation giving away these lands. If this bill passes, we will lose a priceless piece of our natural and historic heritage. I ask that you deny this request until the proposal does not destroy this land, and the foreign mining companies are accountable to America, the EPA, NEPA, we the people, and the diverse living creatures & plant life that inhabit this area.

PREPARED STATEMENT OF CURT SHANNON, THE CONCERNED CLIMBERS OF ARIZONA

I was present in Washington for the senate hearing on February 9th and appreciate the opportunity to now formally express the views of The Concerned Climbers of Arizona on H.R. 1904 and S. 409 (Southeast Arizona Land Exchange and Conservation Act.) Our group is fully opposed to the passage of either H.R. 1904 and S. 409 for a multitude of reasons primarily related to the unprecedented loss of recreational resources that would occur, should either of these two bills become law.

BACKGROUND

Since 2005 Resolution Copper Mining (RCM) has attempted to gain control of approximately 2,400 acres of land in the Tonto National Forest including the 760 acre Oak Flat Recreation area, which has been specifically and purposefully withdrawn from mining activities since 1955. RCM's efforts to date have been via a series of legislative land exchange bills, in part because that form of land exchange effectively vacates executive order (PLO 1229) that has been in place for over 50 years and because such an exchange would effectively serve as a mechanism to bypass the full regulations mandated by the National Environmental Policy Act.

Forest Service records state that an important criteria for selecting recreational areas to be protected in 1955 was the reasonable expectation of future conflict. This is a critical and often overlooked point because it means that when the Oak Flat area was withdrawn from mining appropriation in 1955 it was actually foreseen that some mining company would eventually propose mining at that location—and in spite of this, it was determined that the area was deserving of protection for recreational purposes.

Information uncovered via FOIA request has also shown that when the NFS was asked by Asarco in 1972 about the possibility of lifting the mining prohibition at Oak Flat, NFS replied that Oak Flat was still in use as a recreational area and thus the reasons for preserving that area were just as valid then as in 1955. This is certainly still the case today.

CLIMBER ISSUES

Rock climbers are the largest recreational user group of the Oak Flat area, and will thus be the most impacted and displaced user group if H.R. 1904 should become law. If RCM establishes the huge block-cave mine under the Oak Flat parcel that it currently intends to, this will result in the largest loss of rock climbing resources in the history of the United States.

In this regard and in spite of all the good faith discussions that numerous rock climbing constituencies have had with RCM over the years, H.R. 1904 is certainly the worst bill yet to be introduced in congress, as all acknowledgment or attempt to mitigate the huge loss of climbing resource has been omitted from this latest version of the legislation. Climbers get absolutely nothing in H.R. 1904. In addition, the treatment of environmental review in H.R. 1904 is substantially flawed as it calls for the public land in question to be exchanged prior to any reasonable public interest determination being made. To be clear, we do not question the right of congress to make the public interest determination with regard to this legislation, but we do question the wisdom of congress doing so without having access to the kind of relevant information that only a NEPA review can produce. In our view, H.R. 1904 puts the "cart in front of the horse" and calls for conveyance of the Oak Flat parcel to RCM without factually and empirically demonstrating whether or not this exchange is truly in the public interest. Congress will truly be flying blind in making this sort of premature determination.

ECONOMICS

A large new copper mine in Arizona does have the potential to bring some economic relief to the communities in the immediate region. It must be noted however that this economic relief is by definition temporary in nature—as every new mine

will eventually close and become abandoned. Recreation, on the other hand represents a renewable and ongoing source of revenue to the state of Arizona and to the local communities.

According to a recent study (attached)* called Sustainable Economic Benefits of Human-Powered Recreation to the State of Arizona, "the Arizona active outdoor (human-powered) recreation economy supports an estimated 86,920 annual jobs, generates nearly $371 million in annual state tax revenue, and produces almost $5.3 billion annually in retail sales and services across Arizona. This popular industry is responsible for 12% of Arizona's retail economy each year."

In conclusion, we respectfully suggest that removing 50+ years of federal land protection to facilitate this land exchange represents not only a poor outcome for recreationalists and the environment, but may also be unwise from an overall, long term economic perspective. In our view, a much better solution would be a compromise scenario—involving sustainable and responsible mining techniques that would maintain the integrity of the surface of the ground in the Oak Flat area. This approach maintains the spirit of PLO 1229 and could thus guarantee the continued recreational, cultural and religious use of the Oak Flat area in perpetuity.

For these reasons we must oppose H.R. 1904 and S. 409.

PREPARED STATEMENT OF TERRY RAMBLER, CHAIRMAN, SAN CARLOS APACHE TRIBE

My name is Terry Rambler and I am the Chairman of the San Carlos Apache Tribe (the "Tribe"). Thank you for the opportunity to submit testimony to the Senate Committee on Energy and Natural Resources concerning H.R. 1904 and S. 409 as reported in the 111th Congress.

Since 2005, the Tribe has consistently opposed legislation that would convey an area called Oak Flat in Arizona's Tonto National Forest to Resolution Copper Mining (RCM). The Tribe's opposition is multi-faceted. As Apaches, our opposition is based upon cultural, social, and religious grounds. As Arizonans, our opposition stems from the adverse impacts of this mining operation on the future of Arizona, including its limited water resources. As Americans, our opposition is based upon the depletion of our nation's treasure and threats to national security with no commensurate advantage to our nation or the American people.

Under H.R. 1904, the Secretary of Agriculture is directed to convey over 2,400 acres of U.S. Forest Service land in southeast Arizona to RCM to facilitate the development and operation of an unprecedented, large-scale block cave copper mine. RCM is a subsidiary of two foreign mining giants—Rio Tinto, PLC (United Kingdom) and BHP Billiton, Ltd (Australia), whose owners include the country of China. Rio Tinto partners with the Iranian government in a uranium mine in Namibia.

Of principal concern to the Tribe are the devastating impacts the mine will have on the Oak Flat area. The mine will swallow giant swaths of the land above ground, including the Oak Flat area, which contains one of the holiest of Apache sites. When the land under Oak Flat collapses into an enormous sinkhole, the nature of the land and its ecology will be destroyed forever, and an area of profound religious and cultural significance to the Tribe, Yavapais and other Native Americans will be permanently desecrated and lost.

In considering H.R. 1904 and S. 409, I respectfully request that you question the merits of this legislation. This legislation is a special interest give-away to a foreign owned entity with no attachment to our country. The legislation fails to protect Indians, Arizonans, other Americans, and future generations.

For these reasons, the San Carlos Apache Tribe has joined with the Inter Tribal Council of Arizona, other tribes throughout the nation, mineworkers, environmentalists, and residents of Superior, Miami and Globe, to oppose this legislation. Our specific concerns follow.

THE OAK FLAT REGION IS A HOLY AND SACRED SITE

Throughout our history, Oak Flat continues as a vital part of the Apache religion, traditions, and culture. In Apache, our word for the area of Oak Flat is Chich'il Bildagoteel (a "Flat with Acorn Trees"). Oak Flat is a holy and sacred site, and a traditional cultural property with deep religious, cultural, archaeological, historical and environmental significance to Apaches, Yavapais and other tribes. At least eight Apache Clans and two Western Apache Bands have documented history in the area. Apache clans originated from this area and Apaches on the Reservation have ancestors who came from the Oak Flat area before they were forced to Old San Carlos.

---

*Document has been retained in committee files.

Tribal members' ancestors passed their knowledge about Oak Flat to their descendants who are alive today.

A number of Apache religious ceremonies will be held at Oak Flat this Spring, just as similar ceremonies and other religious and traditional practices have been held for as long as Apaches can recall. We do so because Oak Flat is a place filled with power, a place Apaches go: for prayer and ceremony, for healing and ceremonial items, or for peace and personal cleansing. The Oak Flat area and everything in it belongs to powerful Diyin (Medicine Men) who we respect, and the home of a particular kind of Gaan—powerful Mountain Spirits and Holy Beings on whom Apaches depend for our well-being.

The Oak Flat area is bounded on the west by portions of the large escarpment known as Dibecho Nadil (Apache Leap), to the east by Gaan Bikoh (Crown Dancer's, Mountain Spirit's, or Gaan Canyon and known as Devil's Canyon), and is intersected to the north by Gaan Daszin (Crown Dancer's or Mountain Spirits Standing, and known as Queen Creek Canyon).

In the Oak Flat area, there are hundreds of traditional Apache species of plants, birds, insects and many other living things in the Oak Flat area that are crucial to Apache religion and culture. Some of these species are among the holiest of medicines—medicines that are only known to and harvested by gifted Apache spiritual or healing practitioners. Only the species within the Oak Flat area are imbued with the unique power of this area. The ancient oak groves provide an abundant source of acorns that for many centuries and today serve as an important traditional food source for the Apache people.

Any mining on Oak Flat will adversely impact the integrity of the area as a whole—both as a holy and religious place and as a place of continued traditional and cultural importance to Apaches and other tribal people. There are no human actions or steps that can ever make this place whole again or restore to the Apache what will be lost. Mining on Oak Flat will desecrate our Gaan's home and could greatly diminish the power of this place, as well as our ability to most effectively conduct our ceremonies. The destruction of Oak Flat will add to the many problems and sufferings that our community already faces. We will become vulnerable to a wide variety of illness, and our Apache spiritual existence will be threatened.

The unique nature of the Oak Flat area has long been recognized, and not just by the Apache. Oak Flat was expressly set aside from appropriation under the public laws, including the mining laws, by President Eisenhower and reaffirmed by President Nixon. Public Land Orders 1229 (1955) and 5132 (1971). Secretary Vilsack recently acknowledged Oak Flat as a "special place", one that should be protected from harm "for future generations". See Secretary Vilsack letter to Senator Wyden, dated July 13, 2009. Oak Flat and other nearby locations are also eligible for inclusion and protection under the National Historic Preservation Act of 1966, as well as other laws and policies.

Article 11 of the Apache Treaty of 1852, requires the United States to "legislate and act to secure the permanent prosperity and happiness" of the Apache people.[1] H.R. 1904 fails to live up to this promise. While the Oak Flat Withdrawal and its surrounding lands stand outside of the physical boundaries of the San Carlos Apache Indian Reservation, this area is part of our and other Western Apaches' aboriginal lands, and it has always played an essential role in the Apache religion, traditions, and culture.

H.R. 1904 FAILS TO REQUIRE MEANINGFUL CONSULTATION WITH INDIAN TRIBES

Numerous laws, executive and secretarial orders and policies of the United States require meaningful government-to-government consultation with Indian tribes. The United States' obligation to engage in good faith consultation with Indian tribes arises from the unique legal, political and trust relationships that the Government owes to tribes under the Constitution, treaties, statutes, and judicial decisions.

Congress has understood and articulated the importance of consultation as a matter of law. The respect for tribal cultural beliefs, especially for sacred sites, has become an essential component of consultation process and reflects the Government's trust relationship with Indian tribes. The National Historic Preservation Act (NHPA) requires that federal agencies consult at all stages with any "Indian tribe . . . that attaches religious and cultural significance" to traditional cultural properties, such as the Oak Flat area. 16 U.S.C. §470(a)(d)(6)(B). Federal regulations require that the Government assess the impacts of H.R. 1904 and the mining project

[1] Treaty with the Apache, 10 Stat. 979 (July 1, 1852), ratified March 23, 1853, proclaimed March 25, 1853.

on Oak Flat because it is an eligible historic property. 36 C.F.R. §800.5. Avoidance and mitigation of adverse effects are called for under NPHA and its regulations.

Executive Order 13175 requires executive departments to conduct tribal government-togovernment consultation with Indian tribes when proposed legislations have substantial direct effects on one or more Indian Tribes. 59 Fed. Reg. 22951 (April 29, 1994). Secretary of Agriculture Vilsack has acknowledged "it is important that this bill engage in a process of formal tribal consultation to ensure both tribal participation and the protection of this site." See Secretary Vilsack Letter dated July 13, 2009, above. President Obama stated in his 2009 Memorandum issuing E.O. 13175, that "[h]istory has shown that failure to include the voices of tribal officials in formulating policy affecting their tribal communities has all too often led to undesirable and, at times, devastating and tragic results." 74 Fed. Reg. 57881 (November 5, 2009).

Nothing in H.R. 1904 requires informed and advanced government-to-government consultation with affected Indian tribes, such as the San Carlos Apache Tribe, as contemplated by the United States' trust responsibility and the laws and policies described above. To the contrary, Sec. 4(c) only requires consultation after enactment of the H.R. 1904, and not before, rendering the act of consultation a mere formality.

Section 4(c) would circumvent Executive Order 13007 which directs Federal agencies to manage Federal lands in a manner that accommodates Native American religious practitioners' access to and ceremonial use of Native American sacred sites and to "avoid adversely affecting the physical integrity of such sacred sites." 61 Fed. Reg. 26771 (May 29, 1996).

Meaningful government-to-government consultation assumes knowledge. The San Carlos Apache Tribe, the Inter Tribal Council of Arizona, the Fort McDowell Yavapai Nation, and others have repeatedly requested that the United States undertake advanced studies to better understand the impact of the proposed mine on the water supplies, landscape and environment of this region. Such studies are needed for informed consultation. This policy is circumvented by the land exchange conveyance mandated by H.R. 1904.

Proponents of H.R. 1904 have criticized the Tribe for not having met and consulted with RCM. However, the trust relationship rests not with RCM but with the United States.

There continues to be sufficient time to engage in meaningful consultations with the Tribe and other affected Indian tribes before any decisions are made whether to convey Oak Flat to RCM. To do otherwise, as H.R. 1904 mandates, would seriously undermine the intent of NHPA and other federal laws, and even the trust relationship of the United States to Tribes.

RIO TINTO HAS QUESTIONABLE TIES TO CHINA AND IRAN

Nine percent of RCM's controlling partner, Rio Tinto, is currently owned by China through its state-controlled Aluminum Corporation of China. If this land exchange goes through, China will end up holding a 4.5% interest in Arizona's Tonto National Forest and our ancestral lands. Rio Tinto is also a partner with Iran in the Rössing Uranium Ltd. mine in Namibia. While RCM seeks to minimize its connections to Iran, Rio Tinto remains on the State Department's list of foreign corporations in the supply chain of strategic minerals to hostile governments, including North Korea and Iran.

Under the President's recent Executive Order on Iran sanctions, including measures to implement section 1245 of the National Defense Authorization Act (NDAA), the U.S. Department of Treasury is issuing general licenses to maintain existing authorizations for certain transactions involving the Government of Iran. Resolution Copper will need to apply.

Executive Order 13175 requires executive departments, including the Department of State, to conduct tribal consultations based on the Tribe's concern regarding the business relations of Resolution Copper and its parent companies with Iran and China. The Tribe is aware of recent U.S. actions at the United Nations Security Council (UN Resolution 1929) and Presidential Executive Order 12957, including the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), which strengthens the support of U.S. sanctions with respect to the Iranian energy industry. As a result of Iran's continued intransigence, the U.N.'s resolution is the most extensive package of sanctions against Iran. U.S. officials have adamantly reiterated that Iran be held accountable for its nuclear program and continued human rights violation.

Currently, the U.S. is conducting official talks about transnational criminal organizations and global efforts to increase pressure on the Iranian regime and isolate Iran from the international financial system. There are also two primary federal

statutes governing reporting by foreign investors about investments made in the United States, which RCM may not have complied with as of yet: the International Investment and Trade in Services Survey Act; [2] and, the Agricultural Foreign Investment Disclosure Act.[3] The Tribe does not have any means to fully investigate a foreign company or its affiliations, but it understands that the Congress and federal agencies can investigate these matters.

Based on the history of Rio Tinto's business relations with Iran and China and in light of the U.S. recent sanctions against Iran, it would be inappropriate to trade U.S. soil to a questionable foreign mining company.

H.R. 1904 IS A GIVE-AWAY TO FOREIGN, SPECIAL INTERESTS

Under the current mining laws, the land exchange would result in a give-away of American wealth. Based upon RCM's own calculation of the ore body at modest prices of copper of $2.00 per pound and molybdenum at $10.00 per pound would result in a give away to two foreign mining companies in excess of $7 billion. Under today's copper prices, the saleable copper extracted from Oak Flat would have a value of about $185.6 billion.

The appraisal requirements of H.R. 1904 do not adequately ensure that the public will receive fair value. RCM and its foreign corporate parents would not pay for the true costs of environmental compliance. As a result, American taxpayers would be left without any revenue and on the hook for the future cost of any environmental remediation.

ANY JOBS BENEFITS FROM H.R. 1904 ARE DWARFED BY ENORMOUS ECONOMIC AND ECOLOGICAL COSTS TO ARIZONA AND AMERICA

RCM and its proponents tout local job creation as the primary justification for this land exchange. However, if H.R. 1904 were to be enacted, it would come at the expense of all Americans, including Indians and Arizonans. RCM claims that the mine at Oak Flat will produce a wide variety of jobs, from 1,000 to as many as 3,700. This last estimate comes from RCM's hired expert and not from an independent analysis. In reality, the number of jobs is highly speculative; the majority of these jobs (assuming they were created) would not appear until a number of years from now, offering little to help today's economy. Furthermore, Rio Tinto plans to make the RCM mine highly automated and to be able to operate it from remote locations, potentially rendering local job creation meaningless.

Other mining companies in the area such as Freeport McMoRan and Teryl Resources recruit employees from as far away as Phoenix and Tucson, and even outside the State. As a result of recent increases in copper prices, unemployment in the Superior—Globe region has fallen well below the national average.

While some jobs will be created by the proposed mine, it is certain that H.R. 1904, if enacted, will result in tragic consequences that RCM seeks to downplay, if not avoid. Any economic benefit that may exist will be negated by the very real, long-term impacts to the regional water supply and environmental and the economic cleanup costs that American taxpayer cannot afford.

There has been no credible cost benefit or other analysis of certain environmental impacts. Once Congress permits Oak Flat to be traded to the private ownership of RCM, RCM would be able to develop and operate its mine with only limited environmental permitting, water quality requirements, cultural protections or financial assurances required under Federal law. As a limited liability corporation, RCM could simply walk away from potentially billions of dollars in environmental and infrastructure damages. Indeed, it is very likely that H.R. 1904 will assure the creation of a future Superfund Cleanup site. We all have to ask ourselves why H.R. 1904 does not provide assurances that a future environmental catastrophe will be remedi-

[2] (22 U.S.C. §3101 et seq.)("IITSA"). The Bureau of Economic Analysis (BEA) of the Department of Commerce administers IITSSA; see 15 C.F.R. 806. The IITSSA requires reports of all foreign investment in a U.S. business enterprise in which a foreign person or corporation owns 10% or more of the voting interest, unless the investment is under $1 million, is under 200 acres, or is real estate intended for personal use.

