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H.R. 3301, SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2007

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

Thursday, November 1, 2007

Serial No. 110-52

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE
38-773 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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LEGISLATIVE HEARING ON H.R. 3301, TO AUTHORIZE AND DIRECT THE EXCHANGE AND CONVEYANCE OF CERTAIN NATIONAL FOREST LAND AND OTHER LAND IN SOUTHEAST ARIZONA. (SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2007)

Thursday, November 1, 2007

U.S. House of Representatives

Subcommittee on National Parks, Forests and Public Lands

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to call, at 10:02 a.m. in Room 1324, Longworth House Office Building, Hon. Raúl M. Grijalva, [Chairman of the Subcommittee] presiding.

Present: Representatives Grijalva, Bishop, Christensen, Flake and Lamborn.

STATEMENT OF THE HONORABLE RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you. Let me call the Subcommittee meeting to order, a legislative hearing on H.R. 3301, Southeast Arizona Land Exchange and Conservation Act of 2007. I will begin the meeting as we wait for our colleague, the Ranking Member, Mr. Bishop, who will be here shortly. At that point, if he has an opening statement, he will do that at that time.

In calling the Subcommittee to order today, we will be receiving testimony on H.R. 3301 introduced by my good friend and colleague, Mr. Ed Pastor. It authorizes and directs a land exchange and conveyance of certain national forest lands and other lands in southeast Arizona. At its heart, H.R. 3301 seeks to convey the 3,000 Oak Flat parcel, which is currently managed by the Forest Service.

Much of the Oak Flat parcel is currently operated as a Forest Service campground and is also popular for rock climbing, acorn gathering by Native American tribes. Beneath the Oak Flat parcel is what many have categorized as one of the largest existing copper deposits in North America.

Resolution Copper Company is seeking to facilitate a land exchange in order to acquire the Oak Flat parcel for mining purposes. The Oak Flat parcel lies adjacent to Resolution Copper Company's existing private land and the site of the former Magma Mine. Resolution Copper would then convey to the Forest Service and the Bureau of Land Management a variety of different properties in southern Arizona.

Land exchanges and conveyances can often be burdensome on the public interest. Because of its complicated nature, I think the measure before us today merits very careful consideration. I would suggest that even the parcels that the Federal Government would acquire under H.R. 3301, the overall benefit to the public interest is still in question.

Many have suggested that Resolution Copper should pay a royalty on the proceeds from mining on Federal lands that they would acquire, and I tend to concur. I look forward to hearing the thoughts of each of our witnesses on the topic of the benefits to the public interest of this measure and this legislation.

I am pleased today that we are joined by Chairman Nosie of the San Carlos Apache, President Bear of the Fort McDowell Yavapai Nation. Located on the Forest Service land in question is the Apache Leap, an area of significant cultural and historic value to these tribes.

Furthermore, the Oak Flat parcel is an area of cultural significance for acorn gathering. These areas are very important to both tribes, and I am pleased that their leadership is here today to share those concerns and their thoughts. I also want to echo the concerns raised by Arizona Governor Napolitano about the tribes' need to be engaged in discussions regarding the mine and land exchange.

These lands hold significant cultural value to the tribes, and there needs to be outreach to them before the legislation moves forward. I would also like to thank all of our witnesses for being with us today. We look forward to receiving your testimony. As I said, when Ranking Member Bishop arrives, if he has an opening statement we will hear it at that point.

With that, let me call the first panel forward, please. There will be, as we know, a five-minute limit on the oral presentations. Excuse me. Before we do the introduction of our witnesses, let me turn to my colleague from Arizona, Mr. Flake, for any opening statement he might have regarding the legislation.

[The prepared statement of Mr. Grijalva follows:]

Statement of The Honorable Raúl Grijalva, Chairman, Subcommittee on National Parks, Forests and Public Lands

The Subcommittee will come to order. Today we will be receiving testimony on H.R. 3301, the Southeast Arizona Land Exchange and Conservation Act. H.R. 3301, introduced by my good friend and colleague, Representative Ed Pastor, authorizes and directs a land exchange and conveyance of certain National Forest land and other lands in southeast Arizona.

At its heart, H.R. 3301 seeks to convey the 3,025 Oak Flat parcel, which is currently managed by the Forest Service. Much of the Oak Flat parcel is currently operated as a Forest Service campground, and is also a popular site for rock-climbing and acorn gathering by Indian tribes. Beneath the Oak Flat parcel is what many have characterized as one of the largest existing copper deposits in North America.

Resolution Copper Company is seeking to facilitate a land exchange in order to acquire the Oak Flat parcel for mining purposes. The Oak Flat parcel lies adjacent

to Resolution Copper Company's existing private land and the site of the former Magma Mine. Resolution Copper would then convey to the Forest Service and the Bureau of Land Management a variety of different properties in southern Arizona.

Land exchanges and conveyances can often be burdensome on the public interest. Because of its complicated nature, I think the measure before us today merits some careful consideration. I would suggest that even with the parcels that the Federal Government would acquire under H.R. 3301, the overall benefit to the public interest is in question. Many have suggested that Resolution Copper should pay a royalty on the proceeds from mining on the Federal lands they would acquire and I tend to concur. I look forward to hearing the thoughts of each of our witnesses on the topic of the benefits to the public interest of this measure.

I am pleased that we are joined today by Chairman Wendsler Nosie of the San Carlos Apache and Mr. Raphael Baer of the Ft. McDowell Yavapai Nation. Located on the Forest Service land in question is the Apache Leap, an area of significant cultural and historical value to these tribes. Furthermore, the Oak Flat parcel is an area of cultural significance for acorn gathering. These areas are very important to both tribes and I am pleased they have joined us today to share their concerns.

I echo concerns raised by Arizona Governor Napolitano about the tribes needing to be engaged in discussions regarding the mine and land exchange. These lands hold significant cultural value to the tribes and there needs to be outreach to them before this bill moves forward.

Again, I would like to thank all of our witnesses for being with us today. We look forward to receiving your testimony.

I would now like to recognize Ranking Member Bishop for any opening statement he may have.

STATEMENT OF THE HONORABLE JEFF FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. FLAKE. I thank the Chairman. I will be very brief. I just want to say I appreciate those who have traveled a long way to get here, particularly those from Arizona, and commend those who have been involved in this process and this legislation. This is very important for the State of Arizona I think for the mining industry and appreciate those of Resolution Copper for the work that they have done to make sure that those locally are informed about what is going on here and involved in the process.

So I look forward to this hearing and this process moving forward. I thank the Chairman.

Mr. GRIJALVA. Thank you, Mr. Flake. Let me call on the witnesses a five-minute rule in terms of the oral presentation, and your statements will be entered into the record entirely. Any extraneous material that any of the witnesses might have will also be entered into the record in its entirety.

With that, let me turn to Mr. Joel Holtrop, Deputy Chief, National Forest Service. Welcome, again, sir.

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE

Mr. HOLTROP. Thank you, Mr. Chairman and members of the Subcommittee for the opportunity to provide the Department of Agriculture's view on H.R. 3301, the Southeast Arizona Land Exchange and Conservation Act of 2007. My remarks are limited to those provisions of the bill directly related to National Forest System lands and will defer to the Department of the Interior on provisions relating to the lands managed by the Bureau of Land Management.

The Department believes that the acquisition of the nonFederal parcels to be managed in the National Forest System would pro-

vide protection for riparian habitat and water rights, archeological sites, two miles along a permanently flowing trout stream, a year round pond and an endangered cactus species.

The Department appreciates that several changes have been made to this proposal in response to previous testimony to address various concerns, and in this context the Department supports the exchange as well as the valuation provisions and believes it is in the public interest, although some concerns remain regarding the overall bill.

H.R. 3301 is a complex land exchange bill that directs the Secretary of Agriculture to convey to Resolution Copper certain lands and interests in the Tonto National Forest in Arizona in exchange for private lands and funds to acquire additional lands in the State of Arizona for management by the Forest Service and the Bureau of Land Management.

It also directs the Secretary of Agriculture to convey to the Town of Superior a cemetery, some 181 acres adjacent to the Superior Airport and Federal reversionary interest in the airport site already owned by the town. It is our understanding that upon completion of the land exchange Resolution Copper would explore the possibility of developing a very deep copper mine beneath the Oak Flat parcel.

Section 4[d] of the bill requires that the exchange contemplated by H.R. 3301 will be completed within one year. We believe that this is insufficient time to complete all the necessary work for the exchange including the development and review of a mineral report, completion of appraisals and surveys, verification of title documents and the many environmental clearances, reviews and the consultation with Indian tribes required under various laws, regulations and policy as outlined in Section 4[e].

The bill directs the Secretary to design and construct a campground including access routes on the Globe Ranger District of the Tonto National Forest within two years to replace the Oak Flat Campground. Preliminary indications are that it will be difficult to find a suitable replacement site within the Globe Ranger District.

We are also concerned that the $500,000 Resolution Copper is directed to pay for the replacement campground is insufficient in that the two year timeframe will be difficult to meet. We request that this requirement be made discretionary, that the legislation reflect the total cost of the campground replacement to protect the taxpayers' interest and that the two year deadline be dropped.

Section 8[a][3] requires the Secretary to continue to operate the Oak Flat Campground for two years or until a replacement campground is constructed. The Department objects to the requirement that it operate a campground located on private lands as well as the waiver of liability for Resolution Copper. We recommend that this section be amended to reflect that the campground will only be operated by the Secretary until the land is transferred.

Section 8[c][3] identifies areas to be closed to public use upon enactment of the Act. We recommend that area closures be negotiated based on the needs expressed in mining plans of operation during the period between bill enactment and consummation of the exchange, should it occur.

Finally, we would like to work with the Subcommittee and bill sponsors on several technical changes to the bill. For example, it should be clarified that the Secretary will convey by quit claim deeds and that title to lands received by the government must meet attorney general's title standards.

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

Mr. GRIJALVA. Thank you, sir.

Let me turn to Mr. Luke Johnson, Deputy Director, Bureau of Land Management. Welcome back. You would probably be happier back here preparing questions than answering them, but nevertheless, welcome.

[The prepared statement of Mr. Holtrop follows:]

Statement of Joel Holtrop, Deputy Chief, National Forest System, U.S. Department of Agriculture

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's view on H.R. 3301, the "Southeast Arizona Land Exchange and Conservation Act of 2007."

I will limit my remarks to the provisions of the bill directly related to National Forest System lands and will defer to the Department of the Interior on provisions relating to the lands managed by the Bureau of Land Management.

H.R. 3301 is a complex land exchange bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper) certain lands and interests in the Tonto National Forest, Arizona, in exchange for private lands and funds to acquire additional lands in the State of Arizona for management by the Forest Service and the Bureau of Land Management (BLM).

The Department believes that the acquisition of the non-federal parcels to be managed in the National Forest System (NFS) would provide protection for riparian habitat and water rights, archeological sites, two miles along a permanently flowing trout stream, a year round pond and an endangered cactus species. The Department appreciates that several changes have been made to this proposal in response to previous testimony to address various concerns. In this context, the Department supports the exchange as well as the valuation provisions, and believes it is in the public interest, although some concerns remain regarding the overall bill.

The bill directs the exchange of a 3,025-acre area referred to as the "Oak Flat" parcel from the United States for five parcels of land owned by Resolution Copper: the 147-acre Turkey Creek parcel in Gila County; the 148-acre Tangle Creek parcel in Yavapai County; the 149.3-acre Cave Creek parcel in Maricopa County; the-266 acre JI Ranch parcel in Pinal County (all located within the Tonto National Forest); and the 640-acre East Clear Creek parcel in Coconino County located within the Coconino National Forest. The bill requires that, in addition to the above exchange lands, Resolution Copper shall pay $7,500,000 into a special Treasury account for acquisition of additional lands in specified areas within the State of Arizona.

The bill requires a 695-acre conservation easement for the Apache Leap escarpment on lands to be conveyed from the United States to Resolution Copper. This conservation easement would provide permanent protection for the parcel from surface disturbance and ensure future public access and use.

H.R. 3301 also directs the Secretary of Agriculture to convey to the Town of Superior, upon receipt of a request, the 30-acre town cemetery, approximately 181 acres adjacent to the Superior airport, and Federal reversionary interest in the 265-acre airport site already owned by the Town.

It is our understanding that upon completion of the land exchange, Resolution Copper would explore the possibility of developing a very deep copper mine beneath the Oak Flat parcel.

Section 4(d) of the bill requires that the exchange contemplated by H.R. 3301, will be completed within one year. The Department believes that this is insufficient time to complete all the necessary work to complete the exchange, including the development and review of a mineral report, completion of appraisals and surveys, verification of title documents, and the many environmental clearances, reviews, and the consultation with Indian Tribes required under various laws, regulations, and policy, as outlined in Section 4(e).

Section 8(a) directs the Secretary to design and construct a campground, including access routes, on the Globe Ranger District of the Tonto National Forest within two

years to replace the Oak Flat campground. Preliminary indications are that it will be difficult to find a suitable replacement site within the Globe Ranger District. We are also concerned that the $500,000 Resolution Copper is directed to pay for the replacement campground is insufficient and that the two-year time frame will be difficult to meet. We request that this requirement be made discretionary, that the legislation reflect the total cost of campground replacement to protect the taxpayer's interest, and that the two-year deadline be dropped.

Section 8(a)(3) requires the Secretary to continue to operate the Oak Flat Campground for two years or until a replacement campground is constructed. The Department objects to the requirement that it operate a campground located on private lands, as well as the waiver of liability for Resolution Copper. We recommend that this section be amended to reflect that the campground will only be operated by the Secretary until the land is transferred.

Section 8(c)(3) identifies areas to be closed to public use upon enactment of the Act. We recommend that area closures be negotiated based on the needs expressed in mining plans of operations during the period between bill enactment and consummation of the exchange, should it occur.

Finally, we would like to work with the Subcommittee and bill sponsors on several technical changes to the bill. For example, it should be clarified that the Secretary will convey by quitclaim deeds, and that title to lands received by the government must meet Attorney General's title standards. We would also like to ensure the maps described in the bill are referenced and dated properly.

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

STATEMENT OF LUKE JOHNSON, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. JOHNSON. Thank you very much. Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to testify on H.R. 3301, the Southeast Arizona Land Exchange and Conservation Act. I would like to summarize my remarks and request the full statement be submitted for the record.

H.R. 3301 provides for the exchange of a 3,025 acre parcel of Forest Service managed land in exchange for a number of private parcels and a cash payment to the Forest Service fund. In general, we defer to the Forest Service on those issues directly related to Forest Service lands.

We support the principal goals of H.R. 3301 and commend the sponsors for the changes that have been made to the legislation since last Congress in response to concerns that were raised. We would like the opportunity to continue to work with the sponsor and the committee on a number of additional modifications to the legislation.

It is our understanding the intent of the legislation is to facilitate an exchange with Resolution Copper Mine and Company who has indicated its intention to explore the possibility of a very deep copper mine near Superior, Arizona, and wishes to acquire the Forest Service parcel overlying the copper deposit as well as the subsurface rights.

The legislation provides for the exchange of a number of parcels of private land to the Federal Government. Two of the private parcels are identified for transfer to the Secretary of the Interior. The first is a 3,073 acre Lower San Pedro parcel east of the Town of Mammoth, Arizona, and straddles the San Pedro River.

