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CURRENT PUBLIC LANDS AND FORESTS LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

S. 2443	**S. 2779**
S. 2875	**S. 2898**
S. 3088	**S. 3089**
S. 3157	**S. 3179**
H.R. 816	**H.R. 2246**

JULY 9, 2008

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CONTENTS

STATEMENTS

	Page
Barrasso, Hon. John, U.S. Senator From Wyoming	13
Bingaman, Hon. Jeff, U.S. Senator From New Mexico	2
Edwards, George, Livestock Loss Mitigation Coordinator, Montana Department of Livestock, Helena, MT	59
Featherstone, Roger, Southwest Circuit Rider, Earthworks, Tucson, AZ	50
Holtrop, Joel, Deputy Chief, National Forest System, Forest Service, Department of Agriculture	21
Kyl, Hon. Jon, U.S. Senator From Arizona	20
Lewis, Shan, President, Inter Tribal Council of Arizona, Phoenix, AZ	46
Nedd, Michael, Assistant Director, Minerals, Realty and Resource Protection, Bureau of Land Management, Department of the Interior	25
Price, Charles C., Daniel, WY	62
Salazar, Hon. Ken, U.S. Senator From Colorado	16
Salisbury, David, President, Resolution Copper Mining, LLC, Superior, AZ	42
Smith, Hon. Gordon, U.S. Senator From Oregon	14
Tester, Hon. Jon, U.S. Senator From Montana	14
Williams, Alice, Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration, Department of Energy	18
Wyden, Hon. Ron, U.S. Senator From Oregon	1

APPENDIXES

APPENDIX I

Responses to additional questions 71

APPENDIX II

Additional material submitted for the record 77

CURRENT PUBLIC LANDS AND FORESTS LEGISLATION

WEDNESDAY, JULY 9, 2008

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:05 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. The subcommittee will come to order.

Let us go ahead and begin. I would like to recognize the chairman, Senator Bingaman. I know his schedule is very tight.

[The prepared statement of Senator Ensign follows:]

PREPARED STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA

Chairman Wyden, Ranking Member Barrasso, Members of the Committee:

Thank you very much scheduling this hearing and inviting me to submit my comments concerning this important piece of legislation.

Mr. Chairman, this bill, which is cosponsored by Senator Harry Reid, would provide for the release of the reversionary interest of the United States in certain property in Reno, Nevada. The U.S. House of Representatives passed the companion legislation, H.R. 2246, on December 4, 2007. The legislation is noncontroversial and addresses an issue arising from the conveyance by the Union Pacific Railroad to the city of Reno of property along the Union Pacific's existing right-of-way for the construction of the Reno Transportation Rail Access Corridor (ReTRAC) project.

With the merger of Union Pacific and Southern Pacific Railroads in 1995, it was projected that the number of freight trains moving through downtown Reno would double. In order to mitigate the traffic, public safety, and environmental impact of the merger, the city developed the ReTRAC project to eliminate 11 at-grade railroad crossings and build approximately 2 miles of lowered train track through the heart of the City. Local, state, federal, and private funds contributed to this enormous $265 million transportation project, which created over 3000 jobs and supported the local economy. The project was completed on time and under budget in 2005.

As part of the project, the Union Pacific-Southern Pacific Railroad granted to the city of Reno title to right-of-way and surrounding land for the project and any other economic development purposes. The city hopes to revitalize the area with retail components, a plaza for public events, and a more pedestrian-friendly downtown. However, it cannot implement these plans because the United States currently holds a reversionary interest in the land. Title for these lands was originally granted to the railroad in 1866 to facilitate construction of the transcontinental railroad. The federal government retained a reversionary interest to ensure that the land was in fact used for a railroad. Since that purpose clearly has been achieved, the proposed legislation would release the federal government's reversionary interest in the property and allow the city of Reno to move forward with its redevelopment plans.

Thank you Chairman and Committee Members for holding this hearing today. I hope you will join me in supporting this legislation that will allow the city of Reno,

Nevada, to continue redevelopment efforts associated with an important public works project that has been a tremendous success for the community.

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

The CHAIRMAN. Thank you very much, Senator Wyden, and thanks for having this hearing. There are two bills that I have particular interest in that we are discussing today, along with the rest of the legislation.

The first is S. 3179, the Lovelace Respiratory Research Institute Land Conveyance Act. This is a bill that I introduced with Senator Domenici as a cosponsor. This legislation concludes the decommissioning of the Department of Energy's Lovelace Respiratory Research Institute, which is located on Kirtland Air Force Base in Albuquerque, New Mexico. It does so by transferring the site from the Federal Government to Lovelace. In doing so, it will save the taxpayers approximately $20 million in long-term monitoring costs.