[3] (7 U.S.C. §3501 et seq.) ("AFIDA"). AFIDA is administered by the U.S. Department of Agriculture; see Regulations at 7 C.F.R. §781. If agricultural land is acquired by or has title transferred to a foreign individual or corporation, AFIDA requires the individual to submit a report (Form FSA-153, Agriculture Investment Disclosure Act Report) to the Secretary of Agriculture within 90 days of the transaction. Exceptions to this requirement include transactions involving: security interests; leaseholds under 10 years; contingent future interests; non-contingent future interests that do not become possessory upon termination of the present possessory estate; easements and rights of way (surface or sub-surface) unrelated to agricultural production; interests solely in mineral rights. In the event of an exchange, RCM would have to comply.

ated. Who will pay that cost? Certainly not RCM; instead, the American taxpayer will be left on the hook.

The Tribe has been mischaracterized as being philosophically opposed to mining. To the contrary, we support responsible mining. We recognize that mining is an essential part of Arizona's economy. Many Apaches are miners. However, we must agree that any mining should be carried out responsibly and that it should not destroy our holy sites.

What is proposed here is the highly destructive block and cave mining method. Block cave mining consumes massive amounts of water that will severely shrink the water supply of an already drought stricken region. The mine will most certainly generate gigantic amounts of waste and tailings piles that may poison the region's water supply, and it remains uncertain even today where the ore will be processed and where the mountains of tailings and development and waste rock for this mine will be dumped. RCM has publicly admitted that its proposed block caving mine would create significant land subsidence and collapse of large portions of the Oak Flat area. Despite these facts, H.R. 1904 removes all administrative discretion and decision-making authority, rendering tribal consultation useless, and provides no protections to the lands, water or integrity of holy, sacred and cultural sites.

No independent assessment has been made available to the public regarding the proposed mine's impact on the water resources, environment, natural ecosystems or the landscape of the Oak Flat area. No provision in H.R 1904 offers any protections for the large-scale water depletions and environmental scarring and toxins that will result from the mine. The absence of requirements for independent assessment or NEPA review in H.R. 1904 before the land exchange ensures that the public will never know the true impacts of the proposed mining operation until it is too late.

Of particular concern is the fact that the mine's dewatering would substantially deplete groundwater aquifers that supply the Globe-Superior region. The cumulative impact of RCM's mine and the other mines already operating in the area on the region's water supplies and quality will never be assessed because of the lack of NEPA review. The mine will likely dry up and otherwise contaminate surface flows, springs, seeps and other water features within the Oak Flat area—all of which are fundamental to the integrity of the area as a holy site and traditional cultural property for the Tribe. Adverse impacts will occur through the depletion of groundwater aquifers and surface supplies that support the base flows in Queen Creek and the perennial pools in Gaan Canyon. The loss to the local aquifers cannot be remediated by banking Central Arizona Project water elsewhere.

At present, no water management plan exists for this already drought stricken region. RCM has not volunteered its studies. No independent study has assessed the potential impact of the proposed mine on the region's water supply. No independent study been made of the amount of toxins or other contaminants that will be produced by the mine. H.R. 1904 guarantees that no such independent reviews will ever be carried out. The potential costs of the proposed mine to the environment, the Apache's holy site, and the region's water supply will certainly outstrip any economic benefits of any jobs.

H.R. 1904 ALLOWS A LAND EXCHANGE WITHOUT NEPA REVIEW

The public should be made aware of the potential impacts stemming from this proposed land exchange. However, Sec. 4(i) of H.R. 1904 mandates that the exchange occur within one year of enactment. This provision effectively prohibits compliance with NEPA.

NEPA requires the government to study, develop, and describe appropriate alternatives to courses of action for any proposal that involves unresolved conflicts concerning uses of available resources. 42 U.S.C. § 4332(2)(E). The NEPA process also must be integrated with other planning at the earliest possible time in order to ensure that decisions reflect environmental values and head off potential conflicts. 40 C.F.R. § 1501.2.

H.R. 1904 fails to protect the public because: (1) it does not require or even permit the Secretary of Agriculture to take a "hard look" at the land exchange before the exchange is consummated; (2) it fails to vest any discretion in the Secretary of Agriculture to consider appropriate alternatives; (3) it does not provide or permit mitigation of impacts related to the exchange and/or the mining project; and (4) it would not permit the Secretary to reject the exchange if the Secretary finds that the exchange is a bad deal for the American taxpayer or public.

Contrary to what proponents of H.R. 1904 contend, the bill waives the requirement of a NEPA analysis before the exchange. H.R. 1904 further waives the Federal Land Policy and Management Act and other critical laws that guide land exchanges and protect the American public. Because of these waivers, there can be no inde-

pendent determination of what is in the public interest. Nor will there be any disclosure of environmental impacts. Indeed, under H.R. 1904, even if the Secretary finds adverse impacts to religious interests or environmental, cultural, water or other harms, nothing can be done. The land will already be owned by RCM and most federal laws would not apply.

S. 409, as reported, did provide some protections prior to decisions on conveyance by requiring a more active involvement by the Secretary and limited consultation with tribes; however, we oppose S. 409, as reported, because it (among other things) fails to acknowledge the importance of Oak Flat to the religion, traditions and culture of the Apache and Yavapai People and because it contains no guarantees that the integrity of Oak Flat as a Apache holy site and traditional cultural property would be protected after transfer to RCM. While both bills are unacceptable to the Apache Tribe, H.R. 1904 is even worse than S. 409, as it completely removes most of the Secretary's discretion and consultation functions. Sec. 4(i) of H.R. 1904 removes the rights that the Tribe or other concerned citizens would normally have under the law before the exchange becomes final. So, even if the Secretary's NEPA efforts after the exchange were found flawed, it is likely to be argued that no one can seek review from government agencies or the courts.

H.R. 1904'S NEPA REQUIREMENTS AFTER THE EXCHANGE ARE HOLLOW

Under Sec. 4(j) of H.R.1904, the Secretary of Agriculture has no discretion to exercise any meaningful authority over RCM's plan of operations or its mining activities on private land absent a federal nexus. Once federal lands are transferred to private ownership under H.R. 1904, RCM may contend that it is able to mine without having to comply with federal law.[4] RCM will only have to submit a plan of operation in advance of producing commercial quantities of minerals. However, the Secretary of Agriculture has no authority to reject the plan of operations if the information is insufficient to conduct the review called for under Sec. 4(j)(2).

Under H.R. 1904, no interim exploratory activities, pre-feasibility and feasibility operations, or facility construction will be given federal scrutiny before production. Completion of the exchange prior to an Environmental Impact Statement negates the utility of the EIS process and eviscerates NEPA protection. As a result, RCM's activities will be subject merely to the limited and inadequate provisions of Arizona law.

Many mining companies have a long history of complying with federal laws and regulations. Public input and close scrutiny under NEPA provides assurances that the public interest will be served. NEPA provides a vital, structured process to assess the impacts of the mine on the land, water, cultural resources, animals and plants, while also assessing the extent, quality and value of the ore body to be conveyed to foreign mining companies. Only then can the American people fully understand the amount of taxpayer wealth being transferred by the Government.

It is only because of the federal laws which are in place that other miners in Arizona and throughout the country are examples of environmental responsibility. RCM and its proponents have completely failed to articulate any credible reason why the NEPA process and other federal laws should be bypassed and circumvented by H.R. 1904.

RESPONSIBLE STEWARDSHIP FOR APACHES, ARIZONANS, AND OTHER AMERICANS

H.R. 1904 would lead to irresponsible development with disastrous consequences. In the words of Theodore Roosevelt: "To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them." Theodore Roosevelt was a champion of Edmund Burke's ideal that a moral partnership exists between the living, the dead and those to be born. That view helped instruct his passion for conserving America's natural resources. That view in some aspects also parallels the Apache way of life. We should all honor this vision.

Oak Flat should be preserved for future generations of Americans, Arizonans and Apaches and other Indian Tribes. Theodore Roosevelt also observed that: "Conservation means development as much as it does protection. I recognize the right and

[4] Lands in private ownership are exempt from most of the normal process for mining on federal lands, which includes jurisdiction of the federal government under the Federal Land Policy Management Act of 1976, 43 U.S.C. §§ 1701-1785; the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531; NEPA, 42 U.S.C. §§ 4321-4347; and 36 C.F.R Subparts A and B. H.R. 1904 further bypasses the National Forest Management Act (16 U.S.C. § 1600) and the Endangered Species Act (16 U.S.C. § 1531).

duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful means, the generations that come after us." That sentiment is reflected in the San Carlos Apache Tribe's opposition to this legislative land exchange. That sentiment is shared by a substantial coalition of Americans.

RCM's proposed mine would waste natural resources and would rob generations yet to come. It should not be permitted to happen by those entrusted with the solemn trust responsibilities for Indians and all Americans.

TRIBES, ARIZONANS, AND OTHER AMERICANS NEED PROTECTIONS FROM H.R. 1904

The Tribe has been joined by the 20 member Tribes of the Inter Tribal Council of Arizona, local community organizations, miners, environmentalists and dozens of others in its opposition to H.R. 1904 and any other legislation that would convey or otherwise negatively harm the Oak Flat area. I respectfully submit that H.R. 1904 should not move out of the Committee for the following reasons:

1. Government-to-government consultation must occur with all interested tribes throughout the land exchange process and proposed uses;
2. H.R. 1904 offers no protections for Oak Flat area as a Traditional Cultural Property, pursuant to Section 106 of the NHPA or, alternatively, exclusion from transfer to RCM under the legislation;
3. There are no guarantees of continued access for tribal members to the Oak Flat area;
4. Certain restrictive covenants should be developed by the Secretaries of Agriculture, Interior and State in consultation with affected Indian tribes, for the Oak Flat area due to its significant tribal archaeological, religious, historical and cultural significance;
5. H.R. 1904 does not include critical water balance measures to ensure protections for the region's future water supply;
6. RCM does not have to comply with applicable federal laws and regulations before any decisions on whether to convey federal land and wealth, including comprehensive NEPA, FLPMA and CEQ review;
7. H.R. 1904 does not require federal environmental compliance; and
8. There are no meaningful sanctions in H.R. 1904 if RCM violates federal laws.

CONCLUSION

In 1871, the United States established our Reservation. Within just a few years, some of the most productive lands within the boundaries of the Reservation were taken away by the United States and conveyed to settlers and miners for their sole benefit. That was repeated five more times over the years. Our burial sites, living areas and farmlands on our Reservation were flooded to make way for a federal dam for the benefit of others. It is in this historical context that we assess the mining proposal and this land exchange.

H.R. 1904 and S. 409, as reported, do not provide the requisite transparency to address many of the fundamental concerns mining projects like these present. The billions of dollars which RCM and its foreign corporate parents would realize in mining profits and avoidance costs for environmental compliance by the premature passage of these bills are staggering. There is no unbiased analysis of the potential economic benefits or costs of potential environmental damages and impacts on the region's water supply.

The proposed mine presents an untenable threat to the security and sustainability of Oak Flat and all it contains, which would be an incalculable cultural loss. Under the bills, there is an absence of quantifiable royalties for the American treasure that would be given to foreign entities in exchange for our ancestral lands.

Mr. Chairman and Members of the Committee, thank you for the opportunity to express our opposition to H.R. 1904 and S. 409 as reported.

TONTO NATIONAL FOREST,
GLOBE RANGER DISTRICT,
Globe, AZ, February 6, 2012.

TONTO NATIONAL FOREST SUPERVISOR,

This letter is to inform you that we and our families are very proud to announce the dates of our upcoming Apache Sunrise ceremonial dance which is to be held at Oak flat. The dates we have scheduled are May 2 through May 16, 2012, We are requesting to meet with you and your office as soon as possible to discuss arrange-

ments so that our use of Oak flat is a priority among any and all requests that may be submitted for the area.

As you are aware, Oak flat was and has always been the home to us, Apaches, as well as being a sacred place that Usen(God) had blessed the world in the beginning of time. History, both written and oral, tell of the wrongs that took place, the extermination and removal of our people to the reservation as prisoners of war, this being mandated because of federal policies to remove us from this place. Our Sunrise dance is one of the oldest religious practices in North America which celebrates a young woman coming of age. The ceremony brings teaching of life's blessings for the girl, and for all people, it brings blessings, healing and visions of things to come. The ancient songs are sung to communicate with all God's creations. We are very fortunate, and blessed that the religion was able to survive and overcome all the obstacles and forces that were against it. We commend those before us who made every effort in keeping and preserving Oak flat as a sacred place, those who prayed, those who came for blessings, the holy—people, the medicine men, the elders, and the Mount Graham sacred runners.

So this is to notify you that we will be in Oak flat to exercise our religious rights and human rights, as your forefathers claimed for all U.S. citizens. We appreciate your assistance in advance.

Respectfully,

LOREN PINA, SR.
MICHELLE RANDALL.
VANSLER NOSIE.
ELAINA NOSIE.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, DC, February 3, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

Re: NCAI Opposition to H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011

DEAR SENATOR BINGAMAN,

On behalf of the National Congress of American Indians (NCAI), I write to express our strong opposition to H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011. We call upon the Senate Energy and Natural Resources Committee to ensure that H.R. 1904 is not enacted into law.

H.R. 1904 would direct the Secretary of Agriculture to transfer over 2,400 acres of federal lands in southwest Arizona in an area known as Oak Flat to a private, foreign-owned mining company called Resolution Copper. In 1955, President Eisenhower recognized the unique properties of this area and issued an Executive Order setting the land aside as a protected area.

The federal lands proposed for transfer under H.R. 1904 are of deep religious, cultural, archeological, historical, and environmental significance to the Apaches, Yavapais, and other tribes in the region. By collapsing the surface of the earth and depleting and contaminating nearby water resources, the proposed mining will destroy the religious, cultural, and traditional integrity of Oak Flat for these tribes, as well as cause permanent environmental damage. Even in its minimal exploration of the region, the mining company has already begun to leave a destructive footprint on culturally significant areas and precious natural resources in and around Oak Flat.

The United States government has legal and moral responsibilities to manage traditional cultural territories in a way that respects the places that hold cultural, historical, spiritual, and religious importance to Native nations and their quality of life. H.R. 1904 breaks these obligations by transferring a known sacred site into the private ownership of a foreign mining company and by destroying the very elements of this place that make it a sacred site to Native peoples.

We look forward to working with you to ensure that H.R. 1904 is not enacted into law. If you have any questions, please contact Robert Holden, NCAI Deputy Director, at rholden@ncai.org or (202) 466-7767.

Sincerely,

JEFFERSON KEEL.

PREPARED STATEMENT OF ROBERT WITZEMAN, CONSERVATION CHAIR, MARICOPA, AUDUBON SOCIETY

H.R.1604, or the U.S. Senate version of it, would be a grave affront to our nation's environmental and cultural protection laws. It greatly weakens standard U.S. environmental, cultural, Native American and historical oversight laws such as NEPA and NHPA. It incorporates a truncated 36-mos. NEPA oversight review process for what would be one of the largest, if not the largest, copper mine in North America. Such a curtailed review and oversight process for a mine which the Resolution Copper Company states may take some ten to fifteen years to build is unwarranted. Essentially all U.S. mine's (some 182 of them since NEPA was passed in 1969) have undergone full, unabbreviated NEPA-oversight and public input and review-a process RCC now lobbies to abbreviate and short-cut.

This proposed Resolution Copper Company mine special land exchange legislation would destroy some 2400 acres of irreplaceable U.S. Forest Service land along with a priceless adjacent Sonoran Desert riparian (Devil's or GAAN Canyon) ecosystem as well as areas of cultural and historical significance to Native Americans in the area.

As currently written, it would accrue to the benefit a British/Australian mining consortium, namely, the Resolution Copper Company (RCC), at the expense of those established laws which protect American and Native American people. It could circumvent, short-cut, and vitiate one of our nation's most important environmental protection laws, namely the National Environmental Policy Act (NEPA). It could destroy one of Arizona's most ecologically rich Sonoran Desert riparian ecosystems, Devil's Canyon. That canyon supports a stunning array of Fremont Cottonwood, Goodding Willow, Arizona Black Walnut, Velvet Ash, at least four species of oak, Arizona Alder, Arizona Sycamore, New Mexico Locust and Arizona Cypress. Black Hawks, Zone-tailed Hawks, Peregrine Falcons, and other unique Sonoran Desert birds make their home there as do a variety of reptiles and desert plants including the endangered, uniquely endemic, Arizona Hedgehog Cactus, Echinocereus triglochidiatus arizonicus.

This legislation, besides potentially being written to short-cut, truncate or circumvent NEPA, weakens the Endangered Species Act and Native American cultural protections of the endangered biota as well as the sacred/historic cultural sites found there. The two foreign mining companies composing RCC, BHP (Australian) and Rio Tinto (British/Australian) have horrendous third world environmental and human rights records. All Arizona tribes have formally opposed this mine. It threatens sacred sites, not the least important of which is Apache Leap, a historic/sacred site where Apache and Yavapai leapt to their deaths rather than surrender to the U.S. Army.

The passage of the proposed land exchange would assure the dewatering and destruction of the irreplaceable riparian biodiversity of Devil's Canyon. To obtain the copper ore Resolution would first have to remove and is currently removing the groundwater aquifers which supply and lie above and adjacent to the Devil's Canyon's riparian habitat. Since the mine is thousands of feet deeper than the canyon, it would render Devil's Canyon's life-giving aquifer bone dry. Additionally, this land exchange bill would give away an ecologically and historically priceless USFS campground of riparian willows, cottonwoods, and oaks. The oaks have been and are being used by Native Americans (for centuries) as a traditional acorn food source. Those acorn trees currently overly what would become a vast one-mile diameter cavernous block-cave mine hole one and 1/3 times deeper than the Empire State Building at its top floor. The area is also well recognized as a site of burials, historic artifacts and prayer locations of the indigenous peoples (Apache) of this area.

This area was considered so unique by Presidents Eisenhower and Nixon that in separate Executive Orders it was decreed that this USFS land should remain permanently off limits to mining because of its unique natural attributes.

Devil's Canyon is a Sonoran Desert riparian masterpiece of springs, wetlands, limpid pools and cascading waterfalls. Some 90% of Arizona's riparian wetlands, so vital to survival of Sonoran Desert birds and wildlife, have already been destroyed by dams, stream diversions, mining, groundwater pumping, etc.

The Resolution Copper consortium, under their past recent proposed NEPA-exempt legislation, would not have to reveal to the public where they will dispose of their toxic mine wastes or how or where they will process their ore. It is variously considered they propose to dump their toxic wastes into a notorious BHP copper mine site east of Resolution Copper's proposed mine site. BHP's levies have ruptured and spilled their toxic products twice in recent years (1993, 1997). The spills cost millions of dollars to clean up. The toxic, heavy metal mine waste products potentially end up in Roosevelt Lake, a source of Phoenix' drinking water and an irre-

placeable fish and wildlife resource. Other proposed dump areas would be in the Superstition vistas/Gold Canyon area to the northwest.