The acquisition of these lands would enhance a key migratory bird habitat along the San Pedro River, and we would welcome them into BLM management. We do, however, have some management concerns surrounding the counsel we would appreciate the

opportunity to resolve. The second is the Dripping Springs parcel which presents a number of problems outlined in detail in our testimony that we would like to resolve before the bill moves forward.

We note the BLM does not currently have the resources or staff to manage a rock climbing area to replace the existing one on Forest Service lands that is expected to be displaced as a result of the exchange. Other issues requiring clarification include timing of the exchange, appraisal related provisions and the equalization of values as well as some more technical issues.

Thank you for the opportunity to testify, and I would be happy to answer any questions you might have.

[The prepared statement of Mr. Johnson follows:]

Statement of Luke Johnson, Deputy Director, Bureau of Land Management, U.S. Department of the Interior

Thank you for the opportunity to testify on H.R. 3301, the Southeast Arizona Land Exchange and Conservation Act. The legislation provides for the exchange of a 3,025-acre parcel of Forest Service-managed land in exchange for a number of private parcels and a cash payment to a special Forest Service fund. Two of the private parcels are identified for transfer to the Secretary of the Interior. In general, we defer to the United States Forest Service on those issues directly related to Forest Service lands. We support the principal goals of H.R. 3301, and we appreciate that a number of changes have been made to the legislation since last Congress in response to concerns we raised. However, we would like the opportunity to continue to work with the sponsor and the Committee on a number of additional modifications to the legislation.

It is our understanding that the intent of the legislation is to facilitate an exchange of land with Resolution Copper Mining. Resolution Copper has indicated its intention to explore the possibility of a very deep copper mine near Superior, Arizona, and wishes to acquire the 3,025-acre Forest Service parcel overlying the copper deposit as well as the subsurface rights.

The legislation provides for the exchange of a number of parcels of private land to the Federal government. We note that while the bill states that two of these parcels are to be conveyed to the Secretary of the Interior, it is our understanding that the intention of the sponsors is for the parcels to be under Bureau of Land Management (BLM) management. The parcels identified are:

- 3,073 acres along the Lower San Pedro River near Mammoth, Arizona;
- 160 acres within the Dripping Springs area, near Kearny, 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 a key migratory bird habitat along the San Pedro River, and we would welcome them into BLM management. While H.R. 3301 directs the BLM to manage the lower San Pedro parcel consistent with the management of the existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696, it specifically does not make these lands a component of that NCA. The new lands lie along the same riparian corridor, but they are at least 60 miles downstream (north) of the existing NCA, and have substantially different resource issues and needs. We recommend the lands either be designated as a separate unit of the existing NCA (with their own management guidance), or that they be managed consistent with the other lands in their vicinity under existing BLM Resource Management Plans. We understand there is a collaborative effort of stakeholders currently underway with whom we would like to work in developing the direction for the management of this area.

The Dripping Springs parcel presents several problems. The legislation proposes to transfer 160 acres in the Dripping Springs area northeast of Hayden to the BLM. The BLM is then directed in section 8(b) to transfer these 160 acres plus an additional approximately 2,000 acres of public land to the Arizona State Parks Board for the purpose of a rock-climbing area to replace a similar area currently managed by the Forest Service that is within the area to be transferred to Resolution Copper. The bill directs the transfer to Arizona State Parks at no cost as soon as the new State Park is established.

The Department can support the transfer of the existing 2,000 acres to the State of Arizona. The majority of these lands were previously identified for disposal. However, we recommend that the legislation provide for an immediate transfer of these

lands to the State without waiting for the establishment of the State Park. The BLM does not currently have the resources or staff to manage a rock climbing area to replace the existing one on Forest Service lands that would be taken over by Resolution Copper in this exchange. Therefore, since Dripping Springs has been designated as the replacement area, we urge its immediate transfer to the State so that appropriate management of the area can be arranged. In addition, we do not believe that it is appropriate for the 160-acre parcel to be a part of the Federal exchange when the BLM will simply act as a pass-through for the State. Any arrangements between Arizona State Parks and Resolution Copper should be handled outside of the Federal exchange.

H.R. 3301 also requires the BLM to provide public access to Arizona State Parks to construct a road to the new rock-climbing area. The proposed road stretches over approximately six miles of rough terrain and, in addition to crossing BLM-managed land, also crosses state and private property. The legislation would require Resolution Copper to pay up to $500,000 to the Secretary of the Interior for transfer to Arizona State Parks for the construction of the road. We believe that the funding for the road should be between Resolution Copper and the State of Arizona rather than involve the Secretary of the Interior.

Section 8(b)(2)(A) requires the immediate granting of a right-of-way across Federal lands for the road. We believe it is important to determine the appropriate route for the road through a full and open public process consistent with the provisions in FLPMA and encourage the bill be amended to allow us to do so. The BLM is happy to provide a right-of-way for the road but does not believe it should be involved in the design, payment, or construction of the road.

Other issues requiring clarification include: timing of the exchange; appraisal-related provisions; and, the equalization of values provisions. Section 4(d) of the legislation requires that the exchange be completed within one year. Based on our experience with exchanges, we do not believe that this is sufficient time for the completion and review of a mineral report, completion and review of the appraisals, and final verification and preparation of title documents. Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides the foundation for an appraisal where the land is underlain by a mineral deposit. Accordingly, adequate information for the mineral report is essential. We recommend adding a provision requiring Resolution Copper to provide confidential access to the Secretaries of Agriculture and the Interior (and their representatives) to all exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure an accurate appraisal.

Finally, we would like the opportunity to work with the sponsor and the Committee on miscellaneous technical items including maps for the areas to be exchanged. In the case of lands to be transferred to or from the Secretary of the Interior, the maps should be completed by the BLM.

Thank you for the opportunity to testify, I will be happy to answer any questions.

Mr. GRIJALVA. Thank you, sir, and let me begin.

Mr. Holtrop, I understand that an appraisal has not been completed on the lands in question in H.R. 3301, however, if based on any preliminary estimates do you expect that the lands exchange under H.R. 3301 to be of equal value?

Mr. HOLTROP. Well, as you stated, there has not been an appraisal completed to this date yet. What the bill allows for is cash equalization to assure that the equal value exchange would occur.

Mr. GRIJALVA. The one year time limit imposed on the land exchange, does that give you enough time to complete the NEPA analysis, ESA consultation, tribal consultation?

Mr. HOLTROP. We are concerned that it does not provide enough time. Even just the appraisal of the land itself can take up to a year and the mineral appraisal on top of that, and with all of the environmental review and consultation of the tribes, as you mentioned, the one year period of time does not appear to be sufficient to us.

Mr. GRIJALVA. Out of curiosity, the Eisenhower administration removed Oak Flat Campground from mining in 1955. Do you know why?

Mr. HOLTROP. The mineral withdrawal at that time was done to protect the Federal Government's interest in the capital improvement of the campground that exists there.

Mr. GRIJALVA. In the provision that allows the Secretary of Agriculture to grant a permanent conservation easement for Apache Leap to qualify as a grantees, how would you expect the Secretary to decide which grantee would receive that conservation easement?

Mr. HOLTROP. Well, as I read the bill what is required is that Resolution Copper would provide a conservation easement acceptable to the Secretary, so it is my understanding that Resolution Copper would do the process of determining who would be the grantee of the conservation easement. If that were acceptable to the Secretary that would be accepted. The bill requires that the grantees be either a government unit, a tribal unit or some land trust organization.

Mr. GRIJALVA. Today, as you know, the House will be considering H.R. 2262, the Hard Rock Mining and Reclamation Act. If the mining operation in question were left on Federal lands rather than exchanged through this legislation, how would royalty payments on the mining operation change under the legislation that is being considered today if that were indeed to become law?

Mr. HOLTROP. Well, I am afraid I am not prepared to answer that. I am not familiar with what the effect of the new bill would have on that, and because of that I don't have a position on how that would be.

Mr. GRIJALVA. On the next panel we are going to hear from tribal leaders with regard to their comments and concerns regrading the legislation. Has the Forest Service engaged in any discussions with the tribes in question regarding this exchange?

Mr. HOLTROP. Yes, we have. We have been involved in informal discussions. As I understand it, the Tonto National Forest has been working with eight or nine different tribal entities in informal discussions as we were finding out information about the proposed exchanged.

There has been visits to the sites with the tribes to look at the various heritage sites and protection that would be necessary and mitigation measures that might be necessary, but until there is a firmed up Federal action there has not been formal consultation at this stage yet.

Mr. GRIJALVA. One question for Mr. Johnson. The provision in the legislation directs the establishment of a replacement climbing park due to the loss of that activity to the Oak Flat parcel. Should the deal to have this area managed as a state park fall through would BLM be able to manage this area, the climbing park?

Mr. JOHNSON. Well, as you know, Mr. Chairman, the BLM is presently managing the Dripping Springs land, the parcel that you referenced. Because of the added attention that has come to that particular area since then, the BLM certainly is aware that there has been an increase in usage in that site, although the BLM is not managing it for that particular use at this time.

If a road were to be constructed under the legislation we would expect that there would be a substantial increase in visitation there. It should be known that the BLM does not presently have the staff or the resources to manage it consistent with the expectations that might come with that site. The BLM would hope that the arrangement outlined in the legislation for the state to take ownership of that and the BLM to transfer ownership of those acres to the State of Arizona would be the ultimate outcome.

Mr. GRIJALVA. Let me turn to Mr. Bishop. If we have another round I have just one additional question.

Mr. Bishop?

Mr. BISHOP. I have only one question for either Joel or Luke. The Oak Flat Campground area that was set aside back when I was I think three, no one has been able to tell me why that was set aside. Do either of you know?

Mr. HOLTROP. It was set aside to protect the Federal interest in the capital improvement of the campground.

Mr. BISHOP. Do you know any more about why they did that, though? I mean, is that the sum and substance of why it was set aside?

Mr. HOLTROP. My understanding that was the sum substance of why that was set aside. It is not uncommon I don't believe when there is a Federal improvement on a parcel that a mining interest would create a difficulty of us continuing to protect that improvement to do a withdrawal in that case.

Mr. BISHOP. Was this action done in isolation or was it part of a larger approach of dealing with making some kind of land arrangements within the State of Arizona?

Mr. HOLTROP. I don't know the answer to that. I would be happy to try to find that out and get back to you later.

Mr. BISHOP. Thank you. That is it.

Mr. GRIJALVA. Mr. Flake?

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. Holtrop, can you comment a little on the ecological value of the lands being transferred to the Federal Government as opposed to the lands that you relinquish control over?

Mr. HOLTROP. There is some significant ecological values as to the land that would be coming into the National Forest System lands. There are watershed values in an area of course where water is a very important resource, some of the lands have an endangered cactus species associated with them, there is two miles, a free flowing stream associated with some of them, and so there is high ecological values. Those are just some of those values.

Mr. FLAKE. So as far as cash value it is net wash as it always is, but ecological value, the Federal Government is getting a pretty good deal?

Mr. HOLTROP. There are significant values that are associated with the properties that we would be receiving, and there obviously are significant values associated with the Oak Flat parcel as well. The valuation would be based on economic values.

Mr. FLAKE. Right, but the ecological value here is one of the reasons that the Forest Service, and BLM and others are supporting this exchange?

Mr. HOLTROP. The position of us being in support of it is based on a recognition of the values associated with the parcels that we would be receiving which are significant, and there would be further analysis done as we went through this process to further ascertain those values.

Mr. FLAKE. Right. Thank you.

Mr. Johnson, you mentioned that the legislation should be amended to compel Resolution Copper to provide, you know, mineral information for the purposes of appraising the land. Is that common or is this setting new precedent?

Mr. JOHNSON. I think that the necessity of having the full information and that information at the disposal to BLM is part of what would be a standard for preparing that information and assessing what the mineral values would be.

Mr. FLAKE. My guess is that information is not often available. What happens when it is not there?

Mr. JOHNSON. Well, in this particular case it is my understanding that with the proponent the BLM would be serving in the role while the Forest Service would prepare the mineral report, would review that and would want access to that to be able to ensure that the mineral values were fully assessed and to ensure that the taxpayer was receiving an equal exchange and an equal outcome in the exchange.

Mr. FLAKE. All right. Thank you.

Mr. GRIJALVA. Thank you, sir. I will forward the opportunity to my colleagues.

One follow-up question, Mr. Holtrop, because as the question came up earlier. Elaborate on some of the questions or concerns that you might have regarding the relocating of the campground.

Mr. HOLTROP. There are going to be some difficulties with finding a suitable location for an additional campground or a new campground on the Globe Ranger District. We have looked at three different sites to date. Each of those sites have different issues associated with them. They have issues of access, they have issues around hazardous materials from prior mining activities, there are issues with private land neighboring some of those campground sites.

The site that we feel best about at this point has some of those concerns but has a significant access issue associated with it where we would probably have to construct about a mile of road in order to get to the campground site. So those are some of the issues that we are dealing with. Then the additional concern that my testimony raised was the concern that the $500,000 would be insufficient to pay for the cost of the construction of that site.

Mr. GRIJALVA. Thank you.

Mr. Flake?

Mr. FLAKE. Just a follow-up to that. You mentioned that two years is insufficient and $500,000 is insufficient. Rather than leaving it open ended, do you have a realistic estimate in terms of both time and cost?

Mr. HOLTROP. I believe a more realistic estimate of cost when you consider of course we would have to do the environmental analysis and determine the site and that could change the cost considerably, but if we were to go to the site that currently appears to

be the best, if there were the need for a road to be constructed to the site the road itself would be over $1 million in cost.

The average cost for every camp unit on the Tonto National Forest over the past several years has been nearly $40,000 per unit. The campground that we are giving up is about a 19 site campground, so the cost of the development of the campground itself would be close to $700,000. When you include the environmental analysis and some of the other things, $2 million might not even be enough, but that might be a more reasonable estimate.

Mr. FLAKE. Thank you.

Mr. GRIJALVA. Let me thank the witnesses. Appreciate it very much. If there is additional questions we will provide those in writing.

With that, let me call the next panel up. Thank you very much, and I appreciate you being here. Let me begin this panel with Raphael Bear, President, Ft. McDowell Yavapai Nation.

Mr. President?

STATEMENT OF THE HON. RAPHAEL BEAR, PRESIDENT, FT. McDOWELL YAVAPAI NATION

Mr. BEAR. Thank you very much, Mr. Chairman, members of the Subcommittee. Thank you for the opportunity to appear before you today on H.R. 3301. My name is Raphael Bear, I am the President of the Ft. McDowell Yavapai Nation located in Ft. McDowell, Arizona.

We recognize the increasing global demand for copper has resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. Resolution Copper Company, or RCC, is proposing to mine a deposit estimated to be worth in the tens of billions of dollars. However, we believe the feasibility of this mine, the equalization of the exchange, environmental damage along with the potential economic benefits as purported by RCC have not been fully or fairly appraised or analyzed.

We are extremely concerned that the mine will cause irreparable harm to the environment. In conveying Federal land to the private entity, RCC will be effectively exempt from NEPA or other environmental protections. Furthermore, provisions for reclamation in the 1872 Mining Act are inadequate and the Surface Mining Control and Reclamation Act of 1977 are not applicable for copper mining.

Our paramount concern is where and how will tailings and overburden be relocated. 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 40 years of mining, much of it which will contain a number of toxic substances.

Will unspoiled canyons be sacrificed to store this material? Thus, in the absence of truly meaningful Federal laws regulating copper mining who will make determinations of what land will be sacrificed, land that the Yavapai hold so dear?