Similar efforts have successfully been completed at other former DOE cold war sites such as the former Mound Laboratory in Ohio which were transferred to the State for economic development purposes.

Lovelace has already used its preexisting facilities to generate over 500 new jobs in New Mexico.

This bill, which I am pleased to note is supported by the Administration and the Department of Energy and which includes changes recommended by the Air Force, ensures Kirtland will continue its national security mission without any impact from this privatization effort.

Mr. Chairman, I would like to welcome Pat Marx, who is Lovelace's Chief Operating Officer. She is in the audience today, and I ask that the written statement submitted by Lovelace be included in the record.

[The prepared statement of Ms. Marx follows:]

PREPARED STATEMENT OF PAT MARX, CHIEF OPERATING OFFICER, LOVELACE RESPIRATORY RESEARCH INSTITUTE, ON S. 3179

The Lovelace Respiratory Research Institute (LRRI) is pleased to provide the following written statement to the Senate Energy & Natural Resources Committee Subcommittee on Public Lands and Forests regarding S.3179.

LRRI is a private, not-for-profit biomedical research organization located in Albuquerque, New Mexico which is dedicated to improving public health through research on the prevention, treatment, and cure of respiratory disease. Equipped with a broad range of scientific and technical expertise and a wealth of research capabilities, LRRI studies respiratory health issues of concern to scientists and health care experts in universities, government, industry, and patient advocacy groups. The organization is committed to curing respiratory diseases through research aimed at understanding their causes and biological mechanisms; assessing and eliminating exposures to respiratory health hazards; and developing improved therapeutics, vaccines, and diagnostics. It readily opens its unique research facilities to university, government, and private collaborators.

The institute, formerly known as The Lovelace Institute, was originally founded in 1947. Today it employs 86 PhD level scientists and 453 technicians and support staff, has an annual budget of approximately $67 million all of which comes from out of state customers. This translates to 2,000 direct and indirect jobs for the local economy.

LRRI and its predecessor organizations (collectively hereinafter referred to as LRRI) have operated the Inhalation Toxicology Laboratory (the ITL, formerly the Inhalation Toxicology Research Institute) on Kirtland Air Force Base since its inception in 1960. The ITL was operated by LRRI from 1960-1996 under a cost-reim-

bursement, no-fee management and operating contract with the Department of Energy (DOE) and its predecessor agencies. ITL facilities and the land on which they are located is one of two parcels of land which are the subject of the conveyances which S3179 would authorize.

The ITL and LRRI have a long and proud history serving the research needs of the United State Government. In 1996 the facility was determined to be no longer needed for the DOE's mission. Since that time the LRRI has been pleased to continue important work in the facility for the Government under contracts and grants as well as serving the needs of the broader research community. After the facility was privatized under a lease from the US Government to LRRI on October 1, 1996, LRRI has been very successful in increasing the annual income of the facility as well as increasing staffing from 180 employees to 539 employees.

The conveyance to LRRI which S.3179 authorizes will allow LRRI to further invest in the facility and thereby make even greater progress in understanding the fundamental biological responses of the respiratory tract to inhaled materials. Likewise, such conveyance will have a favorable economic impact on the Albuquerque, New Mexico community by allowing this facility to continue its important mission. Every day that passes without the completion of the privatization which this conveyance represents is a lost opportunity to the Institute.

LRRI's lease and subsequent operation of the ITL facility has been one of only a few privatization success stories in the DOE complex. Through the diligent efforts of LRRI personnel, new, productive research uses have been found for the ITL. By full conveyance of the property to LRRI, this success story will continue for many years to come.

Pursuant to the provisions of the Resource Conservation and Recovery Act of 1976 (42 USC §§ 6901 et seq., as amended), the DOE has undertaken certain restoration projects to remediate contamination at the facility. However, due to historic research activities at the ITL during the Cold War era, the land on which the facility is located will continue to be contaminated for the foreseeable future. The environmental impacts and condition of the facility have been assessed and documented extensively over the years and are well known to the responsible federal and state agencies, the public, and LRRI. Because of LRRI's commitment to seeing valuable inhalation research continue at this facility and preserving the role the facility plays in the economic stability of New Mexico, the Board of Directors of LRRI has expressed its willingness to assume the substantial cost of future remediation that may be required at the facility in exchange for conveyance of the property.