RCC's land exchange "swap" properties are almost entirely run-down, overgrazed, abandoned USFS inholdings, having few riparian attributes. The few remaining tattered riparian fragments are overrun by trespass cattle. The bill provides no funds for Resolution Copper to fence or halt the ongoing cattle trespass, soil erosion, and property desertification. Here cattle devour the very few remaining cottonwood, willow etc. sapling and seedlings. In conclusion, cottonwood, willow, and other broadleaved riparian trees have no recruitment capabilities, as these are non-maintained, broken-fenced "exchange" properties. The bill contains no provision for fencing maintenance of the exchange properties. Trespass livestock browse the seedlings and saplings of the few riparian trees as if they were "ice cream." Hence, these non-guarded, abandoned land swap in-holding properties are ecologically valueless to the American public. Any merit of these "swap" properties is a cruel hoax to the American public.

The above photo of the BHP-owned San Pedro 7B cattle ranch photo is erroneously described by Resolution Copper as having significant riparian value. In fact, it is a bone-dry riverbed devoid of the classic cottonwood/willow riparian galleries vital to and characteristic of the San Pedro riparian ecosystem. Its adjacent mesquite bosque has no value as habitat for endangered Willow Flycatchers, Yellow-billed Cuckoos, or other flagship San Pedro River avifauna such as its unique Black, Zone-tailed, and Gray Hawks. These are keystone species which the San Pedro is known to benefit.

Of grave concern here is that Resolution's BHP partner will dewater and lower the depth of the Lower San Pedro River's water table by building a 35,000-unit real estate development upstream at their defunct San Manuel copper mine. This will dry up and terminate the 7B's upland, mesquite "bosque." More significantly, the BHP development would dewater and adversely impact much of the entire Lower San Pedro cottonwood/willow habitat water table with its endangered species and unique birdlife.

PREPARED STATEMENT OF BRADY ROBINSON, EXECUTIVE DIRECTOR, ACCESS FUND, BOULDER, CO

Dear Chairman Bingaman and Members of the United States Senate Committee on Energy and Natural Resources:

The Access Fund, America's largest national climbers organization, is pleased to submit this testimony for inclusion into the public record regarding H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011, and S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009, as reported by the Committee during the 111th Congress. Since 2004, the Access Fund has been an interested party and involved stakeholder to the various versions of this proposed federal land exchange, and has met dozens of times with Congressional staff about this proposed law that would direct the Secretary of Agriculture to convey highly popular public recreational rock climbing resources on federal land for use as a massive underground copper mine. The Access Fund opposes this bill because it destroys public climbing resources, lacks meaningful environmental analysis, and is a massive giveaway of public wealth to a foreign-owned private mining company.

This testimony addresses specific problems and suggested solutions related to H.R. 1904 and S. 409 that will better serve the public interest. If the Southeast Arizona Land Exchange and Conservation Act becomes law, Congress should 1) recognize the importance of the recreational resource at Oak Flat by requiring specific and significant mitigation to compensate for the loss of climbing (as included in previous bills authorizing this land exchange), and 2) require responsible environmental analysis before this massive mining project is allowed to consume public resources and potentially affect the environment far beyond the footprint of this proposed mine. These elements were supported by both Arizona's US Senators and nearly the entire Arizona US House of Representatives delegation in several previous land exchange bills involving this area, and it's appropriate that these elements remain in the current bill.

THE ACCESS FUND AND OUR STAKE IN OAK FLAT

The Access Fund is a 501(c)3 non-profit advocacy group representing the interests of approximately 2.3 million rock climbers and mountaineers in the United States. We are America's largest national climbing advocacy organization with over 10,000 members and affiliates. The Access Fund's mission is to keep climbing areas open

and to conserve the climbing environment. Preserving the opportunity to climb and the diversity of the climbing experience are fundamental to our mission. Arizona is one of our largest member states. For more information about the Access Fund, log on to www.accessfund.org.

Rock climbers are numerically the largest recreation group that uses the Oak Flat/Queen Creek area, and we also stand to suffer the largest loss if this area is destroyed by mining activities. There are over one thousand established rock climbs in the Oak Flat area[1] that will subside into an enormous crater if Resolution Copper Mining (RCM) is allowed to proceed with their present plan to "block cave" mine the underlying ore deposit.

Since 2004, the Access Fund has worked with a variety of climbing groups in Arizona, conservation organizations, officials from local and federal government, and Resolution Copper Mining to address the severe impacts that this bill would cause to Oak Flat and the recreation community in central Arizona. Reasonable minds may differ on the best approach to conserve the environment and climbing opportunities if a mine is to go forward. For example, the Concerned Climbers of Arizona[2] seek to minimize surface disturbance at Oak Flat and advocate for the co-existence of mining and recreational activities (and are thus opposed to both H.R. 1904 and S 409), while Queen Creek Coalition (QCC)[3] seeks to "maximize rock climbing resources in the Queen Creek Region" through direct negotiations with RCM. However, on January 16, 2012, the QCC reported that negotiations were not going well and that "Queen Creek Coalition is and likely will remain opposed to Resolution's proposed land exchange." While RCM has expressed an interest in upholding their commitments to the climbing community, QCC reports that RCM's latest offer "fell far short of providing either reasonable access to Queen Creek climbing or compensation for the anticipated loss of much of the Queen Creek climbing area."[4]

The Access Fund has long had a strong interest and played a significant role in the negotiations related to the recreational impacts of this land exchange. This mine will destroy thousands of specific climbing routes and represent the single largest loss of climbing ever. Accordingly, climbers should at least receive the level of compensation promised in past versions of this bill. Also, before proceeding it is critically important for the US Forest Service and general public to more fully understand the scope and impacts of this proposed project. The Access Fund also believes strongly that this bill should require a pre-exchange environmental analysis as required by the National Environmental Policy Act. This common process would responsibly foresee and mitigate potentially significant environmental issues and would best serve the public interest.

Because provisions favorable to climbers have been removed from H.R. 1904, new environmental concerns have emerged, and climbers have yet to complete an agreement with RCM to address the loss of climbing resources, the Access Fund opposes H.R. 1904 while these issues remain unresolved.

OAK FLAT RECREATION

Located near Queen Creek Canyon in the Tonto National Forest, the Oak Flat Campground and the abundant climbing resources therein and surrounding area would be transferred through this bill to Resolution Copper Mining (RCM) who plans to mine the area by using the extremely destructive yet highly profitable "block-cave" mining method. The value of the Oak Flat area as a recreational resource has been officially acknowledged since the 1950s. The Eisenhower Administration foresaw this exact threat of mining to Oak Flat when in 1955 it issued Public Land Order 1229 and specifically placed this land off-limits to all future mining activity. The Nixon Administration subsequently issued 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." Various attempts over the years by mining companies to lift this protection have failed. This proposed law would lift those longstanding protections.

For decades climbers have frequented the Oak Flat/Queen Creek Canyon area in Central Arizona to scale the vast assortment of cliffs, canyons, and boulders.[5] Climbing at Oak Flat—one of the country's few areas widely visited during winter

---

[1] See attached a summary* of the popular public climbing resources in the area affected by this land exchange.

* Document has been retained in committee files.

[2] http://www.concernedclimbers.com/

[3] http://www.theqcc.org/

[4] Id.

[5] See a sample of the climbing resources found in the Oak Flat and Queen Creek area here: http://www.mountainproject.com/v/queen-creek-canyon/105788089

months—has become so popular that for years the area hosted the Phoenix Bouldering Contest which eventually became the world's largest such event.

COMPENSATION PROMISED TO CLIMBERS REMOVED FROM H.R. 1904

Despite climbers losing the extensive and longstanding public recreation resource at Oak Flat, H.R. 1904 provides no compensation in the form of a "replacement" climbing area or any other means. Many of the previous commitments of compensation to climbers—in former bills (S. 1122, H.R. 4880, S. 409) and promises by RCM—are now missing. These include:

1. Access license to RCM properties with climbing resources.—Previous bills directed RCM to execute a recreational use agreement that permitted continued public use of Oak Flat for a period after the land exchange (before safety considerations required closure of these popular areas), and access to specific climbing areas owned by RCM. Although RCM executed a recreational use license with the Access Fund in 2006 (unilaterally revocable by RCM), which was subsequently transferred to the QCC, this short-term license has expired.[6] Accordingly, The Mine Area and Euro Dog Valley climbing areas, as well as the Magma Mine Road (which provides access to these areas and to the Lower Devil's Canyon climbing area) could be closed almost immediately, access to The Pond and Atlantis climbing areas in Queen Creek Canyon is not secured, and RCM has yet to guarantee access to Upper Devil's Canyon, Lower Devil's Canyon (AKA Gaan Canyon), or Apache Leap.

2. Climbing park at Tam O'Shanter Peak.—Previous agreements to compensate the climbing community for the loss of Oak Flat promised the creation of a new 2,000-acre state park focused on rock climbing in the vicinity of Tam O'Shanter Peak ("Tamo") near Hayden, Arizona that would "replace" the climbing and bouldering areas eventually mined at Oak Flat. The State of Arizona declined RCM's offer to acquire and incorporate "Tamo" into its state park system primarily because of the high maintenance costs associated with the access roads combined with severe limits in the state budget. Access to Tamo (most of which is already public BLM land) is now not included in any compensation for Arizona's rock climbing community. The access road to Tamo remains complicated by private property access restrictions, requires high-clearance vehicles, and is much further from Phoenix where most Oak Flat and Queen Creek climbers live.

3. The Pond property transferred to the US Forest Service.—Another piece of compensation to the climbing community initially written into previous versions of the land exchange bill was for RCM to transfer "The Pond" property, perhaps the most popular climbing area in the larger Oak Flat/Queen Creek area, to the US Forest Service to be managed for dispersed recreation. Despite inclusion into previous land exchange bills,[7] The Pond parcel was also pulled from H.R. 1904. We believe that the transfer of RCM's "Pond" parcel to the US Forest Service or other entity—or the creation of an access easement for climbers—is a de minimus form of compensation for the loss of the popular and highly valued public recreation resource at Oak Flat.

4. Financial support for dispersed recreation.—Previous bills transferring Oak Flat out of the public domain required RCM to provide financial compensation dedicated to recreation facility development and management.[8] This financial compensation is also now absent from H.R. 1904.

5. No campground replacement.—While previous versions of this bill required a new campground be constructed for the loss of the Oak Flat Campground (currently protected from mining activities by Public Land Order 1229), H.R. 1904 includes no mandate to compensate for the loss of this decades-long recreation resource protected by executive order since the Eisenhower Administration.

H.R. 1904 LACKS MEANINGFUL ENVIRONMENTAL ANALYSIS AND FAILS THE PUBLIC INTEREST TEST

The Southeast Arizona Land Exchange and Conservation Act of 2011 fails to require any meaningful environmental analysis prior to the transfer of public land to RCM. This bill would circumvent the public process mandated under the National Environmental Policy Act (NEPA) requiring prior analysis of any major federal ac-

[6] See http://www.theqcc.org/.
[7] S. 409 and H.R. 4880 from the 111th Congress.
[8] Id.

tion on public land. Such an analysis would assess the impact mine operations would have on the health of nearby residents, water quality, air quality, cultural resources, recreation, transportation, and the overall environment. A pre-exchange NEPA review is good policy, was included in previous versions of this land exchange bill, and should be included in H.R. 1904 if this law is passed. The Access Fund believes that NEPA must be fully complied with to address all federal actions and decisions, including those necessary to implement Congressional direction such as this highly consequential land exchange.

As is evident elsewhere around Arizona, state and local permitting of mine operations has proven ineffective to ensure the prevention of significant impacts to human health, water, and other sensitive resources.[9] Further, it is bad policy to waive the requirement that a range of alternatives be considered before RCM obtains title of the property and that decisions are appropriately informed, especially for controversial and highly consequential issues such as this land exchange. Likewise there will be no meaningful opportunities for public involvement. NEPA requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action.

The environmental review process outlined in H.R. 1904 is a sham because it fails to require a NEPA analysis of mining impacts at Oak Flat prior the transfer of title to RCM. While the 2009 version of this bill (S. 409) at least required the Secretary of Agriculture to "complete any necessary environmental reviews and public interest determination on the land exchange not later than 3 years after the date Resolution Copper submits a mining plan of operation,"[10] such NEPA review was to be complete before title of Oak Flat was transferred to RCM. Conversely, H.R. 1904 only requires a NEPA analysis within 3 years of a proposed mine plan of operations being submitted and after the Federal land has already been conveyed to RCM. Once the land exchange is consummated and these lands are in the private ownership of RCM, the Secretary of Interior will have virtually no discretion to require a full range of planning and management alternatives. No one truly believes that the Federal government would have any means to significantly influence mining operations once title to Oak Flat is conveyed to RCM.

A better approach for this bill is to follow NEPA procedures as required as if this land exchange was evaluated through the normal administrative process. An administrative land exchange would require an environmental impact statement pursuant to NEPA prior to consummating the land exchange itself (as done with two major Arizona land exchanges involving mining: the Ray Mine and the Safford land exchanges). Such an analysis would require a mining plan of operations, a hard look at environmental and cultural impacts, an analysis of cumulative impacts to sensitive resources, and possible requirements for impact mitigation. Significantly, a full NEPA review would require an examination of a full range of alternatives including whether a potentially a less environmentally harmful—yet economically feasible—mining alternative could be employed underneath Oak Flat for this mine which did not cause surface subsidence.

H.R. 1904 also unreasonably requires the exchange to be completed within one year. Such a rushed timetable will eliminate any meaningful analysis of this project and limit a real determination whether this mine is in the public's interest. At least two to three years are needed to complete environmental reviews, appraisals, title documents, and tribal consultations to understand whether this land exchange and subsequent mine is truly in the public interest as required by Section 206 of the Federal Land Policy and Management Act. The current language in H.R. 1904 would provide no teeth requiring that the public is informed about the consequences of this proposal, including:

- What is the scope of the crater that will result when the surface of Oak Flat subsides and how will this affect water quantity and quality?
- How will RCM process the ore and where will the mining waste be transported and deposited?

Finally, the conclusory statement in section 2 (A)(2) of H.R. 1904 that "the land exchange is, therefore, in the public interest" is without merit absent a meaningful environmental review of this massive mining project with full opportunities for public involvement. Because the provisions in H.R. 1904 virtually ensure the development of this mine, and the public has very little information on the environmental implications of this mine, this exchange is not in the public's interest.

---

[9] See for example: Copper Facilities Release Most Toxic Chemicals In Arizona at http://www.azpm.org/arizona.copper/.

[10] An exchange agreement would then be executed "no later than 90 days after the date of the public interest determination."

For these reasons stated herein, the Access Fund opposes H.R. 1904. Thank you for your attention to this important matter.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

The National Association of Tribal Historic Preservation Officers (NATHPO), which represents tribal historic and cultural preservation interests on-and off-tribal lands, respectfully opposes H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011. H.R. 1904 would transfer more than 2,400 acres of public land to a privately owned mining company without assurances that unique and irreplaceable historic and cultural resources will be protected. Resolution Copper Mining, the primary beneficiary of the transfer, intends to remove the ore beneath Oak Flat, a popular campground and site of significance to several area Tribes, through block mining. The drill pads, mine shafts and tunnels, roads and other human created disturbances generated by the mine will have devastating consequences on the area's ecosystem, thereby severely affecting its religious and cultural integrity. H.R. 1904 also proposes to exempt the transfer from federal law, thus removing the Federal government's responsibility to consult with Indian tribes, as well as limit the public's opportunity to comment during the environmental review process.

THE NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

NATHPO is a national not-for-profit membership association of tribal governments that are committed to preserving, rejuvenating, and improving the status of tribal cultures and cultural practices by supporting Native languages, arts, dances, music, oral traditions, cultural properties, tribal museums and cultural centers, and tribal libraries. NATHPO assists tribal communities to protect their cultural properties, whether they are naturally occurring in the landscape or are manmade structures. In addition to members who serve as the Tribal Historic Preservation Officer (THPO) for their respective tribe, our membership includes many other tribal government officials who support our mission and goals. NATHPO provides technical assistance, training, timely information, original research, and convenes an annual national meeting of tribal representatives, preservation experts, and federal agency officials.

In 1998, the initial cohort of 12 officially recognized Tribal Historic Preservation Officers (THPOs) created NATHPO. In 2012, there are now 131 officially recognized THPOs whose tribal governments are responsible for managing over 50 million acres spanning 30 states. In addition to convening training workshops and national meetings, NATHPO provides technical assistance and conducts original research.

Several Arizona Indian tribes are members of the NATHPO. NATHPO supports the tribe's expressed concerns and opposition to this land exchange.

AREAS OF SIGNIFICANCE

The area proposed to be transferred out of federal control includes a popular campground called Oak Flat, set aside by President Eisenhower in 1955 specifically for recreational purposes. Oak Flat is also a place of profound religious, cultural, and historic significance to many Indian tribes, including the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Tonto Apache Tribe, the Fort McDowell Yavapai Nation, the Hualapai Tribe, Jicarilla Apache Nation, the Mescalero Apache Tribe, the Pueblo of Zuni among others. See Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate on S.409, 111th Cong., S. Hrg. 111-65 (June 17, 2009).

H.R. 1904, as passed by the House of Representatives on October 26, 2011, would allow Resolution Copper Mining (RCM)—a joint venture of foreign mining giants Rio Tinto and BHP Billiton—to secure private ownership of over 2,400 acres of U.S. Forest Service lands and the ore and other minerals located underneath these lands in order to facilitate an unprecedented large-scale block cave copper mine in the Oak Flat region (collectively called "Oak Flat"), which is bounded by portions of Apache Leap (referred to as Gohwhy Gah Edahpbah by the Yavapai) and Gaan Canyon (also referred to inappropriately as "Devil's Canyon" by non-Indians mistaking the Apache Angel dancers as devil dancers), and contains the 760-acre Oak Flat Withdrawal. Oak Flat is located within the aboriginal lands of, among others, the Western Apache and Yavapai tribes. Oak Flat has always been and continues to be a place of profound religious, cultural, and historic significance to the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Fort McDowell Yavapai Na-

tion, the Yavapai-Apache Nation, the Tonto Apache Tribe, and many other Native Nations.

CONCERNS WITH H.R. 1904

I. NEPA Exemption

The H.R. 1904 requires review under National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, only after the land transfer is complete. Such ex post facto review is clearly contrary to the spirit and intent of NEPA which requires that federal agencies analyze alternatives prior to making decisions that would affect the environment.[1] The U.S. Forest Service has stated this portion of the legislation as its "principal concern" since "[a]n environmental review document after the exchange would preclude [USFS]. . .from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment." Southeast Arizona Land Exchange and Conservation Act of 2011: Hearing on H.R. 1904 Before the Subcomm. on National Parks, Forests, and Pub. Lands of the H. Comm. on Natural Res., 112th Cong. (2011) (statement of Mary Wagner, Associate Chief, U.S. Forest Service). We agree. NEPA review after land has been removed from federal control is clearly too little, too late and not in the public interest.