Added hydrologic studies are needed to determine how aquifers and water in this region will be affected. For example, groundwater pumping will dewater natural springs in riparian areas such as Devils Canyon. These areas are not only hydrologically significant

but are sacred to the Yavapai people and will be lost forever as a result of groundwater pumping.

Although a conservation easement would provide protection for Apache Leap from surface disturbance dewatering of the tunnels would cause a serious draw down of the water table of the region and result in subsidence in and around the Leap. Additionally, if financial conditions prove this mine impractical what guarantees are there to assure water will be replaced back into the aquifer prior to mine closure?

Thus, before this legislation moves forward we request that the Secretary of Agriculture be directed to commission and independent third-party analysis of the hydrologic and engineering reports that evaluate potential impacts of the area. Underscoring our concerns are Arizona's mining laws. RCC will probably spend little in bonding to underwrite either the cost of remediation during mining operations or upon mine closure.

Typically self-bonding or corporate guarantees are all that is required. The impacts of sulfuric acid and other contaminants from lead solutions and other processing with copper are well-documented. However, mining companies in Arizona have been known to walk away from their clean up obligations.

For example, Asarco Mining Company recently declared bankruptcy. The cost of remediating their mines are reported in the hundreds of millions of dollars. This region is tied to our cultural and religious heritage as it is our ancestral territory. I cannot express in words how deeply felt this sacred area is to my people. It simply transcends words.

This exchange weakens or renders unenforceable current Federal Indian protection laws such as National Historic Preservation Act, or NHPA. Thus, how will the Yavapai cultural heritage or resources, whether tangible or intangible, be preserved or protected?

Ultimately, damage that will result from this mining operation cannot be mitigated simply by placing a dollar value on it or by exchanging it for some other land that is far from the area of concern. Thus, at this time we believe that there are too many unresolved serious issues that could be fully addressed prior to congressional approval.

Mr. Chairman, members of the committee, on behalf of the Ft. McDowell Yavapai people I thank you for the opportunity to express our deep concern regarding this proposed legislation. Thank you very much.

Mr. GRIJALVA. Thank you, Mr. President.

Let me now turn to Wendsler Nosie, Chairman, San Carlos Apache.

Mr. Chairman?

[The prepared statement of Mr. Bear follows:]

Statement of President Raphael R. Bear, Fort McDowell Yavapai Nation

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Raphael Bear, I am the President of the Fort McDowell Yavapai Nation located in Fort McDowell, Arizona. I have been invited to testify today on the proposed Southeast Arizona Land Exchange legislation, H.R. 3301, that will authorize and direct the exchange and conveyance of National Forest and other land in central and southeast Arizona. My comments, both written and oral, will specifically address and provide evidence as to why this proposed min-

ing operation causes great concern to the People of the Fort McDowell Yavapai Nation.

We recognize the increasing global demand for copper has resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. This includes a large undisturbed ore body beneath the original Magma Mine and about 7000 feet below Apache Leap (1000 ft below sea level), as well as Oak Flat and Devils Canyon, just east of Superior, AZ. The Resolution Copper Company, herein referred to as RCC, is exploring the feasibility of mining this deposit estimated to be worth in the tens of billions of dollars. The proposed House and companion Senate bill (S. 1862), directs the Secretary of Agriculture to convey and dispose of 3025 acres within the Tonto National Forest (FS) including the Federally Protected Oak Flat Campground. This would exchange land from Federal to private property—property that was once inhabited by the Yavapai People. Given the current economic conditions our country and the State of Arizona are facing, this type of endeavor with the potential to generate millions of dollars in tax revenues could be looked on favorably. However, the feasibility of the mine, the equalization of the exchange, the environmental and cultural losses, and potential economic benefits as purported by RCC has not been fully or fairly appraised or analyzed.

At this time, the Congressional Budget Office (CBO) and /or Office of Management and Budget (OMB) cannot truly evaluate the exchange as the Federal government has yet to perform a substantive economic evaluation of the land that houses the copper and other minerals. We believe that appraisal-related provisions and the equalization of values provisions are needed prior to Congressional passage. As H.R. 3301 is drafted, all mineral deposits within the Federal parcel are not accounted for in the evaluation. As of today, RCC asserts that there may be over 24,000,000 tons of copper (600,000 tons per year for 40 years). In today's market, that would translate to roughly $150 billion. Thus, the Federal parcel is orders of magnitude greater in value than that of the non-federal parcels selected for exchange. The mineral report is an essential step toward an appraisal of the Federal parcel and therefore critically needed to assure the parity of the land exchange. However, section 4(d) of the legislation requires that the exchange and other critical documentation be completed within one year after congressional passage. We do not believe that this is sufficient time for the completion, analysis, and review of a mineral report and appraisals. Once RCC has completed their evaluation and analysis, we call for an independent, 3rd party review of the engineering reports for this operation. This must be accomplished in consultation with all affected parties, including the Fort McDowell Yavapai Nation, prior to this legislation moving forward. At this time, relying on the RCC current engineering report or the Department of Agriculture review of this report is insufficient. On a monetary level, RCC financially recoups all mineral profits at the expense of the public making such an exchange grossly disproportionate.

Oak Flat is a major piece of this land exchange. In 1955, Oak Flat campground was recognized by President Eisenhower as an important U.S. resource. This area was specifically withdrawn from mining activity when the he signed Public Land Order 1229. I will not expound on reversing President Eisenhower's decision as others before me have either testified or documented the significance of this region. However, when designated lands are legally protected from future anthropogenic disturbances, in this case mining activity, then congressionally reversed, any assurances that other Federal land that is deemed culturally important or environmentally critical is also in jeopardy. Thus, this exchange sets a dangerous precedent.

As past stewards of this land, we are deeply concerned that the mine will cause irreparable harm to the environment including, but not limited to, contaminating scarce water supplies, decimating the land base directly through mining practices and post mining subsidence, destroying habitat for endangered species, and causing massive surface damage. The bill does not specifically direct the Secretary of Agriculture to perform or have performed in-depth, critically needed environmental studies and analysis of the mining operation. RCC will be effectively exempt from National Environmental Policy Act (NEPA) and any opportunity for public involvement afforded by NEPA. The NEPA process mandates analysis and disclosure of environmental impacts, allowing all affected parties and decision-makers to review and comprehend the risk assessment. The Yavapai People are a critically affected party in this legislation. As such, the Secretary of Agriculture must direct RCC to provide full disclosure of all pertinent environmental information regarding the mining operation, including a substantive mining and reclamation plan prior to congressional mark-ups.

Currently, there are no stringent mining laws that govern copper mining. Provisions for reclamation in the 1872 Mining Act are inadequate and the Surface Mining

Control and Reclamation Act of 1977 is not applicable for copper mining. The majority of environmental protections that these Federal lands are currently afforded are through federal law but many may become inapplicable once the exchange becomes law. Our paramount concern is where and how will overburden and tailings be relocated? 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 100,000's of tons of material generated per day for the 40 years of mining. Much of this material will contain an array of toxic substances. Will unspoiled canyons be sacrificed to store this material? Furthermore, technologically enhanced naturally occurring radioactive materials (TENORM) are waste elements within stockpiles that release toxins into the environment. Subterranean toxic metals pose little harm to human health. However, when brought to the surface, stockpiled, exposed to the air, and subjected to various technological processes, there is a potential for adverse effects to humans. This is particularly true in Arizona where there are abundant deposits of radioactive metals and poisonous arsenic. Thus, in the absence of truly meaningful Federal laws regulating copper mining, who will make determinations as to what lands will be sacrificed—land that my People hold so sacred? We must be consulted and allowed to participate in the process.

Once the land is conveyed, under the mining laws of the State of Arizona, RCC will probably not be required to expend cash to post a bond to underwrite either the cost of remediating toxic spills during their mining operations, or for their pollution clean-up upon mine closure. Typically, self-bonding or corporate guarantees are all that is required. The impacts of sulfuric acid and other contaminants from leach solution are well documented and thus I need not elaborate. However, in Arizona, mining companies who declare bankruptcy leave behind large clean-up obligations. For example, Asarco, which owns many mines in Arizona, declared bankruptcy and was reported to have left 100's of millions of dollars in clean-up costs. Thus, a greater level of financial responsibility should be mandated as there is much risk associated with this projectq

As related in previous public testimony on earlier versions of this bill, a major scientific concern relates to groundwater pumping as it will de-water this region. Riparian areas and natural springs such as Devils Canyon are not only hydrologically significant but are sacred to the Yavapai People and will be lost forever as a result of groundwater pumping. Although a conservation easement would provide protection for Apache Leap from surface disturbance, dewatering of the tunnels will cause a serious drawdown in the water table of the region and will result in subsidence in and around the Apache Leap. Further required investigations vis-à-vis water must also address:

- What empirical and realistic predictions are made for long-term water-use over the 40 plus years of mining? Has the long-term availability and sustainability of water use been assessed?
- How will dewatering of the mine be executed? Will water removed from the shafts prior to copper removal be stored? How will water be replaced in an environmentally safe and effective way after ore is removed?
- If during the course of mining operations, financial conditions prove this mine impracticable, what guarantees will be made to assure that water will be replaced back into the aquifer?

By conveying the land from public ownership to a private entity, much of the permitting process, particularly regarding clean water, is effectively removed. For example, if one looks at recent federal court rulings concerning private property across the U.S., Sections 402 and 404 of the Clean water Act have often been rendered unenforceable (Section 402—National Pollutant Discharge Elimination System; Section 404—regulates the discharge of dredged and fill material into waters of the United States, including wetlands). Thus, what safeguards will be congressional mandated to prevent water contamination or a decrease in quality that will/may result due to either direct or indirect discharge or result from this type of mining technique?

In essence, feasibility and economic studies in regard to water have not been fully addressed. Furthermore, given the on-going long-term drought and resulting potential water shortages within the State, including the Colorado River (BOR Colorado River Water Shortage Criteria Documentation, 2006-7) it is imperative that long-term strategic projections and economic data substantiate that water for mining purposes is the most beneficial use for the State as a whole. Thus, before this legislation moves forward, we request that the Secretary of Agriculture be directed to commission an independent, 3rd party analysis of the hydrologic and engineering reports that evaluate potential impacts of the entire area including Devils Canyon and Apache Leap. This analysis must be in direct consultation with the Fort McDowell Yavapai Nation.

Mining will also impact lands that are tied to our cultural and religious heritage as this region is part of the Yavapai ancestral territory. As stated earlier, many federal protections will be removed from this land. Hence, 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.) that are designated to protect areas important to Native American's may be inapplicable or unenforceable. As stated above, dewatering, land subsidence, polluting of the land and water; all of these activities will desecrate this sacred area. I cannot express in words how deeply felt this land is to the Yavapai—it simply transcends words. Damage that probably will result from this project cannot be mitigated simply by placing a dollar value on it or by exchanging it for some other land that is far from the area of concern. Specific questions that must be addressed include, but are not limited to, the following:

- What, if anything, in this legislation will account for Yavapai cultural resources in the area? Given the extent of land that will be needed for all mining operations, what federal authority will statutorily assure that cultural assessments of the entire area will not just represent a "cursory review"? How will all collected data—raw and published—be disseminated to the Yavapai? What provision will ensure that this information will not become public domain so that culturally sensitive and sacred areas will not be subject to vandalism?
- Where will material be housed if removed from the site? Storage or dissemination of materials must be formally and legally agreed to by the Fort McDowell Yavapai.
- What language in the bill is the federal government proposing to assure that Yavapai cultural heritage, whether tangible or not and regardless of lineage, is going to be preserved in such a way that it meets with our approval?
- As the bill is currently written, the Native American Graves Protection and Repatriation Act (NAGPRA) may not be applicable once the land is conveyed. Therefore, what language will be added to assure the protection or removal of sacred burial sites will meet with our approval?

In summary, the language of the bill, as currently drafted, does not adequately address: 1) the mineral report and appraisal of the Federal parcel to assure the parity of the land exchange; 2) the weakness of Federal and Arizona's current statutes or laws governing copper mining; 3) the lack of an extensive mining plan, reclamation protocol, or bonding assurances; 4) groundwater and surface water issues; 5) subsidence issues; 6) the need for a third party, independent Environmental Impact Statement on the entire mining operation; and 7) Federal environmental and cultural protections afforded public lands are no longer applicable once the land is conveyed. We have additional concerns but many are addressed in Governor Napolitano's letter of August 24, 2007 outlining very specific economic, environmental, and cultural omissions in the current bill. The San Carlos Apache Tribe has also expressed many of these very same concerns. Other Arizona Tribes have articulated their grave trepidations on this bill and provided documentation under separate cover. 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.

STATEMENT OF THE HON. WENDSLER NOSIE, CHAIRMAN, SAN CARLOS APACHE

Mr. NOSIE. Chairman, first I would like to introduce myself. I am Wendsler Nosie, Chairman of the San Carlos Apache Tribe. I also have Jonathan Kicheon, council member, and also, Leon Anderson, who is a former veteran, also here for the first time. I would like to thank you. I, again, thank you for the opportunity to give us an opportunity to speak freely and to be open with you of our concerns.

Not reflecting so much on my relative to my right, Mr. President Bear, of the concerns he expressed which is also in my written testimony I would like to say that first, the biggest part that I hear

not being discussed is the religious aspect of the place to the people, the first people of this nation.

It concerns us at the most highest because of the reflection that it would give to the identity of who we are as native people. Oak Flat is a place where a blessed gift was given to the people about morals, and ethics and how to maintain the Earth. That is the biggest part that is missing within this consultation that we speak of because who gives the right for anyone to tamper with any other person's religion rightfully to practice?

In this history it is a known fact, the history of America, that Native Americans have been put aside and not recognized on their religious belief. Our religious belief is who makes us who we are which makes this North America very unique because God had given a blessed gift here that in so many ways we try to express and we try to share.

There was a question brought up earlier of Eisenhower. Here sits before me a feather off a feather that was given to President Eisenhower of the uniqueness of Oak Flat. In those days from what I understand at least the President and the committee members at that time spoke with the native people to realize the importance of the religious aspect of that area and with the people who had suffered, who had given their sacred life, their soul, by leaping to their death because of what was to come to them of a change that no one understood.

It was important to them to maintain who they were and who they are. Those chose that life by jumping and giving their life to sacrifice it for the future, which today for us it lives in us every day, every hour, every second. With all the people who lived in that area and were prisoners of war in San Carlos and not given the opportunity to go back, even though we resided in San Carlos, we were never given the opportunity to go back to our homelands.

So as you can see, a lot of our elders today feel with inside them the hurt, the abuse, and to have to maintain where we are at to reach out to Oak Flat and to those areas of what was significant importance to us in a spiritual way of life. So it is really devastating when you look on the religious part of it.

In America a lot of words that were defined in trying to define the Apache language is really not true because what we are talking about when we say crown dancers or devil dancers, those are angels, no different than any other religion that practice about what angels are.

The crown of the head represents the halo, and all the marking within that represents everything that was given from the creator, God, who is known throughout the world by many names that were given to us, which makes this place very significant to us, and never being allowed to go back to practice who we are but to sneak there and to be able to do it.

Water. Now, when we speak of water, water is for everybody today. We realize that the world isn't going to change to allow us to be who we are, but now today speaking on behalf of not only Native Americans but speaking for the people that live in that area, water, Arizona doesn't have water. What we have there is water to the future.

With this kind of mining, it is going to pull everything to one place and contaminate the water. What is really left for Arizona? Those of you who call yourself Arizonans should know that because it is important that we keep Arizona alive with what we have.