We are very pleased that Chairman Bingaman and Senator Domenici have introduced S.3179 to authorize the conveyance to LRRI in order to complete the privatization of this research facility. With respect to several specific provisions of the Bill, we note the following:

> Section 3(c) directs the Secretary of the Interior and Secretary of the Air Force to complete "any real property actions" necessary to allow the Secretary of Energy to complete the conveyance. LRRI is prepared to assume ownership of the property upon the passage of S 3179. We note that Section 3(a) "authorizes" the Secretary of Energy to convey the property to LRRI, but unlike Section 3(c), does not direct the Secretary to do so. Without better specification of the real property actions Congress deems "necessary" for conveyance to be completed and without a time established for completion of the conveyance, LRRI is concerned that the conveyance could be prolonged. We look forward to working with the appropriate federal agencies and Congress to ensure timely completion of the conveyances authorized by S 3179.
>
> Section 3(f) contains a provision that requires LRRI to pay the costs incurred by the various agencies in carrying out the conveyance without placing any limitation on such costs. LRRI is certainly willing to pay the reasonable expenses the agencies may incur after passage of the Bill to effect the conveyance, but obviously we would like the parties to have an understanding in advance about what is deemed a reasonable expense.
>
> Section 3(g) contains a broad and expansive indemnification requirement that LRRI is not prepared to meet and which we believe was not intended by the drafters. Under the language of this provision, LRRI would be required to assume the liability not only for remediating the contamination located on the property (which we are prepared to assume), but would also be required to pay for "property damage, personal injury, or death resulting from releases, discharges...by the Institute and any officers, agents, employees...of the Institute arising from activities conducted on the parcel conveyed...." As we previously stated, LRRI and its predecessors operated the

facility for 36 years under a no-fee, cost-reimbursement Government contract. Employees and others have pending claims and may make future claims for personal injury for actions taken prior to the privatization. LRRI can not assume liability for such claims and no federal agency has requested that we do so. We therefore respectfully request that this provision be modified to reflect that LRRI will indemnify the Government for the actions described in Section 3(g) if they arise from the actions of LRRI or its agents and employees after September 30, 1996 when the facility was first privatized.

We look forward to working with the Committee and the sponsors of this legislation as well as the federal agencies involved to develop appropriate mutually acceptable modifications to clarify these points.

Thank you for the opportunity to provide the comments of LRRI on S.3179.

The CHAIRMAN. I would also like to speak briefly about the other bill, S. 2779, which I introduced along with Senators Domenici, Salazar, Allard, and Bennett.

This legislation makes a technical correction to address a recent interpretation by the Office of Surface Mining which restricts the ability of States to use funds under the Abandoned Mine Lands Program for noncoal mine reclamation. There is no additional cost to the Federal Government involved with this legislation. Western States, such as New Mexico, Colorado, and Utah, have used AML funds in the past for noncoal reclamation as authorized by the Surface Mining Control and Reclamation Act, and while activities on noncoal sites have consumed a relatively insignificant portion of the funds provided for the overall AML program, the results in terms of public health and safety in our western States is considerable.

There is a great deal of significant work yet to be done. For example, in my State of New Mexico, we have over 15,000 previously mined sites, with a vast majority of these being noncoal mines.

I believe that OSM's interpretation of the amendments to restrict the use of AML funds for noncoal sites is in error. S. 2779 would make a minor technical change to clarify that States may continue to use the funds for noncoal work.

I would like to also ask your permission, Mr. Chairman, to put some statements in the record. First, there is a statement from the Secretary of Energy and Minerals and the Director of Mining and Minerals Division in the State of New Mexico, Joanna Prukop and Bill Brancard. Next is a statement by the Governor of Colorado, Bill Ritter. Next is a statement by the head of the Department of Natural Resources in Utah, John Baza. Next is a statement by the Interstate Mining Compact Commission. Next is a statement by the National Association of Abandoned Mine Land Programs. All of these statements support the passage of 2779.

Thank you again, Mr. Chairman, for your courtesy.

Senator WYDEN. Thank you, Mr. Chairman. Without objection, the statements that Senator Bingaman referred to in his opening remarks will be included in the record.

[The prepared statements follow:]

PREPARED STATEMENT OF JOANNA PRUKOP, SECRETARY, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT AND BILL BRANCARD, DIRECTOR, MINING AND MINERALS DIVISION, STATE OF NEW MEXICO, ON S. 2779

Thank you for the opportunity to present a statement on this important topic.

We appreciate the efforts of Chairman Bingaman and this Committee to propose legislation that will clarify the intent of Congress under Title IV, the Abandoned

Mine Land (AML) program, of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The State of New Mexico strongly supports S. 2779. This bill will make only minor changes to SMCRA to correct a misinterpretation of SMCRA by the Office of Surface Mining of the Department of the Interior. S. 2779 will return New Mexico and other states to their longstanding role under SMCRA of directing abandoned mine land grant funds to the highest priority needs at either coal or non-coal abandoned mines.