II. NHPA Exemption

Further, H.R. 1904 exempts the Forest Service from its responsibility to comply with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f. Section 106 requires federal agencies to consider the effects of their actions on historic resources before taking action which may affect historic properties. The Section 106 regulations make clear that the "[t]ransfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance" is an adverse impact for which the Forest Service is required to consult with stakeholders including Tribes which attach spiritual significance to the site. 36 C.F.R. § 800.5(a)(2)(vii).

While making some effort to involve interested stakeholders after the land is transferred to Resolution Copper, the legislation clearly circumvents any meaningful consultation process. For instance, consultation could start as late as 30 days from the date of enactment. See H.R. 1904, § 4(c), yet, ironically, if requested by RCM, the Secretary is mandated to begin issuing permits for mineral exploration activities underneath the Oak Flat Withdrawal Area, from platforms outside the area, starting thirty (30) days after the enactment of H.R. 1904. See id. § 4(f)(1)(A). This allows for the initiation of activities which could disrupt the historical and cultural integrity of the site before any meaningful consultation was mandated. Then, ninety (90) days after enactment, by special use permit, exploration activities could be conducted inside the Oak Flats Withdrawal area itself, if requested by RCM. See id. § 4(f)(1)(B). The true extent of these activities cannot be known as no map is available for the public until enactment of H.R. 1904. See id. at § 10(b)(3).

III. Violation of Fiduciary Duty to Tribes

H.R. 1904 directly contradicts numerous statutes and regulations Congress has passed with the intent of protecting the religious, cultural, social integrity of Indian tribes to ensure that the policies and procedures of federal agencies do not impede the exercise of traditional religious practices. Most critically, H.R. 1904 circumvents the Forest Service's fiduciary duty to the Tribal community to engage in meaningful government-to-government consultation. See, Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 788 (9th Cir.2006).

Under the United States Constitution, treaties, federal law, and executive orders, the United States has a trust responsibility to consult with tribes on a government-to-government basis about federal actions that impact tribes. The United States must consult with tribes before making any decision on whether to convey Oak Flat, federal land, to Resolution Copper. For consultations to be effective, the tribes and the United States need to have objective information about the proposed mining activities and its impacts. To date we do not have this information. Further, the United States has a responsibility to protect sacred sites located on federal lands. Tribes ceded millions of acres, including Oak Flat, to the United States in return for protections set forth in treaties.

[1] See, Center for Biological Diversity v. U.S. Dept of Interior, 623 F.3d 633 (9th Cir. 2010)(holding that BLM violated NEPA by not taking a hard look at the environmental consequences of transferring public land to a private copper mining corporation in Arizona.)

IV. Tribal Sacred Site

Congress has enacted laws to protect the religious and cultural integrity of Indian people. This was to ensure that the policies and procedures of various Federal agencies that may impact the exercise of traditional Indian cultural practices are brought into compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion. The religious and cultural importance of the Oak Flat area does not only reside in isolated spots or particular locations or archeological sites, but rather in the integrity of the ecosystem and environment of the area as a whole. Thus, impacts to any part of Oak Flat have an impact on the religious and cultural integrity of the area as a whole—both as a holy and religious place and as a place of continued traditional and cultural importance to Apache, Yavapai, and other indigenous people.

Because of its continued importance to Indian tribes, nations and communities, Oak Flat, as well as specific places within Oak Flat, are eligible for inclusion in, and protection under, Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et seq. ("NHPA"). Further, Oak Flat meets the criteria as a "sacred site" within the meaning of Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 ("E.O. 13007"), as well as pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, et. seq. ("AIRFA"), and related laws, regulations and policies.

CONCLUSION

We appreciate this opportunity to provide testimony to the Committee. NATHPO opposes H.R. 1904 and any other legislation that would convey the Tribal ancestral lands commonly referred to as "Oak Flat" to RCM for mining that would destroy a sacred site of tribes and Indian people. If enacted, H.R. 1904 will permanently destroy Oak Flat and possibly surrounding areas of importance to tribes and Indian people. The area will never recover from RCM's mining activities.

February 22, 2012.

U.S. SENATE,
Energy and Natural Resources Committee, Washington, DC.

DEAR SENATOR,

We are organizations representing millions of Americans who are opposed to H.R. 1904, "the Southeast Arizona Land Exchange and Conservation Act of 2011," which passed out of the House of Representatives last October and S. 409, "the Southeast Arizona Land Exchange and Conservation Act of 2009", which died at the end of the 111th Congress. Both bills would allow Resolution Copper Mining (RCM) to privatize 2,422 acres of public lands in the Tonto National Forest that are sacred to Native Americans, ecologically significant, and highly valued by recreationalists. Resolution Copper is a project of two foreign companies, Rio Tinto—55% owner—headquartered in the United Kingdom, and BHP—Billiton—45% owner—headquartered in Australia. Resolution Copper plans to turn the land into a large underground copper mine by using a process which would create a crater threequarters of a mile wide and 300-400 feet deep. Part of this area was set aside from mineral exploration and extraction for public use by President Eisenhower by Public Land Order 1229, an order that was reinforced by President Nixon. Overturning the executive order for the benefit of foreign mining companies sets a dangerous precedent for religious freedom and public lands protection.

H.R. 1904 allows RCM to bypass complying with the National Environmental Policy Act (NEPA), as would be required if this land exchange was evaluated through the administrative process. The legislation under consideration by Congress would require the land exchange to happen before going through the legally required steps of an administrative exchange. An administrative exchange requires a NEPA Environmental Impact Statement on the exchange itself, including a Mining Plan of Operations, an examination of alternatives, the environmental and cultural impacts, the cumulative impacts (including past and anticipated impacts in the area), and possible mitigation of the impacts, as well as formal consultation with Native American tribes. If this bill were to become law, the public would be denied their right to offer input through the NEPA process, and agencies would be deprived of their ability to effectively protect communities and the environment by making it impossible to make timely and informed decisions that are in the public interest.

S. 409 has significant problems, but at least requires NEPA analysis prior to the land exchange as well as a determination from the Secretary of Agriculture that the exchange is in the public interest. S. 409 would immediately allow Resolution Cop-

per Mining to do exploration under the Oak Flat Campground withdrawn area. It includes no mandate for a replacement campground for Oak Flat, and it leaves tremendous wiggle room for the appraisal process, which would likely mean a bad deal for the US taxpayer regarding fair payment for the tremendous natural and mineral resources we would lose.

Both bills are opposed by conservationists, preservationists, recreationalists, and people who live in communities near the proposed mine, and are strongly opposed by Native American tribes across the country. Just recently, the Navajo Nation tribal council unanimously passed a resolution in opposition to H.R. 1904. Other Indian tribes, nations and pueblos have also expressed strong opposition to both bills, including but not limited to tribes throughout Arizona, New Mexico and California, as well as tribal organizations including among others the Inter Tribal Council of Arizona, the National Congress of American Indians, the All Indian Pueblo Council, the United South Eastern Tribes and the Inter Tribal Council of Nevada.

Both versions of the Southeast Arizona Land Exchange and Conservation Act would privatize public sacred lands which are of incalculable value to Native Americans, birders, rock climbers, and endangered species. They would do so by sidestepping the formal channels of approval that all mines using federal public lands go through, only to benefit the interests of a foreign mining corporation. We ask that you oppose these bills and allow these contentious and critical issues to be worked through by the normal transparent public administrative process.

Sincerely,*

BRADY ROBINSON, EXECUTIVE DIRECTOR.
The Access Fund.

L. PENN BURRIS, CFO/MEMBERSHIP DIRECTOR,
The American Alpine Club.

ROGER FEATHERSTONE, DIRECTOR,
Arizona Mining Reform Coalition.

WILLIAM SNAPE, SENIOR COUNSEL,
Center for Biological Diversity.

PREPARED STATEMENT OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

The Society for American Archaeology (SAA) thanks the Committee for holding this hearing on H.R. 1904, and the Southeast Arizona Land Exchange Act. We appreciate the opportunity to provide comments on this important bill.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With nearly 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

H.R. 1904 would direct the U.S. Forest Service to accept more than 1100 acres, and the Bureau of Land Management to accept more than 4000 acres, of non-federal land in the Arizona counties of Yavapai, Pinal, Gila, Maricopa, Coconino, and Santa Cruz, from Resolution Copper (RC). In exchange, RC would receive more than 2,400 acres of federal land in Pinal County. Included in the land deeded to RC would be the Oak Flat Campground, in which mining activity is prohibited. In 2009, during the 111th Congress, SAA testified in opposition to an earlier version of H.R. 1904 on the grounds that the proposed exchange did too little to protect the cultural resources contained within and upon the federal lands to be disposed of, especially considering how important these places are to several Native American tribes. We can see little, if any, improvement in this regard with H.R. 1904, and thus oppose the measure in its current form.

It is our understanding that under the bill, RC would be able to conduct subsurface mineral exploration and potential extraction activities beneath the surface of the Oak Flat Campground. Further, RC could seek special use permits to conduct "underground activities" at Apache Leap itself. Protecting the surface of these sensitive areas, while useful, does nothing to ensure the preservation of sites that lie below the top layers of ground. H.R. 1904 would also effectively turn the environmental review process under the National Environmental Policy Act into a time-limited rubber-stamp of RC's proposed plan of mining operations. The review would take place only after RC had conducted exploratory and pilot mining activities, presenting the federal government with an additional disincentive to delay extraction.

---

*Additional signatures have been retained in committee files.

The significance of Apache Leap and Oak Flat to the San Carlos Apache, the Zuni, and other tribes, cannot be overstated. These lands play vital cultural, historic, and religious roles in the lives of their peoples. There are few areas of greater significance, archaeologically-speaking, in the entire Southwest. The numerous known and as-yet unknown sites and resources, located both above and below the surface of the earth, currently enjoy protection under numerous federal statutes, including the National Historic Preservation Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act, among others. By transferring these lands out of federal ownership, H.R. 1904 would remove this protection and replace it with a wholly-inadequate substitute that places virtually no priority on the preservation of cultural and heritage resources. While the lands to be gained by the government under the exchange detailed in H.R. 1904 contain substantial natural and culturally-significant assets, this in no way justifies the degradation of Oak Flat.

SAA understands that the difficult economic conditions that faced the residents of south-east Arizona and the nation in 2009 persist today. As stated in its testimony at that time, SAA does not oppose any and all economic development on federal land out of hand. It needs to be reiterated, however, that cultural and historic resources are non-renewable, and that federal law has, since 1906, recognized the need for measures to prevent or mitigate damage to such resources when other activities are going on. Economic development and cultural resources protection does not have to be a zero-sum game. H.R. 1904 rejects the balancing of priorities that is envisioned in current law and regulation in favor of a carve-out that will force the government to abjure many of its responsibilities to the public. As such, SAA opposes this legislation, and urges the Committee to find another approach.

Thank you very much for your consideration of this important matter.

PREPARED STATEMENT OF CLINTON M. PATTEA, PRESIDENT, FORT MCDOWELL YAVAPAI NATION

Mr. Chairman and members of the Committee, on behalf of Fort McDowell Yavapai Nation (herein 'Nation' or 'Fort McDowell'), I respectfully provide our serious concerns and describe how the Yavapai People are affected by H.R. 1904 (herein 'Bill' or "Legislation') that authorizes and directs the exchange and conveyance of National Forest and other land in central and southeast Arizona. A hearing was held on June 14, 2011 on this legislation by the U.S. House of Representatives, Natural Resources Committee Subcommittee on National Parks and Public Lands. The stated purpose of this bill is "to facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, and for other Purposes." The other purported purposes are "promoting significant job and other economic opportunities," "significantly enhancing Federal, State, and local revenue collections," "securing Federal ownership and protection of lands," "protecting the cultural resources and other values of the Apache Leap," "facilitating the development of a world class domestic copper deposit capable of meeting a significant portion of the annual United States demand." My testimony specifically addresses these claims and to provide evidence as to why this proposed mining operation does not meet these criteria.

The stated purpose of this February 9th hearing was to compare and contrast H.R. 1904 with the text of this Committee's Substitute to S. 409 (herein 'Bill' or "Legislation') reported to the Senate in March 2010 under the previous Congress. The Nation's testimony cannot compare and contrast these two bills for one simple reason; it would be attempting to compare the lesser of two evils. However, I will address how both bills sacrifice our holy land by; 1) directing a trade and ownership of federal land that is currently protected from mining and mining activities to foreign private interests and countries and 2) condoning destructive mining activities that will desecrate the entire region. Additionally, the legislative title is the "Southeast Arizona Land Exchange and Conservation Act..." but the federal land to be traded is hardly conserved. The conservation connotation is disingenuous at best and should be stricken. My comments specifically address and provide evidence as to why this proposed mining operation causes great concern to my People.

WHO AND WHAT IS RESOLUTION COPPER?

At issues is a large undisturbed ore body beneath the original Magma Mine and about 7000 ft. below Apache Leap (1000 ft. below sea level), as well as Oak Flat and Devil's Canyon, just east of Superior, AZ. Resolution Copper Mine LLC (herein 'RCM'), a joint venture between foreign mining multinationals Rio Tinto plc/Rio Tinto Limited (herein 'Rio Tinto') and BHP Billiton (herein 'BHP'), are exploring the

feasibility of mining a deposit with an uncorroborated future 'value.' Since Rio Tinto is the major stakeholder and has taken the lead in this legislation we acknowledge this legislation as Rio Tinto's as well as its subsidiary RCM. RCM, is a Delaware based Limited Liability Company. Delaware LLC's do not require the formalities of a Corporation, they can be formed from anywhere in the world, no minimum investment is required, no annual report is required only a payment of an annual tax of $250.00. Congressional legislation is intended to accommodate and benefit Rio Tinto and its foreign investors by directing the Secretary of Agriculture to convey and dispose of 2406 acres of public lands within the National Forest (herein 'FS') including the federally Protected and culturally sacred Oak Flat area. The mine will result in permanent destruction of beloved lands that were once inhabitant by the Yavapai People. These traditional lands were and remain today fundamentally important, culturally significant, highly spiritual and religious to the Yavapai. Notably, nine percent of Rio Tinto is owned by the state-controlled Aluminum Corporation of China, also known as Chinalco. More specifically; "Shining Prospect Pte. Ltd, a Singapore based entity owned by Chinalco acquired 119,705,134 Rio Tinto plc shares on 1 February 2008. Through the operation of Corporations Act as modified, this gives these entities and their associates voting power of 9.32 per cent in the Rio Tinto Group on a joint decision matter, making them "substantial shareholders of Rio Tinto Limited as well as of Rio Tinto plc" (emphasis added) (Rio Tinto, 2010 annual report). Thus, a significant portion of the federal lands to be exchanged, including mineral and other natural resources, would be held by China through its ownership stake in Rio Tinto. In the June hearings, when questioned by both Congressman Bishop and Grijalva on China's role in the company, Rio Tinto attempted to marginalized their role.

THE LOGIC PRESENTED IN DEFENSE OF H.R. 1904 OR OTHER LEGISLATION CONCERNING THIS MINE IS NOT RATIONAL OR DEFENSIBLE ON ANY LEVEL

On February 9th, Rio Tinto's Jon Cherry stated in his testimony that "Minerals are where you find them and we believe that when a critical mineral deposit of this magnitude is discovered, there are appropriate and compelling reasons for the Congress to make Federal land use decisions to facilitate their development as you have on many other issues in the past." Unfortunately, Mr. Cherry and Rio Tinto's perception is that money and profits are the only compelling reasons to determine the necessity of the exchange and subsequent mining of this sacred site. This is their sole rational for RCM. Whereas, Senator Bingaman began the hearing stating that under H.R. 1904 "there are issues that obviously need to be reviewed and answered to be before the exchange takes place" and that there will be "significant impact on the land." He further stated that there are "disagreement on cultural resources and sacred sites." We concur with the Senator's statements and will address each these issues throughout our testimony.

One of the Nation's principal concerns is what Rio Tinto has assured themselves—the intentional limited role of the federal government to make scientific, sound determinations, and what is in the best interest to the United States as to: 1) whether there is a direct benefit or the level of that benefit to the United States; 2) corroboration of Rio Tinto's job related and economic assertions; 3) the extent of environmental damages and mitigation of those damages; 4) addressing Tribal concerns; and 5) mine sustainability or viability. It is also irrationally to intentionally restrain the federal government's ability to regulate, provide instruction, or make recommendations, as to the safety of the proposed mine. These hearings have clearly illuminated these uncertainties. In fact, these concerns are also shared by the Chair of this committee, Senator Bingaman, stating one of his primary worries of H.R. 1904 is that:

> "it does not allow for the federal government's ability to modify the terms and conditions of exchange brought to light in those reviews"

The Senator further went on, "a principal concern of H.R. 1904" that he 'flagged' is that "it provides for a directed land exchange and does not allow for the analysis of potential impacts of the exchange prior to that exchange being conducted."

In other words, making the exchange mandatorily prior to discovery thereby dictating mandatory inaction by the U. S. due to the directed exchange. This is akin to watching a deadly car crash and having the full ability to stop it, but being congressionally mandated not to regardless of the outcome. Why would Congress render the United States helpless? Because, the foreign mining companies and foreign interests who own this mine do not want the U.S. to comprehend, evaluate, or have a voice on this area's vulnerability as to the inevitable dangers RCM will bring to this area. Yes, this areas richness and history belong to every U.S. citizen.

We have previously asked if the great insecurity by Rio Tinto to not move forward in an administrative process is founded in a knowledge that the federal government does not currently hold. We believe this question has been answered and that answer is affirmative. Under questioning, by Senator Bingaman to Mr. Cherry, the Senator stated that Rio Tinto did not oppose the Committee-reported version of S. 409 in the last Congress. However, Mr. Cherry stated that: "...the circumstances at that time, however, were very different than they are today (emphasis added)." This means, they now know that damages will occur and the extent of those damages will be severe and irreversible. Rio Tinto has constantly down played damage. For example, in 2007, they insisted that subsidence would occur. Now their website readily admits, albeit downplays, substantial subsidence will occur. In fact, not only has Rio Tinto admittedly stated there will be environmental damage and subsidence, Senator Kyl in his Senate testimony admitted the possibility of subsidence. Under normal circumstances, uncertainty regarding risks on federal lands that are left unanswered by a mining company directly reverts back to the federal government to answer. But, Rio Tinto's hand crafted bill hamstrings the U.S. ability to perform studies and investigations. We have asked, 'Why not pull this bill and instead refer this land exchange and mining project through administrative processes mandated by Congress under the National Environmental Policy Act (NEPA) and other federal laws?' Because, Rio Tinto doesn't want the elephant in the room examined.