Health concerns. A big issue. I have been telling this since Superior Globe Miami that just look at the gravesites, the cemetery. Many of those people lost their lives on account of their health with mining. Right now there is no check and balance, so what we see to the future is more devastation. When it comes to health, a lot of people are going to be diagnosed with cancer and everything else that it brings. So this is one of the great warnings that we are bringing out to the people that is very important.

The future. Man, if we have a future at all we have to say no to this bill. I am asking the committee to kill this bill because if there is a future for Arizona it comes back to the water, the spirit of Arizona. If we are Arizonans, then we know that is important. Now, from what I understand a lot of these companies are from foreign countries which would lead the other side of the world.

This is America. We should make that decision ourselves. We should learn from what has happened in the other part of the world to know that what we need to do here, and it is to keep America the way it is and to learn from each other so that we can better America.

But, again, like I said, I am just asking on behalf of all the tribes, White Mountain, Camp Verde, Tonto, Hualapai, and Hopi and with my relative to my right, that we kill this bill because for the betterment of Arizona, and for the betterment of our people and the generations that are yet to be born which is very important. Thank you.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Now, let me turn to Mr. John Rickus, President, Resolution Copper. Welcome, sir.

[The prepared statement of Mr. Nosie follows:]

Statement of The Honorable Wendsler Nosie, Sr., Chairman of the San Carlos Apache Tribe

My name is Wendsler Nosie Sr. I am Chairman of the San Carlos Apache Tribe. Thank you for the opportunity to submit testimony to the Subcommittee on National Parks, Forests and Public Lands concerning the Southeast Arizona Land Exchange and Conservation Act of 2007 (H.R. 3301).

The Tribe is submitting this testimony to express its strong opposition to the legislative land exchange proposed by H.R. 3301, which would allow foreign owned mining giants, Rio Tinto PLC (UK) and BHP Billiton Ltd (Australia), to desecrate the aboriginal homeland of the Apache People and acquire and mine approximately 3,025 acres of public lands near Superior, Arizona. H.R. 3301 would also bypass the "hard look" required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA) and other important environmental and cultural resource protection laws.

The lands to be acquired and mined by Rio Tinto and BHP Billiton under H.R. 3301 are referred to by non-Indians as Oak Flat and Apache Leap. These lands are sacred and holy places. So too is the nearby area known as Devils Canyon which also will be desecrated if this legislative land exchange is approved. The Apache People, as well as other Native Nations in Arizona and elsewhere, including the White Mountain Apache Tribe, the Yavapai-Apache Nation, the Tonto Apache Tribe, the Hopi Tribe, the Hulapai Tribe, and the Mescalero Apache Tribe in New Mexico, are compelled to oppose H.R. 3301, not only for our People, but for all of the people who pray that the unique features and habitat of Oak Flat, Apache Leap, and Devils Canyon will continue to be preserved for future generations.

The Holy and Sacred Sites of Oak Flat, Apache Leap and Devils Canyon

Well before Oak Flat, Apache Leap, and Devils Canyon were appreciated for their unique habitat and features by hikers, bird watchers, off-road enthusiasts, and rock climbers, these Lands were home to the Apache People. In our native language Oak Flat is called Chich'il Bildagoteel, and it lies in the heart of T'is Tseban country. The Oak Flat area is bounded in the east by Gan Bikoh or Crown Dancers Canyon, and in the north by Gan Diszin or Crowndancer Standing. These canyons are called "Devils Canyon" and "Queen Creek Canyon" by non-Indians.

For as long as may be recalled, our People have come together here. We gather the acorns and plants that these lands provide, which we use for ceremonies, medicinal purposes, and for other cultural reasons. We have lived throughout these lands, and the Apache People still come together at Oak Flats and Apache Leap to conduct religious ceremonies and to pray or take rest under the shade of the ancient oak trees that grow in the area. The importance of these lands has not changed. These are holy, sacred, and consecrated lands which remain central to our identity as Apache People.

In the nearby area called Devils Canyon, we have placed marks, which are symbols of life on Earth, on the steep ledges and canyon walls that rise high above the stream that has carved deep into the Canyon, and we buried our ancestors in the Canyon's heart. The escarpment of Apache Leap, which towers above nearby Superior, is also sacred and consecrated ground for our People for a number of reasons, many of which are not appropriate to discuss here. You should know, however, that at least seventy-five of our People sacrificed their lives at Apache Leap during the winter of 1870 to protect their land, their principles, and their freedom when faced with overwhelming military force from the U.S. Calvary which would have required them to surrender as prisoners of war.

The traditional cultural significance of these lands, as well the presence of other historic sites on the lands of Oak Flat and Apache Leap, and in Devils Canyon, render these landscapes and sites eligible for inclusion on the National Register of Historic Places under the National Historic Preservation Act, 16 U.S.C. § 470 et seq. (NHPA). Yet, allowing Rio Tinto and BHP Billiton to acquire and mine these lands through the legislative land exchange proposed by H.R. 3301 would destroy the cultural and historical significance of these lands under the NHPA, and desecrate this place of profound religious importance for our People. Rio Tinto and BHP Billiton ask Congress to approve this exchange for the single-minded purpose of providing the best possible profit to the shareholders of two foreign mining companies, which have no identity or loyalty to the United States, and which will suffer no adverse consequences for their profit.

The Apache People cannot, under any circumstances, support this result, especially where the devastating impacts from the mining activities to be conducted on, around, and deep underneath this sacred place will be felt forever once the mining is finished, leaving our future generations to suffer the legacy of damage left behind.

If enacted, H.R. 3301 would bypass the laws enacted by Congress for federal land exchanges. Congress has insisted that the normal administrative land exchange process must include Tribal consultation, meaningful public input, and close scrutiny of the proposed exchange and mining project under NEPA and other environmental and cultural resource protections laws, including, but not limited to, the NHPA, the Endangered Species Act, 16 U.S.C. § 1531 et seq. (ESA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq. (NAGPRA), the Archaeological Resources Protection Act, 16 U.S.C. § 470aa et seq. (ARPA), and the American Indian Religious Freedom Act 42 U.S.C. § 1996 et seq. (AIRFA). In addition, the federal decision makers would have to consider less harmful and environmental damaging alternatives. The rationale and justification for this special legislative land exchange has never been explained by the supporters of H.R. 3301.

The Unique Environments of Oak Flat, Apache Leap, and Devils Canyon Are An Important Refuge for Plants and Animals and a Place of Peace and Solitude for Its Visitors

Since time immemorial, our People have understood the unique beauty and importance of Oak Flat, Apache Leap, and Devils Canyon. In more recent history, the importance of these lands has been recognized by scientists, biologists, and outdoor enthusiasts. Tourists from Arizona, and indeed, all over the world, travel to this unique region of Arizona to see and experience the beauty of these places.

Deep pools of water are captured at the bottom of Devils Canyon as it slices through the high desert on its way to Mineral Creek and eventually to the Gila River. These pools provide a cool and safe home for a diverse number of plants and animals. The region, like all of Arizona, is suffering under a long period of drought.

The water which still courses through Devils Canyon has become a precious ribbon of life. The Canyon provides some of the last suitable habitat for a large number of animal and plant species—species that can no longer find refuge in other riparian areas in Arizona, as these areas can no longer be counted on to provide the most important element of life for all beings—water.

The flows in Devils Canyon and throughout the region, will be depleted and subject to contamination if Rio Tinto and BHP Billiton acquire the lands of Oak Flat and Apache Leap through the land exchange proposed by H.R. 3301. Given the fragile state of Arizona's water supply, certainly these concerns should be subjected to close scrutiny through the normal environmental review process established by Congress in NEPA and other environmental laws. These protections would be bypassed by H.R. 3301.

Oak Flat and Apache Leap sit at an approximate elevation of 4,200 to 4,600 feet above sea level, making it a cool respite for travelers from Phoenix who visit the area as Highway 60 skirts Oak Flat Campground before running through Devils Canyon. The campground and picnic area at Oak Flat are surrounded by large boulders and towering outcrops, while in the campground and picnic area below, ancient oak trees provide shade for hikers, campers and picnicking families, and give crucial sanctuary for many important bird species—a fact that has been well documented by local Audubon societies.

The unique and sensitive ecosystem of Oak Flat is not only fertile ground for medicinal plants and herbs essential to the cultural and religious practice of the Apache People, but the endangered Arizona Hedgehog cactus (Echinocereus triglochidiatus var. arizonicus), which is listed under the Endangered Species Act, also inhabits the Oak Flat area. Other threatened and endangered species are known to be in the area as well, including the Lessor long-nosed bat and the Chiricahua leopard frog. Under H.R. 3301, however, the land exchange and resulting mining project could be constructed and operated without compliance with the federal consultation requirements required by the Endangered Species Act.

The importance of Oak Flat was recognized in 1955 when, through the efforts of the Eisenhower Administration, 760 acres of Oak Flat, known as "Oak Flat Campground", were withdrawn from all forms of appropriation, including mining, under the public land laws through Public Land Order 1229 (PLO 1229). This was done despite the fact that Oak Flat Campground was already located in the heart of an active mining district. Since this time, mining interests have attempted to push back or set aside the protections for Oak Flat found in PLO 1229 on several occasions. Despite strong pressure, federal decision makers have consistently rejected such attempts, choosing instead to preserve the important values of Oak Flat for future generations. There is no justification for Congress to abandon its responsibility to protect these treasured lands today.

The protections for Oak Flat mandated by PLO 1229 remain just as valid today as when they were first issued in the 1950s. If these lands are exchanged by H.R. 3301, and acquired by Rio Tinto and BHP Billiton for their mining purposes, the unique values of Oak Flat will be destroyed forever. Despite this fact, H.R. 3301 fails to provide any legal basis or justification for Congress to override the legal authority of this important public land order.

Overview of the Resolution Mining Project to Be Facilitated by H.R. 3301

The details of Rio Tinto's and BHP Billiton's plans to mine the Oak Flat and Apache Leap Area are not fully known. Although a mining plan would normally be required if the exchange was conducted pursuant to the requirements of an administrative land exchange and the Federal Land Policy Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), such a plan has not been publicly released. In addition, the exact location of the proposed project footprint and the lands to be acquired by Riot Tinto and BHP Billiton have never been disclosed.

H.R. 3301 references a map titled "Southeast Arizona Land Exchange and Conservation Act—Federal Parcel—Oak Flat" dated January 2005, as the description of the approximately 3,025 acres of land located in Pinal County, that Rio Tinto and BHP Billiton would acquire from the Tonto National Forest for their mining operations, which includes the 760 acres of Oak Flat Campground, as withdrawn by Public Order No. 1229. See H.R. 3301, § 3(3). It is significant that Rio Tinto and BHP Billiton have not made the legal description or map of the lands which they are asking Congress to give them through H.R. 3301 readily available for public review. To the knowledge of the Apache Tribe, these companies also have not made the legal description or map of these lands readily available to Congress along with the proposed legislation.

In addition, H.R. 3301 describes a 695 acre "conservation easement" area for Apache Leap, within the 3,025 acres of federal land that would be acquired by Rio

Tinto and BHP Billiton, as depicted on a map titled "Apache Leap Conservation Easement Area," dated November 2006. Again, the companies have not made this map or the legal description of the 695 acres of lands in this conservation easement area readily available to the Apache Tribe or public, and quite possibly Congress. While the Apache Tribe objects to this "Apache Leap Conservation Easement Area" because it will not in fact protect this sacred and holy place of the Apache People, we also object because both the Tribe and the public have not been provided full disclosure of the boundaries and location of these lands.

Although (a) the precise location of the lands to be acquired and mined are unknown; and (b) the details of Rio Tinto's and BHP Billiton's mining plans for Oak Flat and Apache Leap have not been disclosed, the following aspects of the project seem clear, based upon the limited explanations of the project recently made available on the website of Resolution Copper, Resolution Copper Mining, LLC (Resolution Copper) (the named joint venture of Rio Tinto and BHP Billiton) see www.resolutioncopper.com, (last visited 10/25/2007), as well as a review of certain permit application documents submitted to Arizona Department of Environmental Quality (ADEQ) by Resolution Copper:

- Resolution Copper is a joint venture of Rio Tinto and BHP Billiton. Resolution Copper is the successor in interest to Magma Copper Company (and certain earlier mining interests) which previously conducted copper mining in the area proposed for the Resolution Copper project, including in the area just west of Oak Flat and near Superior, Arizona. While a large mine shaft (known as Shaft No. 9) was drilled in 1973 after a massive copper ore deposit was discovered approximately 7,000 feet below the surface of the ground, the large copper ore deposit was never developed.
- After Resolution Copper was formed by Rio Tinto and BHP Billiton, the foreign mining giants turned their attention to whether, and by what means, the massive copper ore body located somewhere below Oak Flat could be extracted from deep within the earth. Despite the incredible opportunity for profit the ore body represents, they quickly settled on one of the oldest, cheapest, most dangerous, and environmentally damaging mining methods available in the industry today. This method is known as block-caving. By using this method, Resolution Copper's own website reveals that they could extract up to 600,000 metric tonnes of saleable copper from the mine every year for at least 40 years before the ore body would be exhausted.
- Under today's copper prices, listed on the London Metal Exchange on 10/25/2007, the saleable copper extracted from these public lands (if these lands are exchanged to Rio Tinto and BHP Billiton), would have a value of around $185.6 Billion Dollars. The appraisal requirements of H.R. 3301 do not adequately ensure that the public will receive fair value for these minerals.
- Through block-caving, Resolution Copper would develop a series of tunnels deep below these sacred lands, and directly below the massive ore body, which is located, in part, underneath Oak Flat and Apache Leap. Using blasting and other techniques over the 40+ years of the mine, Resolution will break up and remove the ore body from the ground for further processing, creating an enormous void in the Earth that will eventually collapse in on itself, causing significant surface subsidence throughout the project area, including at Oak Flat and Apache Leap, and possibly Devils Canyon, Highway 60, and elsewhere. It is unknown if closure plans for the project have been prepared for the Resolution Copper Project.

The Resolution Copper Mining Project Will Result in Massive Surface Subsidence and the Desecration and Destruction of the Oak Flat Area, Apache Leap, and Devils Canyon Despite the Proposed "Conservation Easement" Inserted in H.R. 3301

Under the normal requirements for a land exchange in accordance with NEPA and FLPMA, Congress would require federal decision makers to conduct interdisciplinary studies and closely scrutinize the inevitable surface impacts of the mining project on Oak Flat, Apache Leap, and nearby Devils Canyon. They would be required to consult with the Apache Tribe and interested members of the public throughout the process, and would have to consider the impact of the surface subsidence on the many eligible sites and landscapes found in this area as required by the NHPA and other laws. They would also be required to evaluate the effect of surface subsidence on the traditional cultural and religious elements of this landscape for the Apache People. Rio Tinto and BHP Billiton seek to have Congress exempt them from all of these important requirements of the law through H.R. 3301.

The Apache People do not accept the purported "conservation easement" found in Sec. 6 of the proposed legislation as a substitute for the complete protection of Oak Flat, Apache Leap, and Devils Canyon. The holy and consecrated nature of these

places are not embodied solely in the physical feature known as Apache Leap. Oak Flat and nearby Devils Canyon are also holy, sacred and consecrated grounds. They are all in their place in a unique and irreplaceable region. The traditional cultural and religious values of these places for the Apache People, and the collective integrity of the entire area as a whole, will be destroyed by the surface subsidence and other aspects of the mining proposed by Resolution Copper.