New Mexico has a long and distinguished history of both coal and hard rock mining. Centuries of mining have left a legacy of thousands of mine openings and other mine hazards that pose serious threats to public health and safety. We estimate that there are more than 15,000 unreclaimed mine hazards across New Mexico. Expanding populations and increasing recreational uses are increasing the exposure to abandoned mine dangers. An example of the AML problem is the numerous abandoned uranium mines located primarily in areas of Native American habitiation in northwestern New Mexico.

The primary funding source for AML projects in New Mexico has been Title IV of SMCRA. SMCRA includes provisions for the safeguarding of abandoned coal mines and high priority non-coal mines. Funding from the fees collected on coal production has helped New Mexico address some of our most hazardous abandoned mines. Since the inception of the SMCRA AML program, New Mexico has addressed approximately 4,000 mine features and reclaimed over 700 acres of mine-disturbed land.

Section 409 of SMCRA (30 U.S.C. 1239) allows the States to use AML funds to address high priority non-coal abandoned mines as well as coal mines. While New Mexico still has abandoned coal mines that need reclamation, well over 90% of New Mexico's 15,000 mine hazards are located at abandoned hard rock mines. In the past few decades, all of the fatalities associated with abandoned mines in New Mexico have occurred at non-coal mines. With our SMCRA grants, New Mexico has balanced the need to reclaim abandoned coal mines with the need to address the significant and immediate health and safety threats posed by numerous non-coal mines. Over the past 6 years, New Mexico's $1.5 million annual grant was roughly split between coal (55%) and non-coal (45%) projects.

In December 2006, Congress passed the Tax Relief and Health Care Act of 2006 which included a re-authorization of the AML fee on current coal production and other amendments to the SMCRA Title IV program. One of the major changes was the distribution to the States and Tribes of "state share" funds that had been previously allocated to the States under SMCRA, but had never been appropriated by Congress. For New Mexico, this amounts to approximately $20 million in additional AML funds distributed over the next 7 years, and presents a tremendous opportunity to address many of the high priority coal and non-coal abandoned mine threats.

Under SMCRA, the "state share" funds were available for use by the States at abandoned coal mines and, under Section 409, also at high priority abandoned non-coal mines. In the 2006 legislation, Congress did not amend Section 409. However, the Interior Department issued an opinion in December 2007 prohibiting the additional AML funds from being used at non-coal abandoned mine projects. The Office of Surface Mining followed with a proposed rule on June 20, 2008, which codifies the Interior Department's interpretation.

The new interpretation flies in the face of Congressional intent. Had the funds been appropriated to the State when they were originally allocated to the State, there would have been no question that these funds could be used for either coal or non-coal projects. Congress did not amend Section 409 of SMCRA in the 2006 amendments. However, the Interior Department has latched onto Congress' use of a new funding source to distribute the previously allocated funds to claim that the intent changed.

Since the beginning of the AML program, New Mexico, Utah and Colorado have balanced the need to reclaim abandoned coal mines with the need to address the significant health and safety threats posed by numerous non-coal mines. With these funds, New Mexico successfully completed a number of innovative projects that were recognized by OSM. In the Cerrillos Hills between Santa Fe and Albuquerque, we closed dozens of non-coal mines along trails in a park and protected park visitors from mine hazards while showcasing the mining history. This project received a national award from OSM. Last year, we received the highest national award from OSM for the Real de Delores project in the Ortiz Mountains which safeguarded mine openings within one of the oldest gold mining districts in America.

The impact of the Interior Department's interpretation is significant. While New Mexico's annual AML grant increased this year to $4 million, less than one million

is discretionary and can be spent on either coal or non-coal projects; the remaining three million plus can only be spent on coal projects. As a result, needed projects at dangerous abandoned hard rock mines have been delayed and funds diverted to lower priority abandoned coal mines.

This loss of flexibility also comes at a particularly significant time for New Mexico. Under Governor Bill Richardson's direction, we are using a variety of funding sources to conduct an inventory of abandoned uranium mines, many of which are located in areas occupied by Native Americans in northwestern New Mexico. The impacts of these uranium mines on the nearby residents, particularly the Navajo people, are finally receiving national attention as evidenced by the hearings this year before the House Oversight and Government Reform Committee. New Mexico is working cooperatively with the Navajo Nation and the U.S. EPA to coordinate work on abandoned uranium mines in areas near the Navajo Indian Reservation. With the new AML money available, we have a unique opportunity to finally address some of these sites which have caused great harm to the Navajo communities. With the Interior Department's restrictions, our options become much more limited, because the money for non-coal projects is much more limited. We hope you will prevent that reduction in funds for eliminating hazardous non-coal risks.