DECISION POINT RATIONAL

In the hearing, when questioned by Senator Bingaman on their refusal to continue their support S. 409, Mr. Cherry added that Rio Tinto has made financial investments and that the "project is at a significant decision point." However, as discussed throughout this testimony, this logic is irrational for several reasons. First let's discuss this 'decision point.' The outcome of S. 409 would not have changed a 'decision point' in time. As discussed in more detail below, the fact is the mine is not yet ready to be developed as the technology to mine at 7,000 ft is not in existence. Rio Tinto has enjoyed the privilege of proceeding with their explorations unopposed by the federal government. The expressed immediacy to passage legislation and what this 'decision point' means has not been made clear as Rio Tinto has specified that production capabilities are "at least 10 years away" and technology to mine one mile below the earth's crust is "not currently in existence" but is "under development" (quoted in numerous documents, testimonies, and websites). It should be noted, any deep mine technology that will be developed in conjunction with these forging mining companies will not solely be used for this potential operation. Both RCM's parent companies will be benefactors of new technologies as they have multiple interests in deep mines (or future interests in mines) around the globe and will therefore recoup on any vested technology. Why is exchange legislation mandated if the other issues described herein are not dealt with first? We can only assume that Rio Tinto requires this 'special' legislation: before uncertainties are revealed; before meaningful consultations are conducted with Tribes; before impacts are fully known, addressed, and mitigated; and before the legal standard to evaluate the federal property catches up to what is revealed in the eventual, final, and realistic Mining Plan of Operation (herein 'MPO') as opposed to one that is being proposed, clearly for theatrical purposes.

IRRATIONAL FINANCIAL LOGIC

Mr. Cherry sited financial reasons for necessity of a directed exchange (as opposed to an administrative procedure) stating how much they have invested since 2009. However, Rio Tinto well understands risks on it investments and returns on investments. They say as much on their SEC statements, Annual Reports, investment strategies, etc. For example, in 2007, Rio Tinto risked $38.1 billion in their takeover of Canadian's aluminum Alcan Inc. However, Rio Tinto announced in its 2011 financial annual report that it wrote down a total $9.3 billion of assets, including impairments related to its diamond business. The acquisition of Alcan loaded their company with about $38 billion of debt that threatened to topple the entire company because of their underestimate of demand, scoring operational costs, and price fluctuations, and overestimations on this investment. It is important to note that Rio Tinto knew that Alcan understood where ore was located, had the technologies and knew how to mine it—quite different than the proposed RCM. Given Rio Tinto's grand risk miscalculations in combination with the fact that there are no minerals readily available to mine due to the lack of technologies at 7,000 ft., what is really behind the push to proceed with this directed land exchange? Is it based on some

secret internal financial matters that the government or the general public is not aware of?

Rio Tinto is no different than any other mining company who would similarly invest in exploring and determining the risks and benefits of such a project. In fact, Rio Tinto is very aware of associated financial and other risks with mining as noted in their corporate "Forward-thinking' statement (e.g., from Rio Tinto website and SEC filings):

> ".. involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Rio Tinto, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. . ." But, they play down risks by stating: "Rio Tinto expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement. . . to reflect any change in Rio Tinto's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based."(IBID.)

We understand there is a foreign corporate financial investment by Rio Tinto and its substantial shareholder China, along with BHP, but this question of 'financial investment' only subverts the question as to 'why is the administrative process summarily dismissed by Rio Tinto and why remove Federal oversight and cede exclusive control of these lands and the full value of its resources.' Conclusion, they understand that the risk to the environment and surrounding area is so great that proposing a mine under the administrative process, the United States would ultimately not permit this mine to operate on this federal land—enter the directed exchange.

H.R. 1904 is a 'directed exchange' and mandates that the exchange to occur within one year [Section 4(i)]. Thus, the decision point is tempered by the fact that Rio Tinto does not want to invest foreign shareholders money, including their largest investor China, to develop this mine without first obtaining exclusive control and an all-encompassing guarantee of full ownership over these lands and the value of the resources they contain before any federally directed environmental risk analysis, consultations, or federally defined monetary evaluations are completed. Rio Tinto contends if the land remains under federal ownership, any condition placed by the federal government that protect the environment, water, and sacred sites in the area will be non-starter. Will only a clear title to this land make Rio's investors and foreign Nation co-owners willing to continue investing because they know that this land the must be destroyed in order to mine the ore and the federal government would either place restrictions or not be willing to move forward with the project due to the extreme associated risk? Are all these the changing financial circumstances and the rational for the aforementioned Rio Tinto statement "The circumstances at that time, however, were very different than they are today."?

IRRATIONAL LOGIC AS TO THE NEED FOR COPPER IN U.S. ECONOMIC GROWTH VS. USING U.S. COPPER TO SUPPORT FOREIGN GROWTH

In the Senate hearings, Senator McCain stated that "we can get this copper from this mine Mr. Chairman or we can import it from someplace overseas. There will be a continued demand for copper in our economy." However, reports performed by the federal government do not concur with this assertion. Recent assessments of copper resources indicate 550 million tons of copper remaining in identified and undiscovered resources in the United States [U.S. Geological Survey (herein 'USGS') National Mineral Resource Assessment Team, 2000, 1998 assessment of undiscovered deposits of gold, silver, copper, lead, and zinc in the United States: USGS Circular 1178, 21 p]. Essentially, there is more copper left to discover than has already been discovered. USGS also state that the U.S. is not importing copper but is self-sufficient based on minable copper reserves ("Copper: Statistics and Information," U.S. Geological Survey, 2009, available at http://minerals.usgs.gov/minerals/pubs/commodity/copper/ as of January 22, 2010). Moreover, since 2007, U.S. mine and refinery production has continued to decline owing to mine cutbacks instituted at yearend 2008 and domestic mine production of copper in 2010 declined by about 5% to 1.12 million tons but its value rose to about $8.4 billion. (USGS, Mineral Commodity Summaries, January 2011). Due to numerous factors, but more than all other variables, China is attributed as the principal reason for the enormous worldwide copper price increase not U.S. demand—this is known by every economic forecaster and investor trading on copper. As a result of China (and to a lesser extent India), starting in the earlier 2000's, copper price increases resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. Thus, the question is now, who is this mine be really providing favor to?

There is sufficient evidence to reasonably assume that most of mineral deposits as well as profits will be shipped off-shore and not held within the United States based on these companies mining operations, holdings, and performance. To understand this connection, a discussion of China's copper demand is warranted. Economic Analysis by Chilean Copper Commission states that the U.S. will not be a major driver in copper demand whereas China and India will make up over 60 % followed by Central America and Russia. (Erik Heimlich, Chilean Copper Commission report, Tianjin, November 2010). What is a fact is that China is the world's largest copper consumer and America's best copper customer (Economy Statistics, Trade With U.S., U.S. Copper Exports (most recent) by Country," Nation Master, http://www.nationmaster.com/graph/eco__tra__wit__us__us__exp__of__cop-economy-trade-us-exports-copper). China has also recently been buying up the metal in quantities that exceed its current need (from, Melinda Peer, "Is China Hoarding Copper," Forbes, April 15, 2009, and National Center for Public Policy Research in Washington, D.C., 612, October 2010). Nobu Su, CEO of eastern shipping giant Taiwan Marine Transport, explained the strategy to the UK Telegraph, "China has woken up. . .the next industrial revolution is going to be led by hybrid cars, and that needs copper. You can see the subtle way that China is moving into 30 or 40 countries with resources." (Ambrose Evans-Pritchard, "A 'Copper Standard' for the World's Currency System," The UK Telegraph, April 15, 2009).

China's need for copper is insatiable and Rio Tinto and it creditors are well aware of this fact. Tobias Merath, the Zurich-based head of global commodity research at Credit Suisse AG, wrote in a note; "latest numbers from China show that the country is drawing down its domestic inventories rapidly. . . China will have to step up its imports in the coming months" (Chinamining.org, 6/1/2011). Li Yihuang, chairman of Jiangxi Copper, "We will participate in more copper mining venture investment projects overseas to meet our demand for copper raw materials, which are needed as we expand the business over the next eight to 10 years" (China Daly 6/7/2011). Rio Tinto's International Copper Study Group has forecasted a 377,000-ton global shortage in this year alone. One such member, Diego Hernandez, Codelco's chief executive officer stated on June 8, 2011that high prices will last "a substantial amount of years" on demand from China (Bloomberg News, 6/15/2011). China's copper mining ventures with Rio Tinto can be found in dozens of annual reports, news releases, summary statements, investor road shows, professional presentations, SEC statements, etc. Rio Tinto has repeatedly stated that China is the sector that Rio Tinto will continue to direct marketing and supplying their mined copper and other ores to meet China's needs. RCM is no exception -this is unquestionable. Countless statements from Rio Tinos' executives have been made that RCM copper will meet China's needs. For example, early discussions on RCM minerals, Rio Tinto's Bret Clayton, stated their copper operations:

> "..are well positioned to take advantage of strong global demand, driven by continued growth in China.." (Reuters, 8/8/2008). John McGagh, head of innovation at Rio Tinto recently stated: "China needs to build 3 cities larger than Sydney every year until 2030 to accommodate rural to urban migration" (ASEG conference, August 2010). RCM mine will help to meet this need.

What is even more conclusive (to the China connection) is the deductive reasoning presented in the House hearing during questioning as to whether material from this RCM's mine will go overseas, including China. In that hearing Mr. Cherry attempted to deflect the questions stating:

> "..copper is a commodity traded like any other metal." When further pressed he added "..copper concentrate will then go to smelters to produce pure metal. . ." and in referring to RCM "our projections are they will produce enough concentrate exceed smelting capacities in the U.S. and potentially oversee for smelters."

He stated this will occur "probably 10 years from now." This mine projected to open in 10 years from now, ergo, the material from RCM will be shipped to overseas smelters because capacity here in the U.S. will not be available! In other words, shipped to foreign countries, namely China.

This need is also well understood throughout the halls of Congress. Even Senator McCain stated back in 2005, "Why is the price of copper at an all-time high? The Chinese are buying every scrap of copper that's available. Supply and demand." (Transcript of John McCain's Roundtable Discussion with Star Editors, Arizona Daily Star website, Aug. 28, 2005). Moreover, in July 2011 alone, China took 99,513 tons from US suppliers in July, accounting for 79.6 percent of total copper scrap exports, up 10.1 percent from 90,393 tons (74.9 percent of total exports) the previous

month. "There's no question (China) is the big gorilla in the scrap market," one domestic trader stated. "As the Chinese build infrastructure and the population looks to have the same amenities that the European and U.S. economies have—air conditioning, automobiles and so forth—there's more potential for growth there than anywhere else." (Metalbulletin.com China drives 6th monthly US copper scrap export gain, 9/15/11) Thus, this mines copper production is not for U.S. demand, but will meet the Asian appetite.

FOREIGN COMPANIES AND FOREIGN COUNTRIES BENEFIT BY THE UNFAIR AND UNEQUAL EXCHANGE VALUES

During the House hearing on H.R. 1904, Congressman Grijalva noted the existence of lingering uncorroborated facts and unanswered questions regarding, among other things, the overall economic feasibility and benefit of this exchange to the American taxpayer. Regardless of which legislation being contemplated, it appears that both the sponsors of the legislation and Rio Tinto believe the exchange is one of fair value. However, this is not the case. Regardless of which legislation, Federal agencies were minimally consulted and Tribes were not involved in determining what other specific, higher priority parcels or land bases should have been or should also be included in the exchange. Legally, under FLPMA, exchanges are on a "value-for-value" basis and the exchanged land acquired by the United States is determined to be in their best interest. The 'value' of the federal land in this legislation is unquestionably worth more than the mere lands being offered. FLPMA requires the value of the lands to be exchanged to be equal, or if they are not equal, they are to be equalized by the payment of money up to 25% of the value of the federal lands conveyed in the exchange (43 C.F.R. PART 2200, § 2201.6 Value equalization; cash equalization waiver). According to the FS, land is appraised based on its "highest and best use" (HBU) market value, as determined and documented by a professional appraiser. Sometimes, as in this case, parcels have significant differences in assessment due to different HBU's or various other intrinsic values such as existence of ore bodies (see below). Since FS land exchanges are completed on an equal value basis, if one parcel is of higher value, the difference can be made up in cash, but again, it is not to exceed 25% of the value of the Federal land. This limit was developed for specific and obvious reasons. However, language in H.R. 1904 alters this federal law allowing for the additional land/dollars to be exchanged above the current limit of 25%. But, the short time frame for the exchange and timing and restrictions made in H.R. 1904 regarding other analysis/reports/plans will not allow for an accurate appraisal of the true and accurate 'worth' of the federal land. This will thereby preclude the U.S. from ever receiving a 'fair market value' and sufficient private land to be exchanged and taken into trust.

In examining the royalty provisions found in either legislation, it is highly likely that trading these federal lands into RCM's private ownership will result in unquantifiable, inequitable, and effectively zero royalties being provided to the U.S. Suggestions on a valuation of the ore by multiplying an assumed quantity of mineral reserves by a unit price is almost universally disapproved by the courts [see Cloverport Sand & Gravel Co., Inc. v. U.S., 6 Cl. Ct. 178, 188, (1984)] and also not acceptable. H.R. 1904 calls for an appraisal report that would include a royalty income approach analysis, in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), of the market value of the Federal land. However, this approach often requires the appraiser to use a multitude of indicators, facts, and variables, the accuracy of which cannot clearly and easily be demonstrated by direct market data [See Foster v. United States, 2 Cl. Ct. 426 (1983)]. As prescribed in law as to a 'dollar' evaluation, the "Market value" of the land to be exchanged means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, and the price is not affected by undue influence (see: 43 C.F.R. § 2200.0-5). In this case, the offer on the table has always been directed by foreign mining companies who own private lands and/or wish to dispose of parcels for this invaluable federal land without consideration to the Yavapai or the citizens of the United States as a whole. The unfairness to the taxpayer and influence by RCM is further demonstrated by restrictions placed on the federal government under SEC 4. (d)(2)(B)(ii), where:

> "after the final appraised values of the Federal land and non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value. . . at all (emphasis added)....after an exchange agreement is entered into by Resolution Copper and the Secretary."

In other words, given the directed exchange (SEC 4 (i)), even if the MPO demonstrates there are significant locatable reserves (not resources) years later, this land cannot be subject to further financial appraisals by the U.S. This is not common business sense by any means.

In regard minerals on the federal land and market value, fair return, equalization, appraisal etc. there are several direct questions. For example, what are the comparables to this land? RCM has claimed it is the 'largest ore body' unlike anywhere else in the United States. How can 'minerals' at 7,000 ft. belowground that are undefined, undescribed, nonlocatable, unquantifiable, and of unknown quality that are far from economically viable for extract be considered an appraisal? They can't. Appraisers cannot qualify and put a price on the unknown because these undefined resources and not reserves and therefore cannot be a part of any appraisal. There minerals are speculative resources. To demonstrate this point, Rio Tinto's 2008 Annual report:

> "Estimates of ore reserves are based on certain assumptions and so changes in such assumptions could lead to reported ore reserves being restated. There are numerous uncertainties inherent in estimating ore reserves (including subjective judgments and determinations based on available geological, technical, contracted and economic information) and assumptions that are valid at the time of estimation may change significantly when new information becomes available." (emphasis added)

It should be noted that their cause for concern is directed at documented 'reserves' not 'speculative undocumented resources' such as those that may be found in the federal land. They do denote that geological, technical, contracted and economic information are needed. This should send reverberating messages on H.R. 1904 where a mandatory one year exchange, undefined resources, lack of any credible MPO (e.g., if the technologies and science are not yet developed to mine at 7,000 ft. the MPO is meaningless), and no federal studies and analysis have been performed that answers questions and these uncertainties.

The questionable accuracy on such appraisals is particularly underscored when discounted cash flow (DCF) analysis or other forms of yield capitalization are employed in the analysis. Furthermore, within the UASFLA there are several specific requirements to assess values, including the need for a detailed mining plan for the property. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in similar operations. The annual amount of production and the number of years of production are more difficult (and speculative) to estimate, and require at a minimum, not only physical tests of the property to determine the quantity and quality of the mineral present, but also market studies to determine the volume and duration of the demand for the mineral in the subject property. However, it is unknown at this time what the true production estimates are as specific mining plan details have not been forthcoming from RCM. In addition, the true quality or quantity of the material is unknown and the extraction technology for this mining operation at a 7000 ft. depth has not been developed and thus not currently available. This fact is further underscored by the lack of available information on production levels being consistent with an (unknown) mining plan's labor and equipment. Significantly, all of this information is required for a meaningful and accurate appraisal.

In further examining UASFLA, the royalty income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life-span of the project and a determination of the Net Present Value (NPV), including the NPV of the profit stream, based on a discount factor. The NPV of a future income is always lower than its current value because an income in the future assumes risk. The actual discount factor used depends on this assumed risk. A proven technology carries a lower risk of non-performance (thus, a lower discount rate) than a technology being applied for the first time.

Given inadequacies described above, regardless of which legislation, the evaluation standards prescribed by the UASFLA, coupled with the lack of factual data and uncertainty of the technology, the final appraisal of this massive ore body could ultimately net zero, meaning that the valuation of the federal lands exchanged for the benefit of RCM would not reflect the value of the copper and other saleable minerals these lands contain. The American taxpayer would once again be short-changed. RCM must be required to provide additional information and pay for additional research in order to generate an appraisal that is fair and equitable to the people of the United States. Moreover, since the Federal government has yet to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to RCM. The public interest requires that a complete and fully informed appraisal and equalization of values be performed prior to Congres-

sional passage of H.R. 1904, not after. RCM asserts that there may be over 1.34 billion tons, containing 1.51 percent copper and 0.040 percent molybdenum to be removed over the 66 years of mine life. Although the current value of all minerals present on these federal lands are not provided by RCM, estimates have ranged from $100 to $200 billion. Thus, even RCM's own self-evaluation of the ore body underlying these public lands is orders of magnitude greater in value than that of the non-federal parcels offered in exchange by RCM.

In H.R. 1904, SEC 4. (i) of the legislation requires that the exchange and other critical documentation be completed within one year after congressional passage. Given the rationalizations above regarding the complexity of such analysis, it is incredulous that one year would be sufficient time for the completion, and subsequent thorough examination, and to review of all reports and appraisals. Indeed, current and former FS as well as BLM's, Minerals & Realty Management personnel who provided previous testimony along with FS and BLM's current testimony on this matter believe a one year provision is insufficient time for the completion and review of a mineral report, completion and review of the appraisals, and final verification and preparation of title documents. Yet, the sponsors of this bill have chosen not to heed the government's own experts' advice and counsel on mineral appraisals. Why? Once RCM has completed its evaluation and analysis, the Fort McDowell Yavapai Nation urges Congress to require an independent, third party review of the all reports, including the engineering report, for this operation. This must be accomplished in consultation with all affected parties, including between the Federal government and the Yavapai Nation, prior to this legislation moving forward. At this time, relying on the RCM current engineering and other reports is insufficient. On a monetary level, one can clearly see that RCM financially recoups all mineral profits at the expense of the public making such an exchange grossly disproportionate.