Even if Apache Leap was protected from subsidence by the proposed conservation easement (which it is not), this important cultural, religious and historic site would eventually be surrounded by 2,330 acres of land that will be irretrievably damaged and defiled by the proposed mining project. This includes the lands of Oak Flat and nearby Devils Canyon. This would be akin to leaving the sanctuary of a church intact, but allowing for the desecration and destruction of the rest of the church, which destroys, in itself, the purpose of the church as community gathering place and place of worship.

While H.R. 3301 would purport to prohibit "commercial mineral extraction" from under the proposed conservation easement, it does not prohibit Resolution Copper from tunneling under Apache Leap or from conducting other below ground operations directly below the escarpment. In addition, nothing in H.R. 3301 would require Resolution Copper to cease its mining operations and block-caving activities in the surrounding area should these operations and activities show signs of damaging or desecrating Apache Leap. Indeed, under Sec. 6, the responsibility of maintaining and preserving Apache Leap would be shifted to the grantee of the conservation easement. Resolution Copper would be relieved of any obligation to change its mining plan or operations to avoid harming this sacred place.

These serious problems are multiplied by the fact that H.R. 3301 would bypass the normal federal requirements of NEPA and other federal laws enacted by Congress—laws that would normally require Resolution Copper to perform adequate studies and conduct modeling in order to predict how their mining activities will impact surrounding surface features. Under H.R. 3301, impacts to Apache Leap would only be known when and if they occur. By then it will be too late.

Furthermore, while Rio Tinto and BHP Billiton "promise" today that they will change their mining methods if Apache Leap is threatened, their promises ring hollow to us. The risks of massive surface subsidence presented by block caving are well documented. Once these lands are in the private hands of Rio Tinto/BHP Billiton, it will be too late for the government, the Apache Tribe, or the public to do anything if these foreign mining companies break their promise or discover that their hopeful predictions are wrong.

In addition, the foul environmental track record and history of shameful treatment of indigenous people by Rio Tinto and BHP Billiton are well known. Their record speaks volumes.

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 United States 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. 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 see that the project was properly managed upon its departure. Villagers are no longer 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 of the contamination which the mining operation caused.

It is often stated that history is prophesy. In this case, the historical conduct of Rio Tinto and BHP Billiton provide no assurances that these companies will keep their promise to protect Apache Leap, or for that matter, to protect the environment and respect the traditional culture and religious values of the Apache People.

Finally, the conservation easement proposed by H.R. 3301 for Apache Leap does nothing to address the impacts of the mine to the surface and groundwater supply in the region. It also fails to address the imminent threat of environmental contamination to the surrounding soils and sediments, and the surface and groundwater presented by this massive mining project. These are extremely serious consequences which, under H.R. 3301, would not be studied or modeled by Rio Tinto and BHP Billiton.

The Resolution Copper Mining Project Will Dangerously Deplete Groundwater and Surface Water Supplies Throughout the Region

The massive mining operation to be facilitated by H.R. 3301 threatens to dangerously deplete surface and groundwater supplies throughout the region—water supplies that are already relied upon and desperately needed by others in Arizona. H.R. 3301 does not require Resolution Copper to perform any modeling or proper studies of the impact of their project on the regional water supply and hydrology. To date it is unknown if such work has been undertaken. That which is known is briefly summarized below.

- The copper ore body is estimated at its highest point to be located 7,000 feet below the surface; however, because the actual surface of the Earth at Oak Flat and Apache Leap already sits between 4,100 feet and 4,600 feet above sea level, the top of the massive ore body appears to be actually located at approximately 3,000 feet below sea level.
- Given the depth of the ore body, as well as its immense size, throughout the 40+ year life of the mining project, Resolution Copper will have to aggressively conduct extensive "dewatering" activities in order to continually pump and remove the surface water and groundwater which 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.
- This depletion of the regional groundwater supply can be described as a "bathtub effect", in which surface water, tributary groundwater, and aquifers located above, beside, and beneath the excavated ore body and mining tunnels (on the outside edges of the bathtub) constantly migrate to and from the bottom of the bathtub (the vacant ore body and mining tunnels). As this process continues over the 40+ year life of the project, the mine will deplete many billions of gallons of water from the surface water and groundwater throughout the region, including depleting (and/or contaminating) springs sacred to the Apache People. Neither Rio Tinto nor BHP Billiton have the legal right to disrupt, deplete or contaminate this water under any law.
- Finally, 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 subsidence (which will take place as gravity and the weight of the Earth above the enormous cave created by this mine cause the cave to collapse in on itself) will alter the natural state of the aquifers and surface drainage of the watersheds throughout the region forever.

A microcosm of the dangers to the regional water supply presented by a mine of this magnitude has already been realized by Resolution Copper as it struggles to dewater the deep mine shaft known as Shaft No. 9, located just west of Oak Flat. Shaft No. 9 was drilled by Resolution Copper's predecessor in interest in 1973. According to permit application documents filed by Resolution Copper with the Arizona Department of Environmental Quality, Shaft No. 9 was drilled to an approximate depth of 800 feet below sea level. Shaft No. 9 was originally pumped free of water through of process called mine "dewatering." However, when the dewatering process was stopped, surface and groundwater flooded the Shaft.

Resolution Copper estimates in its permit application documents that it will take at least 18 months to 2 years to pump all of the migrating surface and groundwater out of Shaft No. 9, in order to facilitate mining operations. To do this, Resolution Copper predicts it would be required to pump at a rate of 2,500 gallons per minute (for 18 months to 2 years) just to initially dewater the Shaft. To keep Shaft No. 9 dry after initial dewatering, Resolution Copper estimates it would then have to remove water from the Shaft at a rate of 300 to 800 gallons per minute throughout the 15 year life of the Shaft. If Shaft No. 9 is kept dry for the 15 year life of the Shaft, this single mine shaft, by itself, will permanently remove and deplete over 8 billion gallons of water from the regional water supply. This would be enough to supply at least 46,900 Arizona homes for an entire year.

The problem of depletion to the regional water supply demonstrated in microcosm by Resolution Copper's Shaft No. 9 represents a very small frac-

tion of the total depletion to the water supply which will be caused by the "bathtub effect" created by Resolution Copper's tunnels and shafts, and the removal of the copper ore body itself, which is located at least 3,000 feet below sea level. This problem will increase over the 40+ year life of the project, and it will continue forever after Rio Tinto and BHP Billiton remove and sell the copper and other metals from the mine and wire their profits to locations outside the United States. We Americans will be left with an ever increasing toxic stew of hazardous mine wastes, contaminated water, and the inevitable collapse of the area. Indeed, the water found in Shaft No. 9 has already been shown to be contaminated by Arsenic, Nickel and Beryllium. Even if these heavy metals are removed through treatment, the water from Shaft No. 9 is likely to be unsafe to discharge into nearby Queen Creek because of dangerously high levels of pH and Total Dissolved Solids. It also cannot safely be used for irrigation without first being blended with water of a better quality.

The threat to the regional water supply created by dewatering the mine will also be multiplied by the construction of stormwater retention and impoundment features and other small dams and diversion channels, which are designed to temporarily detain any rainfall or other sources of water (such as streams and washes) within the footprint of the project to avoid any discharge of contaminated water into adjacent or nearby creeks and streams. Migration to these water sources, however, will nevertheless happen over time. In addition, the mining process itself will consume enormous amounts of water. As noted above, Resolution Copper does not have the legal right to this water.

The serious depletion problems also cannot be solved by the use of Central Arizona Project Water, as Resolution Copper may suggest. The bulk of CAP water is already dedicated and committed to other uses and users in Arizona, including for use in future Arizona Indian water rights settlements. There simply is not enough CAP water to meet Resolution Copper's demand for this giant mining project. In addition, the "banking" of CAP water that is purportedly being undertaken by Resolution Copper, will not eliminate the burden of this mining operation on the regional water supply, as CAP water is banked at locations near Phoenix, Arizona, for later withdrawal in the Phoenix Active Management Area. This is, of course, far from the area of the proposed mining project near Superior, Arizona. Therefore, there is no enhancement to the local water supply by virtue of Resolution Copper's "banking" CAP water. Any inference by Resolution Copper that there will be sufficient water under the legal control of Resolution through its CAP banking to conduct its mining operations would be false.

The dangerous limits to Arizona's water supply are well known. The demands on this finite water supply only increase under the continued pressure of drought, a fast growing population, and other additional demands from development and mining. The impacts on the regional water supply presented by the Resolution Project have not been studied or subjected to public review and scrutiny. Under the legislative land exchange proposed by H.R. 3301, such studies and mandatory public review would not be required. It is clear that the impacts to the regional water supply will be real and substantial. It would be a dangerous leap of faith to facilitate this land exchange without studying this matter in great detail and providing the results of such studies to the public for review.

The Project Threatens to Contaminate the Surface and Groundwater and Sediments and Soils of the Region

Resolution Copper has not prepared, or at least has not made publicly available, a mining plan or mine closure plan for this massive mining project. If they have performed studies or other assessments regarding the project's potential to contaminate the surrounding area, we have not seen them, and we serious doubt that Congress has seen them. We also have not seen the details of the environmental protections (if any) that Resolution Copper may intend to put in place if Congress allows them to circumvent federal law to acquire and mine these lands. Certainly, the protections do not appear in H.R. 3301.

The United States' short-term experience with mines of this type does not provide it with adequate information to evaluate the long-term and irreparable impacts of such a large scale block-caving operation conducted deep in the Earth—impacts that may take many centuries to manifest. In fact, the United States' experience with any mining technique is just a little over 200 years old. Yet, we are only now experiencing some of the disastrous results of early Spanish, Mexican, and American mining practices in the west, which will compound over time.

Mining operations, especially large scale copper mines like the block-caving operation proposed by Resolution Copper, eventually result in the contamination of the surface and groundwater (and sediments and soils), not only in the immediate area

of operation, but often, throughout the adjoining and related aquifers. It is simply not a matter of "if", but "when." For example, groundwater is frequently contaminated when water from the mining project containing heavy metals and other contaminants migrates from the project into surrounding aquifers. Surface water is contaminated when liners leak, pipes burst, or stormwater impoundments fail. These problems also result in contamination to the sediments and soils of the region. We have experienced these dangerous events with unfortunate frequency in Arizona and New Mexico.

The threat of significant environmental contamination presented by the Resolution Project, coupled with the cumulative environmental effects of other significant historic and future mining activities in the region, must not be lightly cast aside by Congress, or others who may be blinded by Resolution Copper's promise of short term economic gain and employment. The dangers of environmental contamination presented by this massive mining project are very real. H.R. 3301 would bypass the requirement that these dangerous impacts be studied or considered and subject to public scrutiny. H.R. 3301 would also foreclose the possibility that less dangerous alternatives be considered. This is not acceptable to the Apache People, and it should not be acceptable to Congress, as the representative of the American People.

No Justifiable Rationale Exists for Avoiding the Normal Administrative Land Exchange Process in Favor of H.R. 3301

Rio Tinto and BHP Billiton have failed to provide any meaningful reason why the legislative land exchange proposed by H.R. 3301 is justified. They have not explained why the "hard look" required by NEPA and other important environmental and cultural resource protection laws should be bypassed through H.R. 3301. For the Apache People, there is no reason.

The primary justification relied upon by Rio Tinto and BHP Billiton to support this massive mining project appears to be its potential to create jobs for the local community of Superior, Arizona, and its neighbors.

While it is correct that the construction and operation of the Resolution Copper mine will create jobs in the short term (numbers vary considerably on the estimated total amount of jobs, type of job, and terms of employment), the truth is that the jobs created by this mine will not be filled by people from the local Superior community or even neighboring towns.

Resolution Copper, like other mining companies such as Phelps Dodge Corporation (now owned by Freeport McMoRan Copper & Gold Inc.), Teryl Resources, and others, are developing and expanding their copper mining operations throughout Arizona due to increased copper prices. Hundreds of job openings for these mining operations have yet to be filled by these companies, who are now finding that they must recruit employees from as far away as Phoenix or Tucson, and in some instances, from outside the State. Hefty signing bonuses are being offered for some jobs, and some mining companies, like Freeport McMoRan, have created programs which would allow employees who have homes in Phoenix and elsewhere to live at the mine during the week and return to their families on the weekends. If local job creation is one of the primary justifications for the Resolution Copper project, than it would seem that this need has already been met by other mining companies in the area.

Finally, it should be noted that by Resolution Copper's own accounts, it is only in the "Pre-feasibility" phase of development for the mining project. See www.resolutioncopper.com/res/whoweare/project_development_steps.pdf (last visited 10/26/2007). In fact, Resolution Copper does not intend to begin mine construction until the year 2013.

Quite simply, there is no urgent need for Congress to act on the legislative land exchange proposed in H.R. 3301. If Rio Tinto and BHP Billiton desire to acquire Oak Flat and Apache Leap for their mining project (which the Apache Tribe urges should never be allowed), sufficient time exists for these foreign mining giants to follow the established federal administrative land exchange process (which all Americans normally must follow), which would require a "hard look" at this project under NEPA and other laws, and consideration of the profound concerns that the Apache People and members of the public maintain about this project.

The Apache Tribe understands the role that mining has played in Arizona's brief history as a State. However, there are some places in the world that simply should not be destroyed or desecrated under any terms or for any reasons. Oak Flat, Apache Leap, and Devils Canyon are some of these places. On behalf of the Apache Tribe, and the Native Nation's named earlier, we urge you not to support H.R. 3301 in any form, and to take all actions within your power to protect these holy, sacred, and consecrated lands from harm.

STATEMENT OF JOHN RICKUS, PRESIDENT, RESOLUTION COPPER

Mr. RICKUS. Thank you, Mr. Chairman and members of the committee. My name is John Rickus, I am the President of Resolution Copper based in Superior, Arizona. I want to thank you for the opportunity to present the support of the bill as it is an important step toward the development of a large underground copper mine in the historic mining district.

If you look up at the screen you will see the deposit exists in this area here, and this area is the old magma mine that you can see there. The old body is an extension from the old magma mine mineralization. Because of its depth at 7,000 feet below surface, it will be complex and take a considerable period and money to develop.

I am going to focus on four issues: economic benefits, environmental benefits, mitigation of stakeholder concerns and fair value to the public.

Economic. We will spend over $10 billion in capital over mine life. Mine will last for at least 40 years from the commencement of production. It will generate 1,400 permanent jobs, all of which will be high paying, and there will be significant additional jobs during the construction phase. In addition, there will be indirect jobs, and we anticipate that this could be in the region of 6,000 to 7,000 additional jobs in the region.

Our financial models indicate that the tax benefits to the United States are substantial, and the tax return is several times the return to the shareholders of resolution. This project is large and is projected to produce 25 percent of the domestic demand for copper in the United States, copper coming from Arizona.

Second, environmental benefits. I have a net positive environmental benefit in terms of acreage to the public and Arizona. In 2004, we started a voluntary clean up of the historical mining area which is to the north of Superior. We started a voluntary clean up of this area which had been mined since 1910. We are spending $50 million to clean up that area, and we will have cleaned up 2,000 acres.

There were tailings dams, an old smelter, and so on, on that site. We didn't have to do that until after our mine closed, which will be around 2060 or so, but we did it as an act of good faith now. The lands that we have pulled together as has been previously mentioned have very high ecological value, and we are offering 5,539 acres in return for 3,000 of nonriparian land.