Mr. Chairman and members of the Committee, we thank you for this opportunity to present New Mexico's position on S. 2779. We urge the Committee to correct the misinterpretation of SMCRA and restore the flexibility needed by the States. We look forward to working with the Committee in the future.

PREPARED STATEMENT OF HON. BILL RITTER, JR., GOVERNOR, STATE OF COLORADO, ON S. 2779

Thank you for the opportunity to present a statement on this important topic.

I appreciate the efforts of Chairman Bingaman, Senators Salazar and Allard, and this Committee to propose legislation that will clarify the intent of Congress under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Under SMCRA, Congress has allowed States to address public health and safety hazards at all prior mining operations—both coal and non-coal—through their Abandoned Mine Land (AML) Programs. See 30 U.S.C. 1239 (SMCRA section 409). Western states, including Colorado, have used these funds, based on gubernatorial request and secretarial approval, to protect public health and safety from the threats posed by coal and non-coal abandoned mines alike. These threats are significant and growing.

In Colorado, there are over 17,000 mine openings remaining to be safeguarded—the overwhelming majority of these at abandoned non-coal mines, as well as 33 underground coal mine fires of which some are over a century old, 50,000 acres of abandoned coal mine area in the rapidly developing Front Range of Colorado, and over 150 coal and hard rock sites that require some form of environmental cleanup.

Many of the mine related fatalities in Colorado (16 of the 20) over the past few decades have occurred at abandoned non-coal mines. As urban growth pushes into undeveloped areas and as recreational uses increase, the threat to public heath and safety from abandoned mines is increasing. To address this issue, Colorado is appropriating nearly $1 million each year of Severance Tax revenues for AML work.

The reauthorization of the AML Program by Congress did not in any way change the provisions that allow AML funds to be used to address public health and safety hazards at either coal or non-coal mine sites. Yet, the Department of the Interior, Office of Surface Mining (OSMRE) has proposed rules that would prohibit the majority of the funds going to Western, non-certified states from being used on non-coal abandoned mines. This change is contrary to Congressional intent. Had Congress intended to restrict funding for non-coal projects, they would have done so in the legislation.

OSMRE's new interpretation of SMCRA is without support in the law. Section 409 of SMCRA provides that funds allocated to the states under either the "state share" formula or the "historic share" formula (Sections 402(g)(1) and (5)) are available to safeguard high priority non-coal hazards. Despite Congress' decision to leave Section 409 unaltered, OSMRE has decided arbitrarily that "historic share" funds are no longer available for non-coal hazards. Similarly, Congress also decided to provide to the states the amount of "state share" funds that had been previously allocated to the states but not appropriated. OSMRE has now decided that these funds are also no longer available for abatement of non-coal hazards.

OSMRE claims that once a state has completed all of its coal projects, then it can use all of its grant funds for non-coal projects. Therefore, under OSMRE's new inter-

pretation, in order to complete its coal projects, Colorado will spend years working on high cost, low priority coal projects that present little threat to public health and safety—meanwhile, numerous, highly hazardous abandoned non-coal mines will remain unattended. This is a potentially dangerous and unnecessary risk that OSMRE is imposing on the states.

It is essential that we fulfill the intent of Congress to address the greatest threats to public health and safety whether they are at coal or non-coal abandoned mine sites. Colorado's congressional delegation was a leader in this reauthorization to address the unabated hazards at both coal and non-coal abandoned mines. The impact of the Interior Department's interpretation is significant to Colorado. While Colorado's annual AML grant increased this year to $6 million, only $2.4 million is discretionary for either coal or non-coal projects, and the remaining funds can only be spent on coal projects—based on OSMRE's decision.

Since the beginning of the AML Program, Colorado, New Mexico, and Utah have balanced the need to reclaim abandoned coal mines with the need to address the significant health and safety threats posed by numerous non-coal mines. With these funds, Colorado has safeguarded over 7,500 hazardous openings. Colorado, New Mexico, and Utah have all received recognition from OSMRE on exemplary non-coal projects.

Colorado supports S.2779 which will maintain the congressional intent to provide states with the flexibility to use Title IV funds for high priority coal and non-coal sites and not impose any new restrictions on the use of the funds. With a very minor change to SMCRA to correct a misinterpretation by the U.S. Department of the Interior, S. 2779 will return Colorado and other Western states to their long-standing role under SMCRA of directing abandoned mine grant funds to the highest priority needs at either coal or non-coal abandoned mines.

Mr. Chairman and members of the Committee, thank you for this opportunity to present Colorado's position on S. 2779. I look forward to working with the Committee in the future.