LEGISLATION FAILS TO PROTECT CULTURAL AND RELIGIOUS CONCERNS OF THE YAVAPAI PEOPLE ALLOWING FOREIGN INTERESTS TO CONTROL LAND AND STRIP AWAY NATIVE AMERICAN RIGHTS AND DIGNITY

During the Senate hearings, Senator McCain stated that: "At every hearing, this projects tremendous environment and economic values are reaffirmed yet at each hearing we see these same agitators (emphasis added) trotted out to play the tired role of Industry obstructionists (emphasis added)...." It appears that the Senator is referring to Indian Nations as agitators and obstructionist. I take offense to this label. Frankly, a land for land exchange and specifically is this case, sacred land, cannot be traded for land that is not sacred. It isn't mining we are objecting to, but the destructive block cave mining activities and exchange of this sacred site. Let me be clear, this land is currently and equally important today as it was to our ancestors. Since time immemorial the Yavapai have exercised our religious rights, traditions, cultural practices, and teachings. Although this land is now in federal ownership, it can still be visited, touched, and cherished. The spirits remain and we still feel their presence. RCM operation will cause irreparable damage to the environment of this area whose resources are inextricably linked to sacred sites, archeological, and the cultural and religious heritage of the Yavapai People. Thus, as a Tribal Nation, the Yavapai are not just an effected or aggrieved 'party' but a People who will be significantly injured by what will materialize should this bill move forward.

In referring to the federal parcel to be exchanged, Senator Kyl stated that "all it is, is just an undeveloped campground for the Forest Service." And what will be exchanged for this land is "5,000 incredibly strong environmental land transferred to the federal government." He further stated that all the environmental groups are in favor of acquiring the land to be exchanged. In speaking with many of these groups, I believe this statement to be untrue. He also stated that the area to be exchanged is near the area of Clear Creek that was featured an Arizona highways magazine. He said that this is 'the kind of land that will be exchanged.' However, also previously featured by Arizona highways as "the Best Place to Go Camping Without a Tent Bouldering is at Oak Flat Campground" in which you will be "caught between a rock and a hard place. That is, you'll be surrounded by the rocky, rolling hills of Devil's Canyon—the perfect setting for scrambling, climbing and bouldering. In the springtime, it's also a great place to see wildflowers. The campground itself is speckled with huge, shady oak trees and is home to a variety of wildlife. . ." Devils Canyon the remarkable beauty, remoteness, and described the importance of this area was also featured in another volume. The FS promotes the area as having abundant oak trees, seasonal but clear running creek, and natural defenses.." Countless others have described the environmental benefits, including

home to endangered and threatened species, of this area. What seems so counter-productive, the sponsors of this bill advocate the preserving of riparian habitat in Arizona yet the mine dewatering of the entire region including that of Devil's Canyon will destroying the precious riparian habitat. Thus, Oak Flat and surrounding area also has 'incredibly strong environment land' along with other intrinsic and intangible values!

The Nation discussed this land trade directly with Senator Kyl and informed him of the environmental and cultural importance of this area. It is not 'just' a campground. The aboriginal Yavapai Indians named the Oak Flat and Apache Leap area Gohwhy Gah Edahpbah. In the 1860's the Yavapai's lived in this area and their traditional ways of life until the discovery of gold and other mineral ores. What resulted was a significant invasion of non-Indians treaties that laid claim on the territory of the Yavapai Indians. Thus, the Yavapai have been displaced because of ore bodies this is not new. This direct incursion by foreign mining entities on this sacred land is akin to how we were treated in the past. It is astounding is that this is the 21st century in a Country, in a more enlightened society; this type of invasion can still occur and ugly labels placed on Native Peoples who object to their constantly held scared sites being desecrated.

What is apparent, those supporting the mine fail to recognize that issues this mine will bring affect many Tribes, not just the San Carlos Apaches. Congress has not meaningfully consulted Tribes and the administration has not meaningfully consulted with the requisite studies/analysis and results this mine possess. Senator McCain stated that at his and Senator Kyl's constant urging that. . . "tribe just sit down.. just listen to the Resolution Copper, they refuse to do it. They refuse to sit down and at least listen and let the copper company make a presentation. Yet, they will urge Tribal Consultation." He later stated that by not meeting with Resolution Copper "it is not what America is supposed to be all about..." He further intimated that monetary issues should outweigh any other Tribal issue. Thus, it is difficult to explain the importance of this areas religious, spiritual, and cultural, and environmental significance to someone whose predominate motivating factor for moving forward (without meaningful requisite NEPA and Tribal Consultations) is monetary in nature. However, through this testimony I hope I have provided information to being this dialog.

The fact is meaningful consultation has not occurred even at the highest levels of government. In a June 27, 2011 in a letter to the ITCA from Secretary Vilsack, the Secretary explained that the Forest Service did not believe that Tribal Consultation over H.R. 1904 was called for saying, "The Forest Service has not proposed the new legislation, and Executive Order 13175 does not require consultation at this time." Moreover, during similar hearings on analogous legislation, the Yavapai were told by certain members of Congress that it would be 'easier' if we met with RCM to work out our differences. In fact, during the House hearings on H.R. 1904, Congressman Gosar asked each of the invited panelists who supported H.R. 1904 if they 'consulted' with Tribes. However, the onus to consult is not on RCM or any other non-federal entity but on the federal government. The legal obligation of Federal Agencies to consult with Tribes on a government-to-government basis begins in the Constitution, in Article I Section 8 (the Commerce Clause), where Congress is empowered to regulate commerce with foreign governments, between the states and with the Indian Tribes. The government of the United States has an obligation to consult with Tribes as sovereign nations on matters of interest and concern to Tribes. Furthermore, Federal agencies programs and activities must be consistent with and respect Indian treaty rights and fulfill the Federal government's legally mandated trust responsibility with Tribes. Presidential Orders including 12875, 12898, 13084, 13175, 13007 and Presidential memoranda along with Congressional and Constitutional mandates are expressed in statutes and the policies of the several Federal Agencies that relate to Tribal matters. The Departments of Agriculture and Interior are mandated to interact with Tribes on a government-to-government basis. Tribal Government Consultation and Coordination Requirements, documenting the authority, whom to contact, subject matter, and time frame in which to complete the necessary consultation are defined and outlined in each agency. The aforementioned mandates that these agencies must abide by include; American Indian Religious Freedom Act of 1978, Archeological Resources Protection Act of 1979, as amended and implementing regulations, Federal Land Policy and Management Act of 1976 and implementing regulations, NFMA—National Forest Management Act of 1976, as amended and implementing regulations, NAGPRA—Native American Graves Protection and Repatriation Act of 1990, as amended, NEPA—National Environmental Policy Act of 1969, as amended (and CEQ regulations at 40 CFR parts 1500-1508), NHPA—National Historic Preservation Act of 1996, as amended, RFRA—Religious Freedom Restoration Act of 1993. Thus, as a sovereign govern-

ment, the United States has an obligation to engage in meaningful consultation with the Nation on this matter. This requirement for consultation has been echoed by several members of Congress and administration. Although we were promised at the 2007 hearing that consultations would transpire, to date no formal federal consultations have occurred between Fort McDowell and any 'appropriate level' agency personnel or Department in the Federal Government that include the necessary supporting documents and studies we have requested.

As written, this bill eviscerates aforementioned federal mandates on Government-to-Government consultations with Indian Tribes. The aforementioned laws, Presidential Orders, congressional mandates and statutes, and federal policies regarding these consultations are meaningless due to the direct and mandated exchange (i.e., see H.R. 1904, SEC 4 (i)). Tribal input is after-the-fact making any timely or meaningful consultation part of a check list—just a formality—rather than lawful. This is in direct contrast to Senator Kyl's statement that "nothing ion this bill circumvents consultation." In fact, given the mandatory exchange language, the Secretary hands are tied to incorporate any Tribal input into NEPA or an EIS because the land exchange is completed before the majority of analysis or consultation is concluded. Rio Tinto is keenly aware of this fact and may be attributed to their rational for not proceeding through the administrative process.

LEGISLATION RELIES ON RIO TINTO'S JOB ANALYSIS WITHOUT CREDIBLE, UNBIASED DETAILED ANALYSIS BY THE FEDERAL GOVERNMENT

During the Senate hearings, Senator McCain stated that: "At every hearing, this projects tremendous environment and economic values are reaffirmed.." But, whose studies reaffirm this? He further stated that it was unfortunate that the administration's testimony gave no meaningful recognition of the mines National importance beside the passive way they discussed potential economic and employment benefits. The Senator states "facts on the ground" have not been realized—but whose facts? It is unfortunate that the sponsors of this bill do not admit that there are no federal studies to support the many years of the unsubstantiated and disparate economic and job numbers purported by Rio Tinto—no affirmations just Rio Tinto propaganda.

Senator McCain stated that "[a]ll these people what is a chance to work." But, this mine is far from a financial panacea for the region's economic woes. The supposed rational and quintessential factor for passage of this legislation is to promote immediate and significant job opportunities in the Superior area. Rio Tinto has espoused various predictions on job numbers and financial impacts to the local economy. However, these numbers are speculative and lack credibility because they are not supported with a realistic and final MPO, impartial economic documentation, and have not been scrutinized by federal authorities (or other 3rd party, non-company representatives). In fact, nowhere within H.R. 1904 or other related legislation is there any written or legal commitment from Rio Tinto or BHP to create jobs, types of the jobs to be created, location of those jobs, workforce pool to be utilized, educational requirements, etc. Job creation in the region is vital—we appreciate this need. But, supporters of this mine are notably unspoken as to what type of jobs will be created, where and when they will be available, and who will actually fill them. The sponsors of these bills state that jobs will be available for the people of Superior and Native Americans. However, to understand the furtiveness behind Rio Tino's supposed jobs opportunities one only needs to look at how the mine is being designed. What is being proposed it is not the mine of the past that most are familiar with rather it is what Rio Tinto coins the "Mine of the Future" (riotinto.com. Rio Tinto, n.d. Web., 2011). This "Mine of the Future" offers little in the way of mining and subsequent employment as currently recognized. Rio Tinto openly boasts and is proud to tout that RCM will use automated technologies similar to the fully automated "Mine of the Future" in the Australia's Pilbara mine:

> ". . .mining processes that include unprecedented levels in automation, and remote operations that will revolutionize the way mining..." (IBID.)

This "Mine of the Future" changing the way mines operate utilizing robotized drilling, driverless ore trains, driverless "intelligent" truck fleet, etc. (e.g., Rio Tinto Adds Driverless Trucks To Pilbara Iron Ore Operation, Dow Jones Newswires, 6/8/2011). In fact, in Rio Tinto's 2010 Sustainable Development Report, they stated that based upon:

> "today's improved understanding of caving processes and advanced technology," Resolution Copper will be able to "employ more automation and mechanization than were available in the past."

In other words, increase their foreign corporate bottom line by decreasing their labor cost in eliminating the very people who seek mining jobs. Have local workers or others been privy to this information? Is this one of the reasons that this bill mandates the land exchange prior to the benefit and knowledge contained in an MPO or other information (SEC.4 (i) and (j)) that would define proven mining technologies and actual job creation that are in line with these operations? If the supporters of this bill believe the mine proposal will provide job and economic benefits as well as follow federal procedures; allow it to be approved and permitted by the United States through administrative process (without a trade). The purported 'jobs' would not be affected by an administrative process and the land exchange itself would not be required to proffer jobs.

The trend toward automated technology across the mining sector, from transport to drill rigs, allows more mining processes to be operated remotely. Recently, the Sydney Morning Herald quoted Construction, Forestry, Mining and Energy Union leader Gary Wood stated that.."in the long run automation will mean serious job losses." He went on to state in that article that "People talk about reskilling but you don't need a team of truck drivers to sit and operate one computer. . . . . Over 10 or 20 years we are going to see a significant demise of these lesser skilled job opportunities. (from Driverless Trains and the 'Mine of the Future': Are Workers Becoming Obsolete?, By Kari Lydersen, In These Times, 2/282012). In the House hearings, Mr. Cherry referenced jobs but what he did not say was who was being hired, are they being transferred from other sections of Rio Tinto or BHP, are they direct employees of Rio Tinto or BHP that will be transferred back to these parent companies, are they temporary workers, where are these individuals or companies being recruited from (outside Arizona or in the U.S.), where are their actual location(s) and home base(s), what types of jobs are they performing, are lobbyists included in these numbers, etc.? In relation to RCM's operations, Rio Tinto previously addressed this question:

> "These types of projects also require significant and diverse skill sets, not always immediately available off the shelf. Direct experience at Palabora in South Africa and Northparkes in Australia and our joint venture relationship at Grasberg are positioning Rio Tinto with what I believe is a unique capability matched with our organizational depth and breadth. (Tom Albanese, Chief ex., Copper & Exploration, SEG 2006 Conf., Keystone, CO, 5/14/2006).

In other words, shifting highly educated, specific internal company based knowledgeable Rio Tinto employees to work concomitantly in RCM operations. We also appreciate the immediate need for job creation. But, this legislation does not provide assurances or guarantees from the company on the timing of the technology or whether it can be developed to mine at this depth utilizing automated block cave 'future' methodologies. In the hearings, Superior's Mayor Hing stated that Superior has seen its share of boom and bust cycles in relation to mining and that its population has decreased nearly 60%. He declared this bill will bring immediate jobs to the area. However, job creation as described by Rio Tinto will not be instantaneous. By Rio Tinto's own admission, this mine will not be in full operation for at least 10 years a fact no one has cared to address particularly since the automated technology to mine is not yet developed. That is if the technology will be successfully advanced—it is taken for a fact that Rio Tinto will successfully develop these technologies in short order. But, to call attention to this point, Rio Tinto's 2008 Annual report stated:

> "Some of the Group's technologies are unproven (emphasis added) and failures could adversely impact costs and/or productivity. . ... The Group has invested in and implemented information systems and operational initiatives. Some aspects of these technologies are unproven and the eventual operational outcome or viability cannot be assessed with certainty." (emphasis added) Automation also comes with technology that requires a greater specificity. It eliminates the types of jobs that typical copper mining operations would normally offer as it substantially reduces the need for skilled and unskilled workers. Rio Tinto fully acknowledges this:

> "the future miner will be required to have a higher degree of education in mechatronics, supercomputing or artificial intelligence.." (J. Cribb, Rio Tinto. Miners of the Future. Review. September 2008). They also state; "Humans will no longer need to be hands on as all this equipment will be 'autonomous'—able to make decisions on what to do based on their environment and interaction with other machines." (Rio Tinto. Rio Tinto chief exec-

utive unveils vision of "mine of the future,"1/18/ 2008, riotinto.com/media/ 5157__7037.asp).

Additionally, H.R. 1904 does not garner any guarantees or promises from these multinational corporations that it will actually 'operate' the mine in Superior (or regionally) as technology would allow Rio Tinto to operate the mine from anywhere in the world. At the hearings this concept was scoffed at. However, taken from aforementioned Rio Tinto materials the future mine Remote Operation Centers (ROC) will:

> "operate and optimize the use of key assets and processes, including all mines, processing plants, the rail network, ports and power plants. They continue, "Operational planning and scheduling functions will also be based in the ROC. ROC-based management would oversee pit and plant control, as well as manage the most effective use of power distribution and support activity such as maintenance planning." Furthermore, Rio Tinto stated the ROC in Pilbara is "an operational control room, office block and supporting infrastructure, and allow for potential significant expansions beyond its initial scale."

Thus, mines of the future are operational from hundreds of miles away from the actual mine. In fact, as stated in Rio Tinto's 'Mine of Future" documents, eleven mines in aforementioned Pilbara are controlled from an operations center 800 miles away. Moreover, according to Rio Tinto, one of the major goals of their prototype automation mine is to consolidate workers as well as reduce the numbers of workers. "Operators will oversee the equipment from the ROC (Remote Operation Centers)." (IBID.)

RCM operation is the future and to underscore this points, Rio Tinto has called RCM not just the 'mine of the future' but the 'super mine of the future' due to the yet developed but boasted 'automated technologies' it will require (John McGagh, Rio Tinto and step-change innovation, Sydney Convention and Exhibition Centre (ASEG), Australia, 8/23/2010; Rio Tinto Website). Rio Tinto's ROC centers are actively being expanded upon. Thus, why would RCM operate in this region when it can be operated anywhere these ROC's currently exit (e.g., Salt Lake area), where employed well-trained, highly technical staff already reside? If and when RCM develops in Superior—Rio Tinto clearly knows it would not only have fewer jobs than typical mines but the type of jobs will not be ones that will benefit the majority of the good people in this region. In June hearings, Mayor Hing stated that he would not be in favor if the project were mined as described above. The reason, this type of mining does little to benefit the local economy or provide jobs. It will, however, help foreign conglomerates and their stakeholders. It will not help the people of the U.S., particularly those in our region, and it certainly will not save the area for Native Americans to continue their religious and cultural ceremonies. Thus, without unbiased analysis/verification by federal authorities to examine their jobs claims, the immediacy of job creation and its impact on the region is merely an unmet expectation in order to sway passage of this bill.

LEGISLATION DOES NOT REQUIRE NEPA OR OTHER NEUTRAL, INDEPENDENT STUDIES ON RISKS, ALLOWS MINING ACTIVITIES ON PROTECTED AREAS, AND INABILITY TO APPLY FEDERAL REGULATIONS POST ENACTMENT

Senator McCain criticized the administration for "feeds unsubstantial claims that mine will eminently affect the environmental quality and cultural resources." Senator McCain referred to the years "discussing and analyzing this land exchange." But for all these discussions, what federal analysis, such as NEPA, has been performed on the entire mining operation that guarantees the environmental quality and cultural resources will remain intact? NONE. Under a proposed federal action, NEPA requires all Federal agencies: 1) to assess the environmental impacts of major Federal projects, decisions such as issuing permits, spending Federal money, or actions on Federal lands; 2) Consider the environmental impacts in making decisions, 3) Disclose the environmental impacts to the public, and 4) Consult with tribal governments that would include an affected tribe as a "cooperating agency." NEPA would also require the preparation of a detailed 'Environmental Impact Statement' (EIS) for any major Federal action as the mine would "significantly affecting the quality of the human environment." With respect to this proposed mine, multiple Federal agency have jurisdiction, by law and special expertise, and must examine the extensive set of factors and issues this mine presents. These agencies have the broad suite of responsibilities and expertise making them virtually impossible to exclude during the NEPA process and development of the required EIS. These agencies must be given the discretion to study, review and analyze materials/

data/etc. along with input and consultation with Tribes, and other independent agencies (not associated with Rio Tinto) as to the viability, feasibility, financial implications and impacts to U.S. natural resources. An EIS does not dictate the substance of regulatory decisions rather it forces the agency to take a "hard look" at the relevant factors [See Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989)]. The cost connected with these analysis and studies should be completely borne on Rio Tinto. Departments of Interior and Agriculture who would take part in this process have stated, in multiple forums, that this process takes, on average two to four years with complicated cases taking additional time for the proper due diligence. With neutral and independent studies performed prior to the enactment of an exchange, only then can Congress objectively evaluate the impacts, costs, benefits, and risks. Intuitively, without such analysis, this legislation cannot satisfactorily serve in the best interest of the U.S. This complete, unbiased analysis is what supporters of this mine are uncomfortable with.