We will deposit tail ends in old open pit mines. There are many in the region, and there is plenty of space. We anticipate this will result in the re-landscaping of a considerable number of acres way in excess of 3,000. Therefore, the land potentially affected by mining will be half that which we anticipate landscaping.

Mitigation. Our mining operations will have an impact in the Oak Flat area. There is the campground there, and there is the Oak Flat area in general. As was indicated, we will provide $500,000 for a replacement campground, we will be looking at alternative camp climbing domains and we are looking to ensure that the climbers can climb in this area, which we own, for as long as possible, possibly in perpetuity.

We are establishing working group with all the climbing factions within Arizona. As you know, we are putting a permanent conservation easement on Apache Leap—for those that don't know it, it is this feature here—and we are including some of our private land in that conservation easement.

Mr. Chairman and members of the committee, there may be other areas of concerns to the Apache Nations. We have tried to reach out as evidenced by the letters that we have submitted for the hearing record, and we would welcome direct dialogue in the very near future, and have always said that and have always welcomed the Apache Nations into our offices, but they haven't come as yet. The exchange provides fair value to the taxpayer.

Appraisal. We will use Department of Justice appraisal methodology. The valuation of the land will ignore our ownership of the mining claims, and we are paying for the full value of Apache Leap and then placing it into conservation easement. These are considerable concessions. There will be full cash equalization.

If the appraisal indicates we owe additional monies it will go into a special fund for Federal land in the Coconino, San Pedro, Las Cienegas and Sonoran Desert. If it is the reverse and the value of the land we are conveying is higher than the land received that will be donated to the United States government for purchasing land in Superior.

My last comment concerns royalties. We are of course aware of the mine law reform legislation currently working its way through this committee and the House. As previously stated, even before this process we assumed that the up front payment of fair value based on a royalty of the government. We would be pleased to work with this committee as to how mining law reform might relate to this land exchange and to deal with any changes to that appraisal that may be necessitated by passage of such reform.

The intent of this would be to ensure that the value is fair, that there is not duplication of payment, to ensure that the lands we have offered are fully credited and that the public will receive these important offered lands as part of the solution. So I reiterate, we are very willing to work with this committee on these matters.

Thank you very much, and I would be happy to answer questions afterward.

Mr. GRIJALVA. Thank you very much, sir.

For our last witness, Ms. Sandy Bahr from the Sierra Club. Ms. Bahr?

[The prepared statement of Mr. Rickus follows:]

Statement of John Rickus, President, Resolution Copper Mining, LLC

Mr. Chairman and Members of the Subcommittee:

My name is John Rickus. I am the President of the Resolution Copper Mining LLC ("Resolution Copper"), which is a company headquartered in Superior, Arizona and which is owned by subsidiaries of Rio Tinto plc and BHP-Billiton plc. I am here in support of H.R. 3301 and to briefly describe the efforts we have made to ensure that the land exchange and other provisions of H.R. 3301 are in the best interest of all the parties involved, including the general public.

The goal of the land exchange, from our perspective, is for us to acquire approximately 3,025 acres of National Forest land, which is comprised of mining claims that we hold and an existing campground. For ease of reference, I will refer to it collectively as the Oak Flat parcel. As you can see from our display and the map attached to my testimony, the Oak Flat parcel either abuts, or is heavily intermingled with, private land that Resolution Copper already owns. Much of that pri-

vate land was the site of the old Magma underground copper mine, which operated from 1912 to 1996 and produced 25 million tons of copper ore. We are in the midst of spending an estimated $50 million to clean up the old tailings and other remnants from that mine and we have spent $15 million on the cleanup to date.

After the Magma Mine was closed in 1996, further exploratory drilling revealed the existence of a very large copper deposit located adjacent to the old mine workings, but 4500 to 7500 feet below the surface of the Oak Flat parcel, where the temperatures are up to 175 degrees Fahrenheit. We will sink deep shafts and tunnels to access the orebody in order to conduct the mining operations. When in operation, the mine will provide approximately 25% of the nation's annual needs for copper from a safe, domestic source and create 1400 permanent, high quality technical jobs—several thousand jobs during mine construction, and a very large number of service related jobs in the region. It will also generate income, property, severance and other Federal, State and local tax revenue that we believe will be several times the amount of the value of this project to our company.

As I just indicated, developing a mine of this magnitude a mile to a mile and a half beneath the surface is an extremely expensive and financially risky proposition—involving $750 million in exploration and feasibility work and $4 billion or more of capital investment, before mine construction is finished and mining can commence to produce minerals in commercial quantities. To justify this type of investment, we believe it is prudent to first own the land where we will operate. Fragmented land ownership simply does not promote efficient mine permitting, development and operation. In addition, because we will be intensively using the Oak Flat parcel for access, exploration and development, much of it will lose its recreational value. Ownership of that land will also enable us to provide the necessary protection of the public from our mining operations.

The mine will be a deep underground mine. Unlike an open pit mine, this mine will have minimal waste rock dumps. We will ship the ore from Oak Flat using an underground tunnel with a conveyor to an existing open pit mine site, where we will upgrade the copper ore to produce a concentrate for sale or further processing. The concentration process generates a waste sand known as tailings, that will fill up at least one existing old open pit mine, which we will then reclaim and re-vegetate. We believe that will be a very important long-term benefit to the environment.

Now, we realize that when we ask to remove land from public ownership, it is incumbent upon us to try and convey to the public lands that have even greater environmental and other public values than the lands we are receiving. We have worked with the Forest Service, BLM, Arizona Game & Fish, and numerous Arizona conservation organizations to achieve that in H.R. 3301.

As it now stands in H.R. 3301, Resolution Copper will convey 8 parcels of land, totaling approximately 5,539 acres, to the United States in the exchange. Whereas most of the Oak Flat parcel is relatively flat, and has no permanent water—the 8 parcels we have assembled for exchange are exceptionally rich in ecological, recreational and other values and many of them have significant year-round water resources. The other attributes in these offered lands include:

1) seven miles of river bottom and riparian land along both sides of the free flowing San Pedro River, which is one of the most important migratory bird corridors in the United States;
2) two miles of trout stream and other fish and wildlife habitat along East Clear Creek in the Coconino National Forest;
3) possibly the largest, and most ancient, mesquite forest (or bosque) in Arizona;
4) 956 acres of extremely diverse grassland habitat in the Appleton-Whittell Research Ranch—an existing preserve jointly managed by the Forest Service, BLM and the Audubon Society inside the Las Cienegas National Conservation Area;
5) four in-holdings in the Tonto National Forest which have significant riparian, ecological, cultural, historic and recreational amenities, including populations of the endangered Arizona hedgehog cactus, and a rare pond fed by a year-round stream; and
6) a 160 acre parcel to add to the proposed rock climbing recreational area.

H.R. 3301 provides that we cannot acquire the Oak Flat parcel unless we convey all 8 of the parcels to the United States, regardless of value. If the 8 parcels appraise at more than the Oak Flat parcel, H.R. 3301 requires that we donate the excess value to the United States.

As a result, this land exchange is guaranteed to result in very significant net gains to the United States in: 1) river bottoms and riparian lands; 2) habitat, or potential habitat, for threatened, endangered and sensitive species; 3) public recreational opportunities; 4) habitat for innumerable species of flora and fauna; 5) im-

portant bird areas; and 6) year-round water resources—a rarity in many parts of Arizona.

We have submitted letters for your record from various units of local government, conservation organizations and other interested parties either supporting the entire land exchange, or supporting Federal acquisition of the 8 parcels we will be conveying to the public in the exchange.

Mr. Chairman, we have also agreed to several provisions in H.R. 3301 that are designed to ensure that the taxpayers receive full fair market value in this land exchange and that any facilities or activities we displace in acquiring the Oak Flat parcel are adequately replaced, or improved upon. I will briefly describe those provisions in the order they appear in H.R. 3301:

- Subsection 5(a) of H.R. 3301 provides that all appraisals will be conducted in accordance with U.S. Department of Justice appraisal standards, which are used for all Federal land transactions. The Forest Service will write the appraisal instructions and all appraisals must be formally reviewed and approved by the agency. This means that the appraisal process will be under the government's complete supervision and control.
- We realize that mineral appraisals can be difficult, especially where unpatented Federal mining claims are involved. Accordingly, we have agreed to have the Oak Flat parcel, 75% of which is overlain by our unpatented mining claims, appraised as if our mining claims do not exist. That is a very significant concession on our part and will guarantee that the taxpayers get the full fair market value for the land they give up in the exchange. It should be noted that such value is determined by the assumption that a royalty exists in favor of the government, and which is then paid up front. That provision has been in H.R. 3301 and its predecessors since inception, even prior to the current mining law reform efforts. Paying that up front—by delivery of the sensitive environmental lands—ensures that the government receives this value without having to depend on future operations for this return. This is, as previously noted, in addition to the very substantial local, state and federal taxes that will be paid by the operations.
- To protect the portion of the Oak Flat parcel that comprises Apache Leap, we have agreed to a permanent 695 acre conservation easement for Apache Leap, which will preclude surface development of the Apache Leap and which will prohibit us from mining underneath the Apache Leap. The easement has been voluntarily enlarged this year to include 105 acres of our existing private land. Note that as drafted, we will receive no credit in the appraisal for the easement. We understand that Apache Leap holds cultural and historic importance to the Apache tribes and this is one of the main reasons for the easement. H.R. 3301 contemplates that the easement will be held by a governmental or NGO body, which may include the Apaches. We have also provided a $250,000 endowment to administer the easement. As you know, H.R. 3301 also states the intention of Congress that we enter into an agreement with interested Apache to allow for continued acorn gathering at the Oak Flat Campground and requires that the JI-Ranch parcel that we will convey to the Forest Service as part of the exchange, will be available for acorn gathering. In addition, we have on numerous occasions both formally and informally indicated to a number of Apache tribes that we stand ready to engage in dialogue with them to see if there are other areas where we can address their concerns.
- As for outdoor camping and recreation, H.R. 3301 specifies that the existing Forest Service campground at Oak Flat, which has 16 minimally developed campsites, will be replaced with a new campground or campgrounds, and Resolution Copper will pay up to $500,000 of the costs thereof.
- Also as you know, Mr. Chairman, portions of the Oak Flat parcel and adjacent areas, including areas of our existing private land, are areas currently used for rock climbing and bouldering. To accommodate these activities, we have agreed to three separate actions. First, subsection 8(b) of H.R. 3301 facilitates the establishment of a new rock climbing State Park, if the State so chooses. We have already spent in excess of $1.5 million to identify and develop the climbing resource in the Park area, and to buy private land for inclusion in it. Our road builders have studied the proposed access road to the Park, and are confident we can build it to the specifications set forth in H.R. 3301 for the $1 million we have pledged. Secondly, we signed a private license agreement with the Access Fund that authorizes continued rock climbing on two parcels of our existing private land where climbers were previously trespassing, and on one parcel we will acquire from the Forest Service. Thirdly, we are in the process of forming a climbers' working group to discuss ongoing access and climbing issues and to expand and enhance these opportunities, so long as it is safe to do so.

- If the government appraisal process determines that we owe additional funds in the exchange, section 5(b) of H.R. 3301 requires us to pay full cash equalization into a special fund to be used for the acquisition of new Federal land in either the Coconino National Forest, San Pedro River Corridor, Las Cienegas NCA, or in the Sonoran Desert.

My last comment concerns royalties. We are, of course, aware of the mining law reform legislation currently working its way through this Committee and the House. As previously stated, even before this process we assumed the up front payment of fair value based on a royalty to the government. We would be pleased to work with the Committee as to how mining law reform might relate to this land exchange and to deal with any changes to that appraisal that may be necessitated by passage of such reform. The intent would be to ensure that the value is fair, that there is not duplication of payment, to ensure that the lands we have offered are fully credited and that the public will receive these important offered lands as part of the solution. So, we are very willing to work with this Committee on these matters.

That completes my testimony. I very much appreciate the opportunity to testify before you today and stand ready to answer any questions that you may have. It is my hope that H.R. 3301 will now proceed with all due pace so that we can continue the work on this critical project.

STATEMENT OF SANDY BAHR, SIERRA CLUB

Ms. BAHR. Mr. Chairman, members of the Subcommittee, for the record, my name is Sandy Bahr, I am the Conservation Outreach Director for the Sierra Club's Grand Canyon Chapter in Arizona. I appreciate the opportunity to provide information on H.R. 3301. My comments will focus primarily on the problems with the exchange, the negative impacts of the mine it will facilitate and why it is bad policy to avoid the National Environmental Policy Act.

First, I would like to address the loss of Oak Flat picnic and campground. H.R. 3301 allows Resolution Copper Company to privatize Oak Flat. Oak Flat was recognized by President Eisenhower as an important area back in 1955 when he signed Public Land Order 1229. It specifically put this land off limits to future mining activity and reserved it for campgrounds, recreation and other public purposes.

Oak Flat provides many recreational opportunities for Arizonans including for the people in the local communities. Activities include hiking, camping, rock climbing and birding. The area has four bird species that are on the National Audubon Society's watch list of declining species that are of national conservation concern. Also, the endangered Arizona hedgehog cactus is found in the area. Oak Flat is an important part of our history and also has significant values for Native peoples as you have heard earlier.

H.R. 3301 rescinds Public Land Order 1229. In Section 10 of the bill titled Miscellaneous Provisions it revokes any public land order that withdraws Federal land. It is a bad precedent and a bad message for the Congress to give up an area that has been protected for more than 50 years. We are also concerned about potential threats to Devils Canyon, which is nearby.

Devils Canyon provides important riparian habitat in a state where much of our riparian habitat has been degraded or destroyed. Considering its proximity to the proposed mine and the amount of water the mine will utilize there are significant risks of dewatering Devils Canyon.

H.R. 3301 allows Resolution Copper to bypass the National Environmental Policy Act as would be required if this land exchange was evaluated through the administrative process. An administra-

tive exchange would require an environmental impact statement including an examination of alternatives, the environmental impacts, the cumulative impacts and possible mitigation of the impact.

Without it, there are key questions that are outstanding including, is it necessary to give up Oak Flat for this mining operation? If the information that Resolution has provided on this proposed mine is accurate it will be a large copper mining operation, perhaps the largest in Arizona and one of the largest in the United States.

To allow the company to circumvent the National Environmental Policy Act on such a large mine that has great potential to negatively affect the surrounding environment and to leave all those unanswered questions would be wrong. State laws are not adequate to ensure this level of analysis. There is no state environmental policy act and no act that looks at the larger public interest relative to this exchange.

It is clear that Resolution Copper will benefit from the exchange. It is less clear that the public is getting a fair return or that it is worth the loss of important public lands. It is difficult to understand how the exchange could move forward without solid appraisals including on the value of the copper itself.

Resolution has indicated that it is a large ore body. Their website right now says 48 billion pounds of copper. If valued at $3 per pound, the ore body would be worth $144 billion. Another concern with the mine is its ultimate reclamation. Arizona has relatively weak requirements in this area. Right now our state contains over 100,000 abandoned mines and many contaminated sites.

I just want to quickly touch on some of the inherent problems of land exchanges. They can be effective tools, but there are certainly many pitfalls. They should be used judiciously. Even with administrative exchanges often the public lands are under valued while the private lands are over valued, and there have been numerous reviews to indicate that. Arizonans have made it clear how they feel about land exchanges by six times since 1990 rejecting land exchange authority for the Arizona State Land Department.