PREPARED STATEMENT OF JOHN R. BAZA, DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH, ON S. 2779

My name is John R. Baza and I am the Director of the State of Utah's Division of Oil, Gas and Mining that is part of the Utah Department of Natural Resources. I appreciate this opportunity to submit this statement for the record with respect to the legislative hearing on S. 2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain federal fund payments for qualified non-coal abandoned mined land (AML) reclamation projects. I wish to state that I am unequivocally in favor of, and the State of Utah supports the amended language of SMCRA being proposed by S. 2779.

Utah has and will continue to receive significant new funding under the SMCRA reauthorization legislation; however, because of federal agency interpretation, we will not be allowed to use it on non-coal hazards, which comprise the major physical public health and safety threat related to abandoned mines in Utah. The U.S. Office of Surface Mining, Reclamation, and Enforcement (OSMRE) within the Department of Interior is severely restricting the ability of states/tribes to spend AML funds on non-coal hazards. This restriction applies to non-certified states/tribes and has the greatest impact on three western states with large non-coal problems: Utah, Colorado and New Mexico.

Beginning in federal Fiscal Year 2008, the states/tribes received a substantial increase in AML funds from three sources: state share, historic share, and unappropriated state share funds. Previously, at our own discretion, the states/tribes could use all AML funds for either high priority coal or non-coal projects. OSMRE is choosing to interpret the reauthorization legislation as requiring them to restrict the money connected with the historic share and the unappropriated state share to abandoned coal mine projects only. State share funds alone will be available for non-coal projects. The ramifications are draconian: for Fiscal Year 2008, Utah will have $1.0 out of $3.7 million, Colorado will have $1.9 out of $6.6 million, and New Mexico will only have $1.2 out of $4.2 million available for non-coal projects.

Although OSMRE argues that the unappropriated state share is federal treasury money, there is another interpretation. I believe that the intent of Congress, as demonstrated by the reauthorized legislation, is to return this funding to the states and tribes. It is a purely arbitrary decision on OSMRE's part regarding from which Treasury fund cost category they actually find the money to pay a long past due debt. OSMRE claims that SMCRA was designed to eliminate coal related AML prob-

lems all along and that it is incumbent upon them to carry out Congress' wishes and ensure the completion of coal AML projects and push programs to certification. I disagree. Congress recognized an abandoned mine problem and identified the coal industry and a fee on production as a vehicle to fund the amelioration of the problem. OSMRE has funded the non-coal projects that meet all criteria set out in SMCRA without objection for the past twenty-five years. OSMRE's position on this matter suggests a bias against western states who will derive the most significant impact from such decision-making. I believe OSM is taking this opportunity to block legal avenues that allow western states to address the extreme non-coal abandoned mine hazards and is using every possible interpretation of the reauthorization language to channel available funding to eastern coal states.

In Utah, Colorado and New Mexico almost all (if not all) fatalities and serious injuries associated with abandoned mines have occurred at non-coal mines. These non-coal dangers are our highest priority. While we will continue to conduct abandoned coal mine reclamation projects, if we had a choice, we would target all of our funding increase on the significant public health and safety hazards posed by non-coal abandoned mines.

Utah previously submitted testimony to the Senate Energy Committee on this same problem. During the reauthorization discussions, it was our understanding that the Committee agreed with us that the reauthorization would not decrease our ability to safeguard non-coal hazards. We are extremely disappointed and concerned that OSMRE's interpretation of the reauthorization legislation results in a significant cut in the funding available to mitigate the most hazardous sites in Utah. Even though we now have more funding available than in previous years, we are more restricted in how we can use those funds than ever before. We do not interpret the new language in the reauthorized law as a mandate to deny states/tribes the ability to manage their own programs in their own best interests and in the best interest of the public. Again, I wish to add my name to the list of individuals in support of this legislation. Thank you for the opportunity to submit this statement on S. 2779. I would appreciate your efforts to advance this bill into law.

PREPARED STATEMENT OF THE INTERSTATE MINING COMPACT COMMISSION, ON S. 2779

My name is Gregory E. Conrad and I serve as Executive Director of the Interstate Mining Compact Commission (IMCC). I appreciate the opportunity to submit this statement for the record with respect to the legislative hearing on S. 2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects.

The Interstate Mining Compact Commission (IMCC) is an organization of 24 states located throughout the country that together produce some 95% of the Nation's coal, as well as important hardrock and other noncoal minerals. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. Over the years, IMCC has worked with the states and others to identify the nature and scope of the abandoned mine land problem, along with potential remediation options.

In testimony we presented to the Committee last March at an oversight hearing on hardrock abandoned mine lands (AML), we noted that nationally, abandoned mine lands continue to have significant adverse effects on the environment. Some of the types of environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, sedimentation, chemical release, and acid mine drainage. Safety hazards associated with abandoned mines account for deaths and/or injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years, are scattered throughout the United States. The sites are located on private, state and public lands.