Senator McCain has stated he is a "strongly support NEPA's goal of informing officials, stakeholders, and the public about the environmental implications of significant projects proposed to be undertaken by the federal government. (Natural Resources & Environment, Volume 23, Number 2, Fall 2008). Moreover, the U.S. Institute for Environmental Conflict Resolution created under the Federal Advisory Committee Act whose chief sponsor of the legislation creating the Institute, Senator John McCain, explained that its purpose was "to promote our nation's environmental policy objectives by reaching out to achieve consensus rather than pursuing resolution through adversarial processes." (2005, National Environmental Conflict Resolution Advisory Committee, Final report, to the U.S. Institute for Environmental Conflict Resolution.) However, with legislation on this mine, the proponents of this legislation will not allow for the administrative process or the requisite NEPA thereby, creating an adversarial position.

Rio Tinto testimony states, "Resolution Copper has always recognized that such a review under NEPA will be required prior to commercial mining and have committed to do so." However, the real meaning of the written legislation states otherwise (see below). There is nothing in any proposed legislation as to RCM binding long-term agreement with any federally directed study outcome, analysis, mitigation, compliance requirements, changes to mining plans, etc. as it relates to the federal parcel. Nor would they be willing to be under the direction of the federal government as to the mandated federal compliances related to federal lands post enactment. That is why they want the land transferred into private ownership within one year and allowed to mining in this area immediately after passage of the legislation. In doing so, Rio Tinto marginalizes risks that would be discovered under scientific measurements and quantification of uncertainties regarding environmental risks. This stealth 'special' legislation is specifically structured to circumvent a variety of federal laws, statues, policies and procedures including the NEPA and effectually negates any opportunity for public involvement and Tribal consultation required, disclosure of environmental impacts, including cumulative impacts and obfuscates affected parties and decision-makers to review and comprehend the risk assessment. In this case, NEPA is merely a pro forma and perfunctory at best as land is traded before NEPA is completed and before a credible MPO is developed. This point is incontrovertible. This is not only our analysis, but the understanding by Senator Bingaman and the FS and Bureau of Land Management (herein 'BLM') as related to testimonies on H.R. 1904 in both House and Senate and BLM and FS testimonies during Senate hearing on S. 409. Yet, supporters continue to misstate that NEPA is a condition of this legislation. For example, Senator Kyl incorrectly said that "Nothing can be done without completion of all environmental laws" (emphasis added). During the June 14th 2011 hearing, Congressman Gosar made a number of statements on H.R. 1904 declaring:

> "inaccurate assertion that my legislation circumvents environmental law." Furthermore, "Sections 4. (i) and 4. (j) address explicitly and implicitly compliance with Federal environmental laws and regulations pertaining to conveyances of Federal land and approval of mine plan of operations. The partners must comply with other applicable Federal laws and regulations prior to the conveyance of lands. Thus, the exchange will not go forward until major environmental requirements under the National Historic Preservation Act, Endangered Species Act, Executive Orders pertaining to wetlands and floodplains, and Hazardous Materials Surveys are met..." And, "With regards to the Mine Plan of Operations, HR 1904 is clear that this plan can only be approved following preparation of a full EIS that is in accordance with NEPA and all other applicable Federal laws and regulations. Additional environmental compliance requirements will also have to be addressed at the state and local levels in order for

this mine to be developed. This legislation promotes economic development in an environmentally responsible way."

However, these assertions are not congruent with the intent or wording of this bill. The legislation does state the following, SEC 4(i) states the intent of Congress is "that the land exchange directed by this Act shall be consummated not later than one year after the date of enactment of this Act" (emphasis added). Whereas, SEC 4 (j)(1) states that compliance with the requirements of the NEPA under this Act shall be dictated only under "Prior to commencing production in commercial quantities (emphasis added) of any valuable mineral from the Federal land conveyed to Resolution Copper (emphasis added) under this Act (except for any production from exploration and mine development shafts, adits, and tunnels needed to determine feasibility and pilot plant testing of commercial production or to access the ore body and tailing deposition areas), Resolution Copper shall submit to the Secretary a proposed mine plan of operations." Additionally, SEC 4 (j)(2) states "The Secretary shall, within 3 years of such submission, complete preparation of an environmental review document in accordance with section 102(2) of NEPA (1969, 42 U.S.C. 4322(2)) which shall be used the basis for all decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations related to the proposed mine and mine plan of operations of Resolution Copper, including the construction of associated power, water, transportation, processing, tailings, waste dump, and other ancillary facilities." But, this is not in relation to RCM site but areas outside the federal parcel to be traded. Senator Kyl stated there are 'no waivers.' However, HR 1904 SEC 4 (f)(1)(A) specifically instructs the Secretary, upon enactment of this Act, "[s]hall issue to Resolution Copper a special use permit to carry out mineral exploration activities under the Oak Flat Withdrawal Area" AND "[a] special use permit to carry out mineral exploration activities within the Oak Flat Withdrawal Area..." SEC 4 (h) specifically separates off the federal land by stating the Federal land is not under federal control but private control stating that the land to be conveyed "[s]hall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership" (emphasis added). In other words, the land is conveyed to RCM with one year, yet immediately allowing destructive mining activities to commence prior to extraction of "commercial quantities" (note, "commercial quantities" are conveniently undefined) [SECS 4 (i)(j); 6 (a)(1)(A)]. Thus, rendering mining operations to occur without oversight and intervention from federal authorities. Then within a three year period, will NEPA and other mining concerns be addressed. But, this occurs AFTER the land is privatized! I believe this not only is a waiver, but 'special' legalization.

Regardless of any legislation, supporters also quip that an MPO will be approved by the government. However, in regard to applicable federal governing law and jurisdiction, the federal government has no such 'approval' process of an MPO on private mining lands or has the ability to regulate the land under an MPO that would be provided now to be governed on private hands. Thus, any MPO produced is now, under present language, is meaningless because the mining plans will change once the land is in private and no longer subject to NEPA governmental review and oversight [e.g., HR 1904 SEC 4 (h)]. Senator Kyl believes that "NEPA is fully satisfied." The fact is, regardless of which legislation, once privatized, this land is effectively exempt from nearly all requirements of federal law and outside review and scrutiny due to the mandatory one year trade provision. In fact, it will not be subject to the requirements of the Mining Law of 1872. These points were underscored in both BLM and FS testimonies and by Senator Bingaman in his questioning of witnesses. It is unclear why these facts are not be realized by RCM supporters. Once these lands are transferred to Rio Tinto, any opportunity for Tribal involvement will be marginalized at best. Supporters of this bill say this is not true. But, sadly it is true. If additional reports, examinations, scientific analysis, Tribal information etc. come forward and demonstrate significant impacts after the trade takes place, the federal government can no longer exert the type of jurisdiction on private land as it does on public land, it can no longer mitigate, or provide guidance on how to remedy environmental consequences. If RCM truly believes otherwise, then the Fort McDowell Yavapai Nation challenges this foreign conglomerate to allow this to proceed through the administrative process. If the compulsory reduction of federal oversight to this land and meaningless post-trade compliances are not the intent of Congress, then rewording and mandating studies and consolations to occur yielding results before an exchange is contemplated.

The Nation is left to believe that land and water held in trust for all people, the environment, and for our cultural and religious purposes will be ultimately scarified for Rio Tinto and their foreign investors. Subsidence, water quality and quantity

concerns, air quality concerns, tailings and overburden placement and storage, acid mine drainage and subsequent pollution, and a host of other damages yet to be determined as a result of this automated massive deep block cave mining operation are not sufficiently addressed in this bill. Where is it written in legislation holding RCM responsible when mining destroys the sacred places of Apache Leap, Oak Flat and surrounding region, and the important cultural resources these places provide? As past stewards of this land, we are deeply concerned that the RCM will cause irreparable harm to the environment including, but not limited to, contaminating scarce water supplies, permanent dewatering nearby surface water and sacred springs, loss of cultural resource materials, decimating the land base directly through mining practices, mining and post mining subsidence, and permanently destroying habitat for all fauna and flora.

Devil's Canyon, located near the proposed mine is of great importance and of critical concern to the Yavapai people. Without providing sacred details, Congress should be cognizant of the fact that the Yavapai perform and have performed numerous religious and cultural ceremonies at Devil's Canyon since time immemorial. The hydrology is a critical element that makes this region significant to the Yavapai People. Perpetual dewatering throughout the life of the mine through groundwater pumping, mine dewatering, pollution, and other mining activities will cause these springs to be lost forever. This is an irrefutable scientific fact and not addressed within the proposed legislation. Safeguards mandated to prevent contamination, decrease in quality or quantity of the surrounding area that will result due to either direct or indirect discharges as also lacking. Will the surface flows and aquifer configurations be drastically altered by block-cave miming that the areas water supply be altered and negatively changed forever? We request that the Secretaries of Agriculture and Interior be directed to commission an independent, such as USGS, analysis of the hydrologic and engineering reports that evaluate potential impacts on the entire area including Devil's Canyon and Apache Leap now. This analysis must be in direct consultation with the Fort McDowell Yavapai Nation. Another paramount concern is where and how will the tailings be re-located? In consulting with geologists and geomorphologists, it does not appear that there are sufficient, previously abandoned surface mine pits that could either temporarily or permanently house the predicted hundreds of thousands of tons of material generated per day for the 40 or more years of mining. Much of this material will contain an array of toxic substances. Will unspoiled canyons be sacrificed to store this material?

Basically, NEPA is a postscript—a broken promise to Native Americans-after the damages begin, backward to the legal and federally approved process and the intent of NEPA. The legislation mandates the exchange regardless of the outcome of any federal studies or public interest determinations. In truth, if allowed to go forward, the federal analysis would, in all likelihood, determine that this project simply possess too great of an environmental risk or undeniable cultural and religious desecration such that it would be deemed unfeasible, and not in the public interest. It appears that these risks and outcomes are the primary reasons why Rio Tinto has deliberately tried to outwit and circumvent the administrative process by seeking this directed legislative land exchange. In essence, both bills, albeit on differing scales, request Congress to accept incalculable risks in exchange for other private lands scattered throughout Arizona in an attempt to 'mitigate' damages resulting from Rio Tinto's mining of these sacred federal lands near Superior. The Yavapai People do not and cannot accept this rational.

APACHE LEAP REMAINS WITHOUT ANY REAL PROTECTIONS

In H.R. 1904, SEC 5 (a)(1)(E) and SEC 4(d) in S. 409 outline the exchange of Apache Leap. Noticeably absent are provisions for a conservation easement included in previous versions. In referring to Apache Leap, Senator Kyl mistakenly stated that this section "totally protects it, so there is no issue there." However, in converting portions of Apache Leap for the 'public' does not protect them from mining activities. If mining on the federal lands is to occur despite significant objections, when catastrophic disturbances, such as subsidence, fissures, etc., cause destruction on, under, or around Apache Leap transpires, detailed provisions are not in place as to the restoration/reclamation activities. Who will be the responsible party to provide for those restoration activities and their associated costs? There are no provisions as to how to evaluate, monitor or stop either short-or long-term impacts of mining activities, or to stop or prevent the destruction of irreplaceable cultural and religious resources of Apache Leap. Both pieces of legislation allow Rio Tinto to "carry out underground activities" as these activities are "Subject to valid existing rights" [i.e., mining claims, see H.R. 1904, SEC 7 and S. 409, SEC 4 (d)(2)]. Although, commercial extraction of minerals under the surface of Apache Leap is pro-

hibited, there will be very destructive activities or operations that will occur immediately following passage of this legislation. Conveniently, these activities are not listed. In fact, overall protections of Apache Leap are seriously undermined by language in H.R. 1904, SEC 8 or S. 409, 409, SEC 4 (d)(2), as it provides for substantial mining activities and operations both on top of an under the Apache Leap that will result in its subsidence. For example, in H.R 1904, SEC. 8. (a)(2) RCM will be granted special use permits by the Secretary to begin "underground activities," in other words mining operations without any scientific evaluations, government analysis/determinations (e.g., NEPA), or subsequent government intervention. This is understood to including drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information) that do not involve 'commercial' mineral extraction but allows for extraction nonetheless under Apache Leap (per S. 409). Moreover, it is very likely that RCM dewatering activities is necessary for their deep underground tunnel system used for its mining activities. A serious drawdown in the water table of the region and will result in subsidence in and around the Apache Leap but not addressed in H.R. 1904. SEC 8. (a)(3) further permits surface and subsurface disturbance allowing "monitoring devices" that may, in fact, result in damage to Apache Leap without a benefit of NEPA or an EIS determinations negating the few "protections" intended to preserve its natural character. These undefined monitoring devices are understood to mean, at minimum, monitoring wells and other devices, instruments, to achieve multiple purposes including other appropriate administrative purposes (per S. 409). But, these activities are contraindicated in this section as it prohibits disturbance of "..surface of Apache Leap." Notably, activities that would affect subsurface do not have prohibitions as only 'surface disturbances' are stated here. In other words, Rio Tinto is given a pass to destroy this sacred area not conserve it. We find this windfall to Rio Tinto to be particularly egregious.

Any implication that Apache Leap will be protected through the development of a "management plan" is also misplaced. A plain reading of Section 8 of either pieces of legislation reveals little in the way of specifics. Indeed, while legislation directs the Secretary of Interior to "prepare" a management plan for this important and sacred place, the bill contains absolutely no requirements for the plan and provides no substantive direction to the Secretary as to what the plan should entail or the federal cost associated with this plan. The final terms of the plan are left to the discretion of the Secretary, without guidance from Congress or federal appropriation. Thus, there is little assurance that a plan for the "permanent protection" of the cultural, historic, educational, and natural resource values of Apache Leap will be developed.

What is also evident, there is no connection or coordination in H.R. 1904 between the development of the management plan and RCM's overall mining planning/activities throughout the larger area, including its subsurface activities below Apache Leap. In this case, the management plan of Apache Leap is separate and distinct from any operations or mining plans. Furthermore, while SEC 8. (b)(1) of each bill calls for "consultation" with the Indian Tribes regarding the management plan for Apache Leap, there are no provisions in the bill for consultation with the Yavapai Nation regarding RCM's unrestricted mining activities in the area surrounding Apache Leap as well as its operations and activities under the Leap. Yet, it is these activities, including the deep underground block caving operation itself, that present the greatest threat to the cultural, historic, educational, and natural resource values and continued integrity of Apache Leap. Without any protection or funding assurances, such as substantial bonding, should damage to Apache Leap result from mining activities we ask, who is responsible for the damage? As written, both RCC and the Federal government appear to have circumvented any responsibility for injury to Apache Leap caused either directly or indirectly by RCM's mining activities or operation. Because legislation does not provide provision or other guidance in this matter, it can be truly said that this bill is silent on the true protection for Apache Leap. The Yavapai must be consulted on including, but not limited to, regarding if, and to what extent, any disturbance or activity to the surface/subsurface of Apache Leap is acceptable, mining operations needed to carry out all mining activities in and around Apache Leap, and the management plan of Apache Leap.

CONCLUSION

To conclude my testimony, numerous studies have shown that impacts from the type of mining being proposed will occur for many years after the completion of mining. Subsidence effects at underground hardrock mines using block caving cannot be mitigated, particular on such a grant scale being proposed. The area is currently protected by the Native American Graves Protection and Repatriation Act (Public

Law 101-601) or any provision of the American Indian Religious Freedom Act (42 U.S.C. 1996), the National Historic Preservation Act (6 U.S.C. 4701 et seq.), and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.). These laws are designated to protect areas important to Native American's but will be inapplicable and unenforceable as a result of any legislation brought forward. Misquotes or misunderstanding of this exchange have been expressed by sponsors of this bill. For example, in the House hearing on HR 1904, Congressman Gosar stated that "the exchange will not go forward until major environmental requirements under the National Historic Preservation Act . . . are met." However, this is unequivocally incorrect. As stated earlier, these mandates cannot be met due to the timing of the mandatory exchange and post-exchange analysis. Furthermore, these federal mandates cannot be enforced once in private land once conveyed to Rio Tinto. The scale of destruction that is proposed with this mine, dewatering, land subsidence, polluting of the land and water will desecrate this sacred area. No amount of reclamation and restoration can reverse the damage that will occur on such an imposing and unprecedented scale. I cannot express in words how deeply felt this land is to the Yavapai—it simply transcends words. Damages to this area resulting from this mining project cannot be mitigated away. Simply placing a dollar value on the land or exchanging it for some other land that is far from the area of concern and does not have the same value to us is not acceptable. The Tonto National Forest has discovered at least a dozen archeological sites in and around Oak Flat. Therefore, the Nation requests the opportunity to evaluate all data in internal and external reports for the entire area, including data that were not included in the final version of these reports. Fort McDowell also request answers to the specific questions we have in regard to how Rio Tinto and the Federal government will protect the religious and cultural resources of the area.

It is well understood that in a land exchange, the intended use of conveyed federal lands should not conflict significantly with management of adjacent federal and Indian trust lands (43 C.F.R. §2200.0-6(b)). This trade is not consistent with well-established laws on this matter (e.g., NEPA). Cultural resource consideration and Tribal input into the land 'value' must be part of this process at the on-set—before the exchange and land evaluation process. But, even if we are allowed to participate-how will the United States evaluate our 'values' to the land as these 'values' are so critical to the very culture and spirit of the Tribes, including the Yavapai People? The 'value' of this land to the Yavapai does not simply equate to a dollar amount on a price tag. Its assets are more than words can translate or dollars can calculate -they cannot be simply traded away for lands that foreign mining companies own. Thus, going into this exchange, the evaluation of all lands, by legal standards and by the Yavapai People, has not been legally 'appraised' or 'assessed' as to their true worth and significance to Tribes.