In summary, I just want to say H.R. 3301 does not represent a land exchange that is in the broader public interest. We lose Oak Flat Campground. If an area that has been protected from mining and other negative actions for over 50 years can be given up so readily, what is next? What is really protected? There is no real environmental analysis or significant public involvement process, and there are many unanswered questions. Answering them after the fact does not ensure the public's interest is served.

The loss of Oak Flat and any protections for it and the withdrawal of the protections in the bill, the failure to provide an adequate analysis of the exchange up front, the magnitude of the potential impacts of this land exchange, the failure to include any appraisal or valuation of the minerals up front and the potential threat to Devils Canyon and Queen Creek, for all of those reasons, the Sierra Club is strongly opposed to this land exchange. Thank you.

[The prepared statement of Ms. Bahr follows:]

Statement of Sandy Bahr, Sierra Club, Grand Canyon (Arizona) Chapter

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to provide information on H.R. 3301 Southeast Arizona Land Exchange and Conservation Act of 2007. My comments will focus primarily on the problems with the exchange itself and the negative impacts of the mine it will facilitate. I will outline the concerns about the particular bill, why it is bad policy to avoid the National Environmental Policy Act review and analysis process, and also address some of the inherent problems with land exchanges themselves.

Loss of Oak Flat Campground

First, I would like to address the loss of Oak Flat Picnic and Camp Ground. H.R. 3301 will allow Resolution Copper Company (Rio Tinto—55% owner—headquartered in the United Kingdom, and Broken Hill Properties—45% owner—headquartered in Australia), which acquired the old Magma Mine near Superior, Arizona to privatize Oak Flat Campground.

Oak Flat campground was recognized by President Eisenhower as an important area back in 1955, when he signed Public Land Order 1229 (see Exhibit A, PLO 1229) which specifically put this land off limits to future mining activity and reserved it for camp grounds, recreation, and other public purposes. Oak Flat provides many recreational opportunities for Arizonans, including for those in the local communities, and for others from around the country. Recreational activities in the area include hiking, camping, rock climbing, birding, bouldering and more (see Exhibit B, photo of Oak Flat)

Oak Flat is a key birding area. Four of the bird species that have been sighted at Oak Flat are on the National Audubon Society's watch list of declining species that are of national conservation concern including the black-chinned sparrow, Costa's hummingbird, Lewis' woodpecker, and gray vireo. The endangered Arizona Hedgehog cactus (Echinocereus triglochidiatus var. arizonicus) also inhabits the Oak Flat area and is threatened by this proposed mine.

Oak Flat is an important part of our history and also has significant cultural values for native peoples, including for acorn collection. Because of the significance of Oak Flat, its history of providing a respite for travelers and those seeking relief from the hubbub of the urban environment, the significance of the area for the Apache people, and the important recreational opportunities it offers, the Sierra Club is strongly opposed to this land swap.

In addition to privatizing this important area, H.R. 3301 also rescinds P.L.O. 1229. In Section 10 of the bill, titled "MISCELLANEOUS PROVISIONS", it revokes any public land order that withdraws Federal land or the land to be conveyed to Arizona State Parks. It is disturbing to see this withdrawal of the protection for Oak Flat. Considering all the pressures on our public lands, the important services and opportunities they provide, and the important respite from the increasing urbanization they provide, it is a bad precedent and a bad message for the Congress to give up to a mining company an area protected by President Eisenhower more than 50 years ago.

Threats to Devils Canyon

Devils Canyon is located in the Tonto National Forest and on State Trust Lands near the proposed mine, just northeast of the town of Superior. It flows into Mineral Creek which is a tributary of the Gila River. Devils Canyon provides important and all too rare riparian habitat in a state where much of our riparian habitat has been degraded or destroyed—most estimates indicate that more than 90 percent has been lost to water diversions, groundwater pumping, and other activities. It is an area enjoyed by hikers and climbers and those seeking some relief from the heat. Sycamores and Arizona alders thrive on Devils Canyon's water and also provide valuable habitat for wildlife. (See exhibit C—photo of Devils Canyon.)

Considering its proximity to the proposed mine and the amount of water the mine will utilize, between 17,000 and 19,000 acre feet of water per year (see RCC website.), the risks of dewatering Devils Canyon are significant. Banking Central Arizona Project water at a remote location as the company is currently doing will not protect this important riparian area.

No Meaningful Environmental Analysis

H.R. 3301 allows Resolution Copper Company to bypass the National Environmental Policy Act (NEPA), as would be required if this land exchange was evaluated through the administrative process. An administrative exchange would require a NEPA Environmental Impact Statement on the exchange itself, including an examination of alternatives, the environmental impacts, the cumulative impacts (including past and anticipated impacts in the area), and possible mitigation of the im-

pacts. This type of analysis helps the public better evaluate whether they are getting a fair exchange and also evaluate the true environmental impacts of such an exchange. A NEPA analysis can identify a less environmentally harmful alternative as well. It is clear that Resolution Copper Company (RCC) will benefit enormously from this exchange. It is less clear that the public is getting a fair return on the loss of Oak Flat, the possible damage to Devils Canyon, and the threats to Apache Leap.

Because there is no real NEPA process associated with the exchange, there is no opportunity for the public to review a Mining Plan of Operation. Instead, what we have is a shifting landscape of different answers to the same questions. We might argue with the agencies about how much information and analysis needs to be done on the exchange in an administrative process, but at least there is opportunity to make that argument.

There are key questions outstanding on this proposal which make it impossible to say the exchange is in the larger public's interest. Where is all the mining waste going to go? What are they going to do with the tailings? Is this a sulfide ore, which is often the case for ore that is below the water table? If it is, how are they going to address the acid mine drainage from the rock dumps? How are they going to process the ore? At one point they suggested using the leach pad at Pinto Valley, but if their estimates on the amount of ore are accurate, they could only process a fraction of the ore at that leach pad. Are they going to smelt the ore? If so, where? Clearly there are significant air quality issues associated with that, not to mention considerable energy use.

Resolution Copper Company indicates that they will complete an Environmental Impact Study in 2009. That study will have little relevance if this bill has already passed and the land exchange has been consummated. If done properly and with a solid open public process, an environmental analysis can inform the proposed action. A study after the fact does not allow that, plus there will be no opportunity to choose the no action alternative or a less environmentally damaging alternative. We will not know the effects of this proposed mine on Devils Canyon until after the fact. We will not know if it is really necessary for the public to give up Oak Flat in the exchange or if they can mine this ore body without it until after the deal is done. The study after the fact might make people feel better about the deal, but its value is negligible, at best, as it will not change the outcome.

If the information that Resolution Copper Company has provided on this proposed mine is accurate, it will be the largest mining operation in Arizona. It would be larger than the Phelps Dodge Morenci Mine and one of the largest working copper mines in the United States. To allow the company to circumvent the National Environmental Policy Act on such a large mine that has great potential to negatively affect the surrounding environs and that has so many unanswered questions associated with it, would just be wrong.

Value of the Land and the Ore

A critical issue that is not addressed by this legislation is the value of the lands that RCC will acquire. There is no real discussion of the known and anticipated mineral values on the U.S. Forest Service (public) lands. It is difficult to understand how this land exchange could move forward without solid appraisals, including on the value of the copper itself. The Mineral Report and Feasibility Study help provide the basis for the appraisal. The value of the exchange cannot possibly be properly evaluated without that.

Resolution Copper Company has indicated that this is a large rich ore body. The company's website indicated that there were 30 billion pounds of copper last month. This month, the website says it is 48 billion pounds or 600,000 tons of copper per year for 40 years. That is a huge shift in the numbers in just one month. If valued at three dollars per pound, the ore body would be worth $144 billion. If a Net Smelter Royalty of only three percent was applied for purposes of placing a value on the minerals, RCC should be giving the public $4.32 billion in exchange lands. What they are offering is a tiny fraction of that.

Weak Reclamation Requirements

Another concern with the mine is its ultimate reclamation. Arizona has weak reclamation requirements and has seen the negative impacts of mining for decades. Our state contains over 100,000 abandoned mines and while there is a fund for addressing abandoned mines, there is little allocated to it. We have many contaminated sites that are directly attributable to mining including the Pinal Creek site, east of this proposed mine, and the Iron King Mine, which has been proposed for listing on the federal Superfund National Priority List.

The financial assurance mechanisms are not very strong either as Arizona does not require cash or bonds or paid-up insurance, but instead will accept "corporate guarantees" or a company's promise to pay. If the company goes bankrupt before reclamation is complete, such as is the case with some of the ASARCO mines, then the public, the taxpayers, have to pay for any reclamation.

Inherent Problems with Land Exchanges

While land exchanges can be a tool for conservation, it is a limited tool and the pitfalls are many. It should be used very judiciously. Even with an administrative exchange that would include examination of alternatives and would look at the environmental impacts, it is difficult to determine if the public's interest is really being served. Even though the federal land management agencies are required to do thorough reviews and ensure that a trade is in the public interest, there are significant problems. The General Accounting Office (GAO) issued a report in June 2000 where it examined a total of 51 land exchanges, most of which occurred in the west (BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June 2000.) The GAO auditors found that often the public lands were being undervalued while the private lands were being overvalued, resulting in significant losses to taxpayers. The agency also found that many of these exchanges had questionable public benefit.

The GAO discovered that there were some exchanges in Nevada in which the non-federal party who acquired federal land sold it the same day for amounts that were two to six times the amount that it had been valued in the exchange. While that would not necessarily be the case here, we do know that the non-federal party is likely to make billions of dollars off this land, far short of what the public will get in return.

While the GAO was examining administrative exchanges, it noted that there are inherent problems with exchanging lands no matter the mechanism. In particular, it noted that there are no market mechanisms to address the issues relative to value for value. The GAO indicated:

> *At least some of the agencies' continuing problems may reflect inherent underlying difficulties associated with exchanging land compared with the more common buying and selling of land for cash. In land exchanges, a landowner must first find another landowner who is willing to trade, who owns a desirable parcel of land that can be valued at about the same amount as his/her parcel, and who wants to acquire the parcel being offered. More commonly, both landowners would simply sell the parcels they no longer want and use the cash to buy other parcels that they prefer. In this way, the value of both parcels is more easily established when they are sold in a competitive market, both parties have more flexibility in meeting their needs, and there is no requirement to equalize the values of the parcels. Difficulties in land exchanges are exacerbated when the properties are difficult to value—for example, because they have characteristics that make them unique or because the real-estate market is rapidly developing—as was the case in several exchanges we reviewed. Both agencies want to retain land exchanges as a means to acquire land, but in most circumstances, cash-based transactions would be simpler and less costly.*

They went on to say that program improvements could not address these inherent difficulties and recommended that Congress "consider directing the agencies to discontinue their land exchange programs because of the many problems identified and their inherent difficulties."

If land exchanges are ever suspended and these more market-oriented mechanisms used, it would be critical that the agencies focus on selling smaller parcels that are not contiguous with the larger public lands and then use the dollars to finance acquisition of inholdings and key ecological areas.

Land exchanges have been very controversial in Arizona, which may be one more reason that large corporations do not want to go through the National Environmental Policy Act process which includes significant public involvement. Arizonans have made it clear how they feel about land exchanges by rejecting six times land exchange authority for the Arizona State Land Department.

In 2003, an independent entity, the Appraisal and Exchange Work Group, was formed to review Bureau of Land Management (BLM) land exchanges. The Work Group's report concluded that BLM's land appraisals were inappropriately influenced by the managers wanting to complete the deals and that these unduly influenced appraisals cost the public millions of dollars in lost value in exchanges with private entities and state governments.

One land swap resulted in an ethics violation investigation of Kathleen Clarke, the BLM Director at the time. The proposed San Rafael Swell land exchange would

have cost federal taxpayers $100 million because the BLM lands were so undervalued. The Office of Inspector General's Report on the San Rafael Land Exchange found that several BLM employees devalued the public lands and kept information from Congress (Page 23 of Report).

Summary of Concerns about H.R. 3301

H.R. 3301 does not represent a land exchange that is in the broader public interest. A large contiguous parcel of public land—3,025 acres—that includes Oak Flat Campground is conveyed to Resolution Copper Company. Approximately 4583 acres is conveyed to the public, some of it in rather small parcels, but even the larger parcel by the San Pedro is significantly threatened by future nearby development.

It is pretty clear that President Eisenhower believed he had protected Oak Flat when he issued the Public Land Order. If an area that has been protected from mining and other negative actions for over 50 years, can be given up so cavalierly, what is next? This sets a terrible precedent. This proposed land swap should be rejected and the impacts of such a major action properly evaluated.

There is no real environmental analysis or significant public involvement process. What will this do to Devils Canyon? Where will the ore be processed? What about the rock waste? How will the concerns of the native peoples be addressed? And most of all, what is the rush? Why is there not time allotted for adequate public review, analysis, and appraisal? Even if RCC started moving forward with plans to mine today, it is unlikely they would be ready to mine this copper for several years. There is plenty of time to do a thorough analysis and look at the alternatives, the costs, the values of the lands—including environmental and cultural—and to consider the public's concerns.

For these reasons and more, we oppose H.R. 3301.

Again, thank you for the opportunity to discuss this important issue.

[NOTE: The exhibits submitted for the record have been retained in the Committee's official files.]

Mr. GRIJALVA. Thank you very much. Let me start. Mr. Chairman, Mr. President, thank you for being here today and sharing your opinions and your views with us. Let me ask a question that comes up all the time relative to the discussions about this land exchange. Were either of the tribes that you represent part of the initial discussions on this proposed land exchange, if you wouldn't mind answering?

Mr. BEAR. No, Ft. McDowell was not. For that matter, Ft. McDowell was not contacted until about six months ago after a meeting with Senator Kyl, and then there were attempts, telephone calls that happened at that point by Resolution Copper that we did not return because we did not feel at that time that we were prepared to talk to Resolution Mining.

We feel at this time this is a congressional issue, that we need to be here at this table with Congress to talk this out. Thank you.

Mr. GRIJALVA. Mr. Chairman?

Mr. NOSIE. Yes. San Carlos takes the same stand on that because we were not contacted, and as far as the way we understand is that it would be the United States government contacting us on something highly this dramatic as far as where the tribe stands, but at this point, no.

Mr. GRIJALVA. OK. There is a provision in the legislation that would find an alternative site for the acorn gathering should acorn gathering no longer be safe on the Oak Flat parcel. Does the provision for alternative site address the religious and cultural significant points that you made during your testimony?

Mr. BEAR. Mr. Chairman, let me kind of add a little more to the last question, then I will answer this one. Further yet in the question you asked earlier, RCC, Resolution Copper Company, did not do their diligence in their process in answer to your last question.

Now, in answer to your question about the replacement for acorn gathering, there is no replacement. As you well know, land is land, and what it is, and what my people hold, as I mentioned, in their hearts dear to their hearts.

That is a spiritual type thing that we as Native people do. We believe that obviously God has given that land to us, and that is there for all of us to benefit from.

Mr. GRIJALVA. Mr. Chairman?

Mr. NOSIE. Chairman, it is the same thing. It is not the acorn issue, it is the fact that it is a spiritual place. With spirituality, everything is through a corridor, and you have to really understand the religion to really know the significance of it. We have never been given that opportunity in America to express that, so, no.

Mr. GRIJALVA. Yes, but if I may, Mr. President and Mr. Chairman, there is a provision in the legislation that would express the intention of Congress that Resolution Copper can negotiate an agreement with your tribes on acorn gathering in the Oak Flat area, a concern, and react to one of the points in there that that agreement would be revokable at any time. Your reaction to that?