Over the years, several studies have been undertaken in an attempt to quantify the hardrock AML cleanup effort. In 1991, IMCC and the Western Governors' Association completed a multi-volume study of inactive and abandoned mines that provided one of the first broad-based scoping efforts of the national problem. Neither this study, nor any subsequent nationwide study, provides a quality, completely reliable, and fully accurate on-the-ground inventory of the hardrock AML problem. Both the 1991 study and a recent IMCC compilation of data on hardrock AML sites were based on available data and professional judgment. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do dem-

onstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that remediation costs are very large.

Some of the types of numbers that IMCC has seen reported in our Noncoal Report and in response to information we have collected for GAO and others include the following: Number of abandoned mine sites: Alaska—7,000; Arizona—80,000; California—47,000; Colorado—7,300; Montana—6,000; Nevada—16,000; Utah—17,000—20,000; Washington—3,800; Wyoming—1,700. Nevada reports over 200,000 mine openings; Minnesota reports over 100,000 acres of abandoned mine lands.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. And although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states are intimately familiar with the highest priority problems within their borders and also know where limited reclamation dollars must immediately be spent to protect public health and safety or protect the environment from significant harm.

Today, state agencies are working on hardrock abandoned mine problems through a variety of limited state and federal funding sources. Various federal agencies, including the Environmental Protection Agency, Bureau of Land Management, U.S. Forest Service, Army Corps of Engineers and others have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states with our hardrock AML work and, as states take on a larger role for hardrock AML cleanups into the future, we will continue to coordinate with our federal partners. However, most of these existing federal grants are project specific and do not provide consistent funding. For states with coal mining, the most consistent source of AML funding has been the Title IV grants under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites.

In December 2006, Congress significantly amended the SMCRA AML program to, among other things, distribute funds to states in an amount equal to that previously allocated under SMCRA but never appropriated. However, while Section 409 was not changed or amended in any way, the Interior Department has now interpreted SMCRA to prohibit this enhanced funding from being used for noncoal projects. This is a significant blow to states such as New Mexico, Utah and Colorado which have previously used SMCRA AML funds to address many of the more serious hardrock AML problems. S.2779 would address this misinterpretation by the Interior Department and as a result we strongly support the bill.

As you noted in a letter to Secretary Kempthorne last month Mr. Chairman, Interior's interpretation not only disregards the fact that section 409 was left unamended by Congress, it is also inconsistent with assurances repeatedly given to the states and tribes by OSM during the consideration of the legislation that noncoal work could continue to be undertaken with these AML funds. The interpretation would also have the unacceptable result of requiring states and tribes to devote funds to low priority coal sites while leaving dangerous noncoal sites unaddressed. While OSM will argue that this may impact the amount of funding available to uncertified states to address high priority coal problems, Congress did not seem overly concerned with this result but rather deferred to its original framework for allowing both high priority coal and noncoal sites to be addressed.

OSM has also argued in a recent proposed rule implementing the 2006 amendments to SMCRA (at 73 Fed. Reg. 35214, et seq.) that "prior balance replacement" funds (i.e the unappropriated state and tribal share balances in the AML Trust Fund) are fundamentally distinct from section 402(g) moneys distributed from the Fund. This, according to OSM, is due to the fact that these prior balance replacement funds are paid from U.S. Treasury funds and have not been allocated under section 402(g)(1). This is a distinction of convenience for the Interior Department's interpretation of the 2006 Amendments and has no basis in reason or law. The fact is, these funds were originally allocated under section 402(g)(1), are due and owing pursuant to the operation of section 402(g)(1), and did not change their "color" simply because they are paid from a different source. Without the operation of section 402(g)(1) in the first place, there would be no unappropriated (i.e. "prior") state and tribal share balances. The primary reason that Congress appears to have provided a new source for paying these balances is to preserve a balance in the AML Trust Fund to 1) generate continuing interest for the UMW Combined Benefit Trust Fund and 2) to insure that there was a reserve of funding left after fee collection terminates in 2021 to address any residual high priority historic coal problems. There was never an intent to condition or restrict the previously approved mechanisms and procedures that states and tribes were using to apply these moneys to high pri-

ority coal and noncoal problems. To change the rules based on such a clever invention is inappropriate and inconsistent with law.

For the same reasons that Congress needs to clarify this misinterpretation for noncoal AML work, it should also do so for the acid mine drainage (AMD) set aside program. Section 402(g)(6) has, since 1990, allowed a state or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem. OSM's recent policy (and now regulatory) determination is denying the states the option to set aside moneys from that portion of its grant funding that comes from "prior balance replacement funds" each year to mitigate the effects of AMD on waters within their borders. AMD has ravaged many streams throughout the country, but especially in Appalachia. Given their long-term nature, these problems are technologically challenging to address and, more importantly, are very expensive. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. We therefore urge the Committee to amend S. 2779 to correct the current policy interpretation by Interior and allow the use of unappropriated state and tribal share balances ("prior balance replacement funds") for the AMD set aside, similar to the use of these balances for noncoal work. Suggested amendatory language is attached to our statement.