In the hearings, President Shan Lewis of ITCA noted Tribes and Tribal organization from all over the country have expressed their opposition to this bill because threats to our sacred sites in Arizona present a threat to all sacred sites. It is disturbing that this land exchange would take place and forego the United States Trust responsibility to Native Americans. While it may be difficult for non-Indians to understand, it is equally difficult for us to convey the profound importance of this area. Thus, it is indeed deplorable that without consultation Congress would allow our ancestral lands to be wholly owned by foreign interests who have no conception of Native American religious values, culture and history. The basic questions have yet to be answered regarding the proposed exchange and the benefits to the public interest remain uncertain. Moreover, questions regarding the magnitude of this mining operation's effect on this areas cultural and religious importance must be fully and fairly analyzed through the administrative process prior to congressional action. Only through the administrative process can these serious concerns be adequately considered. Only through the administrative process would the Nation be provided an opportunity for a meaningful government-to-government consultation that is required by the United States trust responsibility to the Yavapai Nation and guaranteed under federal law. However, at the hearings, Senator Kyl does not believe that a TRUE public interest determination such is this is necessary. The Nation will be happy to consult on issues related to legislation that define or provide the requisite transparency to address many of our fundamental concerns including, but not limited to studies/assessments that address or provide: 1) unbiased analysis on the potential job and economic benefits; 2) a mineral report and appraisal of the Federal parcel to assure the parity of the land exchange and justifiable royalty provisions; 3) the feasibility of the mine and mining operations; 4) assessment and mitigation of environmental damages, untenable security and sustainability of the ecosystem including effects on groundwater, surface water, land disturbance, pollution, and subsidence issues; 5) the need NEPA and third party, independent EIS on the

entire mining operation; 6)) extensive mining plan, reclamation protocol, assurances and guarantees made by either the federal government, Rio Tinto, or BHP; 7) how to mitigate the incalculable cultural losses caused by foreign interests taking and destroying land that is critically important ancestral territory of the Yavapai People that is still a very sacred; 8) federal environmental and cultural protections afforded public lands rendered inapplicable once the land is conveyed; 9) protection to Apache Leap and lack of appropriated federal monies to plan and protect this area: and, 10) meaningful consultation with Fort McDowell as a sovereign nation that is required by the United States' trust responsibility to the Yavapai Nation and guaranteed under federal law. It is imperative that the Nation provide input as to Rio Tinto's impact on and the (irreplaceable) 'value' this area holds to the Yavapai People. We also have additional concerns but they are not addressed here. Thus, at this time, we believe there are too many unresolved serious issues that must be fully addressed prior to congressional approval.

Mr. Chairman, members of the Committee, on behalf of the Fort McDowell Yavapai People, I thank you for the opportunity to express our deep concerns regarding this proposed legislation.

ARIZONA MINING ASSOCIATION,
Phoenix, AZ, October 21, 2011.

Hon. PAUL GOSAR,
U.S. House of Representatives, 504 Cannon House Office Building, Washington, DC.

Re: H.R. 1904: Southeast Arizona Land Exchange and Conservation Act of 2011

DEAR REPRESENTATIVE GOSAR, The Arizona Mining Association supports the passage of H.R. 1904. By permitting the exchange of lands, this measure would secure the requisite lands necessary for Resolution Copper to develop this ore body.

Copper is a vital element of America's resource base, and represents an essential building block for economic growth and modernization around the world. Industry in the United States needs copper to build houses, offices, cars, appliances, and electronics. Additionally, the majority of green energy initiatives need more copper than ever before to be successful. For example, the construction of one wind turbine requires 4. 7 tons of copper, the average hybrid car requires twice the amount of copper as a non-hybrid, and solar energy production is supported by copper.

In 2010, Arizona copper mines produced nearly 800,000 tons of copper or 63 percent of the nation's copper production. Even with Arizona's significant copper production, the United States continues to be a net importer of copper and is becoming more and more dependent on other countries for this strategic metal. Our military relies on this metal for everything from bullets to the components of precision guidance systems. If we do not continue to develop our resources at home, we could find ourselves reliant upon copper from other nations in the same way we are now reliant upon other nations for rare earth minerals and crude oil. At its peak, the Resolution Copper Project could produce 25 to 30 percent of our nation's copper needs; thereby substantially reducing this great nation's needs for imported copper.

On behalf of the Arizona Mining Association, we thank you for your vision and leadership on this matter.

Sincerely,

ROBERT E. QUICK, JR.,
President.

ARIZONA CHAMBER OF COMMERCE AND INDUSTRY,
ARIZONA MANUFACTURERS COUNCIL,
Phoenix, AZ, October 6, 2011.

Hon. JOHN A. BOEHNER,
U.S. House of Representatives, 1011 Longworth House Office Building, Washington, DC.

DEAR SPEAKER BOEHNER: The Arizona Chamber of Commerce and Industry urges the House of Representatives to immediately consider HR 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011, on the Floor of the House. This legislation will provide a huge stimulus to both US and Arizona economies without an infusion of any federal funds.

We understand the mine project, which depends on the passage of HR 1904, will create 3,700 direct and indirect jobs for Arizonans and others across America, and it will inject $61.4 billion into the Arizona economy over the life of the mine. Beyond the impact to the Arizona economy, the federal government stands to benefit greatly

from this endeavor. According to an economic impact study prepared by Elliott D. Pollack & Company in September, 2011, "An estimated $14.1 billion is expected to be paid to the federal government in the form of income taxes." That figure reflects the total receipts over the life of the mine. Combine that with the tremendous natural resource of copper to our nation and the tremendous benefit to state and local governments (which stand to bring in $5.8 billion in tax revenues over the life of the mine), and it is clear that this legislation must move through the House swiftly in hopes that the Senate will take action and send it to the President for his signature.

Passage of this legislation will not only convey 5,344 acres of high-value conservation lands to the federal government, but it will transfer ownership of a federal parcel that was withdrawn from mining to Resolution Copper Mining. This transfer will allow for the full development of what we understand to be the largest copper deposit in North America—a deposit that provides high-paying jobs for at least 40-years and will produce over 20 percent of the annual US demand for copper.

We appreciate the tremendous amount of work Congress has to do each and every year. We ask, however, that you place the passage of HR 1904 at the top of your list of critical job-creation legislation. You have the opportunity to make an enormous difference in the lives of Arizonans and, ultimately, the American public by creating jobs, promoting sustainable mining operations, harvesting a vital natural resource, protecting critical conservation lands, and revitalizing Arizona's economy—all without spending one cent of taxpayer money.

Thank you for your consideration.

Sincerely,

GLENN HAMER,
President & CEO.

NATIONAL ASSOCIATION OF MANUFACTURERS,
ENERGY AND RESOURCES POLICY,
Washington, DC, October 25, 2011.

Hon. PAUL GOSAR,
Member of Congress, U.S. House of Representatives, 504 Cannon House Office Building, Washington, DC.

DEAR REPRESENTATIVE GOSAR: On behalf of the National Association of Manufacturers (NAM), thank you for your efforts to address the important issue of domestic natural resources, in particular copper. As you know, copper is used in a number of manufacturing applications which include alternative energy infrastructure, renewable energy products, consumer electronics and hybrid cars among others; and therefore, its availability is important to manufacturers and the manufacturing process.

By way of background, the NAM is the largest industrial trade association in the U.S., representing over 11,000 small, medium and large manufacturers in all 50 states. We are the leading voice in Washington, D.C. for the manufacturing economy, which provides millions of high wage jobs in the U.S. and generates more than $1.6 trillion in GDP. In addition, two-thirds of our members are small businesses, which serve as the engine for job growth.

This legislation will be the first step in helping the United States to meet more of our domestic demand for copper. In fact, the proposed mine would produce enough copper to meet about 25% of the current U.S. demand. In doing so, it will also create jobs and generate nearly $20 billion in federal, state, county and local tax revenue.

We thank you for your efforts and recognition of this important issue and the impact it has on U.S. manufacturers.

Sincerely,

PAUL A. YOST,
Vice President.

DOWDING INDUSTRIES,
Eaton Rapids, MI, September 29, 2011.

Hon. JOHN A. BOEHNER,
U.S. House of Representatives, 1011 Longworth House Office Building, Washington, DC.

Re: Support for HR1904, Southeast Arizona Land Exchange and Conservation Act 2011

DEAR SPEAKER BOEHNER: U.S. manufacturers once again see opportunities to reaffirm our nation's position as the global leader in technology innovation and manufacturing, while growing the economy, creating well-paying jobs, and improving standards of living. Many of us believe that our success lies in the ability—and will—of the U.S. to take command of our own future, by becoming more reliant on our own resources, resourcefulness, and expertise.

That is why I am writing today.

Dowding Industries, with national manufacturing operations in Iowa and Michigan, supports HR 1904, introduced by Congressman Gosar to facilitate domestic production of copper and other critical minerals in his state of Arizona by authorizing the exchange of federal lands for this purpose.

The land exchange would result in Resolution Copper Company conveying privately held land of high habitat and conservation value to the government, and enable the company to conduct safe, responsible mining operations. Passage of this bill would also allow the creation of 3700 jobs, $16 billion in federal tax revenue and over $61 billion in overall economic impact without a single dollar of federal stimulus.

Mineral production is fundamental to manufacturing, and to the competitive economic strength of U.S. manufacturers and our products. Minerals are fundamental to innovations and technologies we recognize today as commonplace—like smart phones, (Pads, and airliners, and others we recognize as the way of the future—like advanced energy technologies. We also recognize that domestic metals production—as with domestic manufacturing—is a matter of economic national security.

Dowding Machining is developing new technologies that could revolutionize the alternative energy industry. The company is working to design and manufacture state-of-the-art machine tools to make massive wind-turbine components with reduced time and cost, and build a new generation of wind turbine blades. Dowding Industries is a precision metals fabricator; we specialize in custom machining for the energy, mass transportation, and industrial equipment sectors. In all cases, metal, and the key minerals that comprise them, are at the heart of our business units.

We understand the land exchange would enable Resolution Copper to access what may be one of the largest copper ore bodies ever identified in North America. Mining operations will benefit the local, state, and national economies for many years to come. Technology industries, of which Dowding Industries is a part, will benefit from the economic impact of this very sizeable domestic raw material production.

I commend your vision for ensuring the economic strength of our nation and its manufacturing sector, and your leadership role in advancing the Southeast Arizona Land Exchange and Conservation Act for achieving this vision.

Thank you.

Sincerely,

JEFF METTS,
President.

STATE OF ARIZONA,
EXEUTIVE OFFICE,
Phoenix, AZ, February 6, 2012.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN, As the Governor of the State of Arizona, I am pleased that we are closer than ever to the passage of legislation that will help generate $16 billion in revenues to the federal government, creating 3,700 jobs, adding an additional 3,000 jobs during a nine-year construction effort, and attracting over $6 billion in private investment. All this would be done without stimulus funds and would preserve thousands of acres of pristine lands.

I write to express my desire for the immediate enactment of this critical legislation—HR 1904, the Southeast Arizona Land Exchange and Conservation Act. As you know, this legislation passed the U.S. House of Representatives on October 26, 2011, and I am pleased that you have already begun its consideration in the US Senate. I urge you to swiftly move this legislation so that we can, together, remove impediments to private sector job creation and stimulate our economy.

Passage of this legislation will convey 5,344 acres of high-value conservation lands to the federal government for management. These non-federal parcels of land that would be preserved by passage of HR 1904 hold significant cultural, historic, and environmental value. By preserving these lands, the federal government will be bet-

ter able to manage and protect the forest lands, riparian habitat areas, and watersheds contained therein.

In exchange for these parcels, the federal government will transfer ownership of a federal parcel that was withdrawn from mining to Resolution Copper Mining. This transfer will allow for the full development of what we understand to be the largest copper deposit in North America—a deposit that provides high-paying jobs for at least 40 years and will produce over 20 percent of the annual U.S. demand for copper.

This bill will not cost taxpayers one cent, and yet will bring private investment; provide jobs and economic growth to a severely challenged area in my state; provide significant revenues to local, state and federal coffers; and will protect valuable lands by conferring them to the federal government.

I have had the opportunity to learn about and personally visit Resolution Copper and have spent time with members of the community throughout the "Copper Basin." I am impressed by the patience and resolve of the community. Further, I am heartened by Resolution's commitment to addressing concerns related to the local communities, the environment, and the multitude of stakeholders that have been part of the development of this legislation for the past several years.

I urge your support of this legislation for real and sustainable job creation.

Sincerely,

JANICE K. BREWER,
Governor.

TOWN OF SUPERIOR,
Superior, AZ, February 3, 2012.

Hon. JON KYL,
U.S. Senate, 730 Hart Senate Office Building, Washington, DC.

DEAR SENATOR KYL: The Superior Town Council wants to reaffirm its support for the Southeast Arizona Land Exchange and Conservation Act and the Resolution Copper project.

With the financial challenges our nation and particularly our state face, we recog1iizt that the Resolution Copper project would provide much needed economic development opportunities for our local community as well as Phial County and the State of Arizona. Specifically, this project has the potential to generate many jobs for those in and around our community and it has the ability to strengthen revenue potential for businesses. We have already seen a large increase of contractors and their work force in and around the area and anticipate this growth to continue.

Superior has a rich history of mining for over 100 years. We recognize that mining is one of our cornerstone industries, and we support continued operations in and around our Town. As elected officials who are concerned regarding positive impacts to our community both now and in the future, it is our desire and expectation that compliance with the National Environmental Policy Act, sustainable water resources and other environmental issues and impacts be adequately addressed. Resolution Copper has made that commitment to me, the Town Council and the community.

We believe that the Resolution Copper project is a solid investment in our community. As Mayor, I recognize the work that Resolution Copper has undertaken to improve environmental conditions in Superior; and I anticipate that work will continue.

On behalf of the Superior Town Council, I respectfully request that you make the Southeast Arizona Land Exchange and Conservation Act your top priority. I cannot stress enough how important your leadership on this important issue is needed.

Sincerely,

JAYME VALENZUELA,
Mayor.

THE TRUST FOR PUBLIC LAND,
FEDERAL AFFAIRS,
Washington, DC, February 3, 2012.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, SD-304 Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: It is my understanding that the Senate Committee on Energy and Natural Resources has scheduled a hearing on H.R. 1904, the Resolution Copper exchange proposal. The Trust for Public Land does not have a position on

the merits of the exchange as a whole, but we can attest to the merits of the East Clear Creek property and our belief that it deserves public protection through inclusion in the Coconino National Forest.

The Trust for Public Land (TPL) is a national land conservation organization that protects land for people across the country. Founded in 1972, TPL has protected more than three million acres in 47 states. In Arizona, we have worked with the Forest Service over many years to convey into public ownership key lands in the Coconino National Forest.

In the course of this work, TPL was offered the opportunity to acquire the East Clear Creek property, which is now included in the Resolution Copper exchange legislation being considered by the Energy and Natural Resources Committee. We initially hoped that the Land and Water Conservation Fund would provide the means for the Forest Service to acquire this land, but it became clear LWCF funds would not be forthcoming in a reasonable time frame. In 2005, the possibility arose to make this property available for the exchange, and TPL pursued that opportunity because we believed it was important that the East Clear Creek land ultimately be conveyed to Forest Service ownership.

The property comprises 640 acres, one complete section, along East Clear Creek in the Mogollon Rim Ranger District of the Coconino National Forest. The parcel is among the largest single blocks of private inholdings within the forest. The creek itself flows through it for more than two miles and may provide habitat for several native fish species known to occur in the East Clear Creek system. These include Little Colorado spinedace (listed as a threatened species by the USFWS), Chiricahua leopard frog (also a threatened species), northern leopard frog, roundtail chub (a candidate species), and Little Colorado sucker. The upper ridges are dominated by Ponderosa pine forest, with interspersed oak and aspen woodlands. This area provides habitat for a variety of wildlife, including big-game species like Rocky Mountain elk, mule deer, turkey, and black bear. In addition, the U.S. Forest Service has identified key areas as protected and restricted habitat for the Mexican spotted owl.

East Clear Creek Canyon and several side canyons cross the property and serve as wildlife transition zones between the upper plateaus and riparian corridor of East Clear Creek. Numerous wildlife trails and raptor nesting sites occur along the canyon walls. Permanent protection of this property will also provide the public with opportunities to enjoy the natural beauty of this area through a variety of recreational activities.

In 2005 there was significant encroachment of new homes being built in the vicinity, and this property would likely have been developed had The Trust for Public Land not acquired it with the intention of seeing it eventually conveyed to the U.S. Forest Service.

As the Committee considers the merits of H.R. 1904, I hope the information contained in this letter will prove useful.

Thank you.

Sincerely,

KATHY DECOSTER,
Vice President.

THE NATURE CONSERVANCY,
PHOENIX CONSERVATION CENTER,
Phoenix, AZ, February 7, 2012.

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
ATTN: David Brooks & Frank Gladics, Washington, DC.

DEAR MR. BROOKS & MR. GLADICS: Thank you for the opportunity to comment on H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011 (hereinafter "bill"). The Nature Conservancy has no formal position on this legislation. Instead, this letter is meant to outline the important conservation value of "the approximately 3,050 acres of land located in Pinal County, Arizona", known as "Seven B", as part of the federal acquisition for conservation purposes.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses, and especially in the developing world, to address sustained human well-being.

In Arizona, The Nature Conservancy has created a dozen nature preserves and developed new funding sources for conservation throughout the state. One main focus of our work has been to protect one of the last few remaining undammed rivers in the State of Arizona, the San Pedro River.

The "Seven B" property contains nearly 7 miles of the lower San Pedro River as well as over 800 acres of ancient intact mesquite bosque representing what is probably the largest old-growth mesquite forest remaining in Arizona. As early as 1974, an Arizona Academy of Science report called for preserving the bosque as a scientific and educational natural area, and subsequent analyses by The Nature Conservancy and others have affirmed its conservation value. In addition to the mesquite bosque and river corridor, the Seven B contains an artesian well that has the potential for providing a recovery site for endangered desert fish species. Therefore, we support the federal acquisition of this parcel for conservation purposes.

Furthermore, the bill expands the San Pedro National Conservation Area to include the Seven B on the lower San Pedro River. It will greatly assist the parties that share a vision for the long-term protection and enhancement of the river's natural values.

However, the conservation values of the "Seven B" property exist only in the context of an ability to maintain the natural functioning of the larger San Pedro River ecosystem.

We thank Resolution Copper for opening a dialogue with its partner on the mine, BHP Billiton, to discuss the future of the lands owned by BHP Billiton adjoining the "Seven B" to ensure their permanent protection. These discussions are ongoing. As well, Resolution Copper has brought together other nearby landowners on lower San Pedro River to discuss long-term strategies for the health of the river.

In addition, we support the inclusion in Sec. 6(d)(2) the ability to provide funding for the management and protection of lands acquired by the federal government by this legislation. We believe this is important for the lands provided to the federal government by this legislation to have an endowment to provide for their management. It is not uncommon to have such a practice in administrative transactions with the federal government.

We must point out one item that needs further clarity in HR 1904. On page 8 of House Report 112-246 for the bill, it states the addition of the Seven B ". . . would fully complete the San Pedro Conservation area." This is not a correct statement and we request a technical correction of the report to reflect this inaccuracy.

Thank you again for the opportunity for us to discuss the conservation values associated with the legislation. We do have an open dialogue with Resolution Copper and Members of the Arizona Congressional Delegation. We look forward to continuing to discuss the items outlined in this letter as this important legislation continues in the U.S. Congress.

Please do not hesitate to contact me if you have any questions.

Sincerely,

PATRICK GRAHAM,
State Director.

○