Mr. BEAR. Mr. Chairman, I can answer that. There is a six month period to do that, and we feel that is not acceptable. That is a one way agreement, and six month time is not sufficient. There is some trust responsibility here as well from the Federal Government as trustees over Indian country. We feel they don't want to avoid that. We want to make sure that the Federal Government does participate in that.

Further yet, there is room for renegotiation on this. There is no legal recourse that they can honor if this land is every conveyed. That is some of our questions.

Mr. GRIJALVA. OK. The last point, and then I will have some follow-up questions for the other witnesses, but to both the Chairman and the President, a suggestion that has been made that a third-party engineering review conducted to gauge the potential impact of mining operation on Apache Leap to assess whether that conservation easement is adequate or not, how do you see that third-party engineering review?

Mr. BEAR. Mr. Chairman, definitely there is a need for that third-party review of that, not only of the easement, but also, we ask for the hydrological research needed to be done. In addition, what happens if copper prices all of a sudden plummet as we live in the economy that we live today? What assures, what guarantees that water will be replaced back into the aquifer if Resolution Copper Mining does leave?

There are some hydrologic engineering reports that need to be done. That was in my written statement, and also in my detailed statement that is already there.

Mr. GRIJALVA. Thank you. Mr. Chairman, any comments?

Mr. NOSIE. No. The same thing applies.

Mr. GRIJALVA. Thank you.

With that, Mr. Bishop?

Mr. BISHOP. Mr. Chairman, clarify this for me. Is both Oak Flat and Apache Leap considered a land of religious significance to the Apache Nation?

Mr. NOSIE. Yes, the whole top of the mound on Oak Flat.

Mr. BISHOP. You mentioned some other tribes there as well. Does the Hopi Nation, for example, have that same view of the land?

Mr. NOSIE. Yes. We have had a joint signature opposing the bill.

Mr. BISHOP. All right. Ms. Bahr, I asked earlier if anyone knew why the administration had separated or set aside Oak Flat, and no one has an institutional memory to know why it was actually done. Does your organization know why? I don't really want speculation here, I just want to know, do you know why it was set apart?

Ms. BAHR. Congressman Mr. Bishop, all I can refer to is the public land order which was issued, and in the public land order they said that it was for campgrounds, and for picnicking and other public purposes. It was part of a larger public land order. It has been an area that is popular for camping and picnicking for some time. It is on the way between Superior and the Globe area, and is a nice stop over.

Mr. BISHOP. Is that a long answer for saying no, we really don't know why it was specifically set apart?

Mr. Rickus, if I could ask you just one question. In some respects I really don't understand why you need the land exchange in the first place. Last week while the mining law was being debated in this room we heard expert testimony from environmental groups saying that anybody could buy public land for $250 an acre, and that is why they were pushing the mining law reform bill.

They also said there are no environmental laws that are being followed under existing law, and that is why the change had to take place. So my question is, why do you need a land exchange? If my calculations are correct all you need to do is pay $7,560.50, and the mine would actually be yours.

Mr. RICKUS. The campground is prohibited with entry, and the land exchange includes the campground.

Mr. BISHOP. So you mean under existing law you can't really buy public land for $250 an acre and operate under the 1872 environmental laws?

Mr. RICKUS. We could.

Mr. BISHOP. OK. Actually, I think my question was in the negative, and you answered in a positive, but I think we both said the same thing.

Mr. RICKUS. I think so, yes.

Mr. BISHOP. You can't buy it for $250 an acre, right?

Mr. RICKUS. No.

Mr. BISHOP. OK. I yield.

Mr. GRIJALVA. Mr. Flake?

Mr. FLAKE. Thank you.

Mr. Nosie and Mr. Bear, you had mentioned that you have not sat down with Resolution Copper to this point to speak directly to them?

Mr. BEAR. Yes. Thank you, Mr. Flake. We met with Senator Kyl about six months ago, and it was after that that we had calls from Resolution Copper on this issue. I don't think we talked to them at all, and we felt that the due diligence, the responsibility of Resolution Copper, was not honored in this because we were not contacted in this process.

However, we don't feel we need to be contacted at this point because we feel this is something that we are talking with Congress

about at this point. Now, we are still in the process of analyzing this situation to see what benefits or how it impacts us. I mean, there is a lot of things here, so many that all these things need to be analyzed properly. Thank you, Mr. Flake.

Mr. FLAKE. Mr. Nosie, you have any comment there?

Mr. NOSIE. No, but we did get information out of Town of Globe, the possibility of this mining. As anything else, you know, get the ball rolling and then have the tribes at the very end. But, again, you know, we felt that there is the trust responsibility with the Federal Government and the tribe to make those initial contacts of the possibilities of what may occur.

Mr. FLAKE. As it stands, whether this exchange goes through or not, Resolution owns a significant chunk of land. In fact, they own more now than they would after the exchange.

Mr. Rickus, is that correct?

Mr. RICKUS. That is correct, yes.

Mr. FLAKE. Whether this exchange goes through or not it would seem that to find some kind of common ground and to discuss differences that you have would be useful I would think.

Mr. RICKUS. And I totally agree. In fact, when we first embarked on this project in 2002 we were asked by the Forestry Service that they would be responsible for liaison with the Apache Nations and would they mind that we just stayed in the background there, and so we did. In early 2005, we were endeavoring to engage with the San Carlos in particular and the White Mountain, and we were scheduled to meet with them before the Senate hearing last year.

A resolution was passed by the two Nations not to talk to us, and so the meeting was canceled. We have since then been endeavoring to make contact, and there are a series of letters, which you have, which outline the attempts that we have made. Our door is always open, and we have made that point several times, that any members of the Apache Nations can come and talk to us.

Our filing cabinets are open. They can look at what we have got. Anything but confidential information about personnel, salaries and so on is open for them to examine whenever they wish. That invitation is open and remains open since.

Mr. FLAKE. I would simply say that it would make our job easier here I think if the parties could sit down and discuss some of the differences and present them to us in that way.

Ms. Bahr, you brought up NEPA. Is there anything in the agreement at all in the legislation which would prohibit the Forest Service from moving through with some kind of NEPA analysis?

Ms. BAHR. Mr. Flake, there is nothing that prohibits it, but if the land exchange goes through it is NEPA after the fact. There is no opportunity to change the land exchange or to determine that it is not in the public's interest which would be required if it was an administrative exchange. They have to determine that it is in the public's interest, and also, you know, look at some alternatives. So it would be after the fact.

Mr. FLAKE. You mentioned that Arizonans had turned down six times some types of land exchanges or efforts to do something. Could you explain that a little further?

Ms. BAHR. Absolutely. Mr. Flake, six times the legislature has placed on the ballot measures that included land exchange author-

ity for the State Land Department, and six times the voters have rejected that. It is since 1990 because it was after a Court decision that determined they were unconstitutional.

Mr. FLAKE. How many land exchanges have occurred in Arizona in the last couple of decades say?

Ms. BAHR. I couldn't give you the exact number. I would be happy to look that up. There have been some Federal land exchanges, and many of them have been controversial.

Mr. FLAKE. Has the Sierra Club ever supported a land exchange to your knowledge?

Ms. BAHR. In Arizona?

Mr. FLAKE. Yes.

Ms. BAHR. In recent history, I would say not in recent history.

Mr. FLAKE. So even with the Forest Service testifying that the ecological trade is a good one, is a net plus for the taxpayers, or the citizens, or whatever, in terms of ecological value, that still doesn't persuade the Sierra Club or others to even consider any land exchange?

Ms. BAHR. Mr. Flake, I think it is debatable as to whether it is a net ecological value, but one of the concerns that we have about land exchanges, which I did put in my written testimony, is that it is hard to get a handle on what is in the public's interest and the values associated with it, and that often the public lands are under valued and the private lands over valued in those exchanges, and that, you know, they set up one part of the state up against the other part of the state and sometimes different parts of the country and that is one of the reasons they are controversial because the values over here aren't necessarily the same over here, but they are still important.

Mr. FLAKE. Thank you.

Mr. GRIJALVA. Thank you, Mr. Flake.

Ms. Christensen, any questions?

Ms. CHRISTENSEN. No. Having just come in, I will defer questions to anyone else.

Mr. GRIJALVA. Thank you. Let me follow-up with the other witnesses some questions.

Mr. Rickus, you mentioned that the Forest Service said to defer discussions with the tribes because they were going to be the liaison to that discussion. So there were no conversations prior to the submission of the previous version of this legislation in the 109th Congress from your company to the tribe?

Mr. RICKUS. There were some conversations in early 2006, and if my memory serves me right, the hearing was in April or May. So we did have conversations earlier than that, yes, and correspondence.

Mr. GRIJALVA. With the tribes?

Mr. RICKUS. With the tribes, but never formally with the tribal councils, always informally. I might inform you that our company had a joint venture and an office on the San Carlos for two years where we were endeavoring to reach agreement to explore for copper deposits on the San Carlos Reservation with them. That was our exploration group, and that occurred I think in 2002.

Mr. GRIJALVA. OK. And briefly, I think Mr. Flake brought the point up about discussions, and I concurred, that you heard from

the tribal leaders about the continued opposition because they feel the land exchange doesn't address very important cultural and religious significance to both tribes. How do you respond to that question, and how do you see that question even mitigated?

Mr. RICKUS. We are obviously very sensitive to all issues, and we from day one tried to mitigate stakeholder concerns. We are very happy to discuss such sensitive issues at any time and would really welcome the opportunity to sit down with both Chairmen and Chairmen of other Apache Nations to see how we can resolve and mitigate their concerns.

Mr. BEAR. Mr. Chairman, may I comment?

Mr. GRIJALVA. Certainly.

Mr. BEAR. Thank you. The Yavapai people, my people, are not Apache, we are Yavapai. The linguistics are totally different, so we have worked together in the past because of our close association brought closer together by forest relocation and imprisonment. So my people, the Yavapai, are not Apache, although we have worked close together with the Apache.

Now, further, the question about the why not just work together or supporting working together, we believe that this is a Federal bill that is being proposed, therefore, we are here to talk to you, that there is some trust responsibility here on behalf of the Federal Government, so we bring this up to you.

Now, Ft. McDowell Yavapai Nation was never contacted until six months ago. Thank you.

Mr. GRIJALVA. OK. Your point being that this is a government to government discussion?

Mr. BEAR. Yes.

Mr. GRIJALVA. OK. Mr. Rickus, in a recent letter that we received from the Governor, she expressed concerns with the alternative climbing park. She stated in there quite pointedly that Resolution Copper should cover the projected $8 million in capital cost. Your response to that letter and to that request from the Governor?

Mr. RICKUS. When we first promoted the idea of a state park, the State Park Board were convinced in their studies that there would be 150,000 visitors a year to the park and that it would be an economically viable concern. When a state parks bill was passed to that effect, the documentary evidence indicates that they were convinced that it was going to make money and be a viable state park.

We have since talked to the Governor's staff about this issue and have indicated to them that the best thing that they can do would be to sit back and watch just how many climbers would visit this place, and if they were encouraged to form a state park due to a large number of visitors then they could consider a state park and make that move in the future.

You will notice in the bill there is no date or time period for the government of Arizona to formulate a state park.

Mr. GRIJALVA. Thank you. And my second time around time is running out.

Ms. Bahr, my apologies. I do have some questions, and I will submit those in writing. You can respond to those, and they will be part of the record.

Ms. BAHR. Thank you. Be happy to.

Mr. GRIJALVA. Thank you. Mr. Bishop, any further questions?

Mr. BISHOP. In the interest of time since we are going to have a vote very soon I will do any other further questions in writing as well.

Mr. GRIJALVA. Mr. Flake?

Mr. FLAKE. Just one quickly. Mr. Rickus, you mentioned that you are confident that the analysis has been done to protect the stability of Apache Leap in terms of the engineering from the deep mining that would occur. Can you comment further on that?

Mr. RICKUS. Certainly. We will be mining away from Apache Leap to start with, and our mining activities for the first 20 years will be some considerable distance away from Apache Leap, and any effective caving won't get anywhere near the area for approximately 35 years. So we will have 30 years of mining record where we can monitor 24 hours a day what is happening to the rocks to satisfy ourselves what is happening.

If there is any potential effect to Apache Leap, we will not mine any ore to the west and sterilize it. That is a firm undertaking that I have made on the television, in the press, written it up many times, and we will stick by that firmly and totally. I have slides and so on to demonstrate that, but I am sure in the interest of time may not wish to go through all of that.

Mr. FLAKE. Mr. Holtrop testified earlier that $500,000 was insufficient to construct a new campground. Do you think that $500,000 is or is that something that can be worked out in the end?

Mr. RICKUS. Well, we have not seen where the Forestry Service are proposing the new campground would be, so I can't really comment on that at the moment. We are happy to have a dialogue in that respect.

Mr. FLAKE. You mentioned that this could ultimately produce about 25 percent of copper, the output. Is the United States a net importer or exporter of copper at the moment?

Mr. RICKUS. It is a net importer of copper, and in the future as a lot of the existing mines run down it will become more dependent on foreign imports.

Mr. FLAKE. All right. Thank you.

Mr. GRIJALVA. Thank you, Mr. Flake. Before we adjourn, I would extend, anybody have any closing comments? Mr. Flake? Mr. Bishop? Ms. Christensen?

[No response.]

Mr. GRIJALVA. I did that because I do.

Mr. BISHOP. Well, then, if you want me to.

Mr. GRIJALVA. No. Thank you very much, all the witnesses, to clearly people that have traveled from Arizona to be here. Very much appreciated your time and your comments. I want to summarize some of the matters today that we have learned regarding H.R. 3301. It is clear I think from today's hearing that there are a number of concerns about the measure that is before us today.

These concerns are not only important to the people of our home State of Arizona, but also touch on larger policy considerations that the Subcommittee should look at in terms of land exchanges. I think in moving forward the following items need to be addressed.

First of all, it is very clear that these lands hold very significant cultural and religious values to Ft. McDowell Yavapai Nation and

the San Carlos Apache. There is no question both tribes need to be better included in the discussions on the matter in the future.

The Forest Service shared with us that the land exchange is not of equal value in the written testimony. Perhaps more needs to be done to equalize the land exchange even given the cash reimbursement clause that is in there. The Forest Service shared with us the one year time limit on the land exchange will not give enough time for NEPA, ESA consultation and tribal consultations.

We either need to strike that provision or work with the Forest Service to modify it. The Forest Service shared with us that it would be very difficult to relocate the campground if the funding is inadequate. It appears that Resolution Copper may need to consider dealing with that funding and offering more funding.

Also, the Forest Service need to be consulted on a better way to deal with any relocation process. We heard from the BLM they don't have the capacity to manage the rock climbing park should the state not take it. Governor Napolitano thinks Resolution Copper should provide $8 million to cover cost of the state park. Resolution Copper needs to consider the request from the Governor.

Let me thank you. I think there is additional issues, the hydrology issue that was brought up. I really believe that as consideration of moving this matter forward careful consideration of all the elements have to be taken into account. I think because it does have implications beyond just a simple land exchange that this needs to be a deliberate due diligence process where it is transparent and every participant affected by it knows what is going on.

So I look forward to additional information in the future, and, like I said, there were issues that have been raised today that need to be very desperately addressed. With that, let me adjourn the meeting and thank all of you very much.

[Whereupon, at 11:17 a.m. the Subcommittee was adjourned.]

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