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. There are numerous success stories from around the country where the states' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and objectives of set forth by Congress when SMCRA was first enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of S. 2779 will further these congressional goals and objectives.

Thank you for the opportunity to submit this statement on S.2779. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

SUGGESTED AMENDMENT TO S. 2779 TO INCLUDE THE AMD SET-ASIDE ACCOUNT
(AMENDMENTS ARE IN ITALICS)

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal *and acid mine drainage* reclamation projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

(a) Limitation on Funds.—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting "or section 411(h)(1)" after "section 402(g)". *Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting "or section 411(h)(1)" after "paragraphs (1) and (5)".*

(b) Use of Funds.—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by inserting *"section 402(g)(6)" before "section 403" and inserting "section 409"* after "section 403".

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF ABANDONED MINED LAND PROGRAMS, ON S. 2779

My name is Loretta Pineda and I serve as the president of the National Association of Abandoned Mined Land Programs (NAAMLP).

The NAAMLP is a tax-exempt organization consisting of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation's coal production. All of the states and tribes within the NAAMLP administer abandoned mine land (AML) reclamation programs funded and overseen by the Office of Surface Mining (OSM) pursuant to Title IV of the Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87).

Since the enactment of SMCRA by Congress in 1977, the AML program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans.

The Association was pleased with the passage of the 2006 Amendments to SMCRA. The 15-year extension coupled with increased funding has provided the states and tribes with the ability to focus on the protection of the public health and safety while ensuring restoration of abandoned mines nationwide. The reauthorization of the AML program by Congress did not in any way change the provisions that allow AML funds to be used to ameliorate either coal or non-coal mine public health and safety hazards. However, the Interior Department has now published proposed rules to prohibit some of this funding from being used to address many of the serious non-coal AML problems.

Therefore, we strongly support S.2779, which makes very minor changes to SMCRA to correct a misinterpretation of SMCRA by the U.S. Department of the Interior. S. 2779 will return states to their longstanding role under SMCRA of directing abandoned mine grant funds to the highest priority needs at either coal or noncoal abandoned mines.

The NAAMLP has worked closely with the Interstate Mining Compact Commission and the Western Governors' Association in providing information to quantify the non-coal AML cleanup effort. While the data is seldom comparable between states due to the wide variation in inventory criteria, they do demonstrate that there are large numbers of significant safety and environmental problems associated with inactive and abandoned non-coal mines and that remediation costs are very large.

Some of the types of numbers that have been reported by IMCC in response to information we have collected for GAO and others include the following: Number of abandoned mine sites: Alaska—7,000; Arizona—80,000; California—47,000; Colorado—7,300; Montana—6,000; Nevada—16,000; Utah—17,000—20,000; Washington—3,800; Wyoming—1,700. Nevada reports over 200,000 mine openings; Minnesota reports over 100,000 acres of abandoned mine lands.

States and Tribes are very familiar with the highest priority non-coal problems within their borders and also have limited reclamation dollars to protect public health and safety or protect the environment from significant harm. States and Tribes work closely with various federal agencies, including the Environmental Protection Agency, the Bureau of Land Management, the U.S. Forest Service, and the U.S. Army Corps of Engineers, all of whom have provided some funding for noncoal mine remediation projects. For states with coal mining, the most consistent source of AML funding has been the Title IV grants received under the Surface Mining Control and Reclamation Act (SMCRA). Section 409 of SMCRA allows states to use these grants at high priority non-coal AML sites. The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at noncoal sites.

In written statements that we presented to the Committee in November of 2007, the Association prioritized two issues of highest concern to us. One involved the restriction noted above regarding the use of unappropriated state and tribal share balances for noncoal AML work. The second involves a similar restriction on the use of these unappropriated balances for the Acid Mine Drainage (AMD) set-aside program under SMCRA. Congress expanded this program in the 2006 Amendments to allow states and tribes to set-aside up to 30% of their grants funds for treating AMD now and into the future. AMD has ravaged many streams throughout the country, but especially in Appalachia. The states need the ability to set aside as much funding as possible to deal with these problems over the long term. Again, OSM has acted arbitrarily in their interpretation of the reauthorizing language by limiting the types of funds the state may use for the set-aside program. We have proposed amendatory language that would correct this misinterpretation and allow the states to apply the 30% set-aside to their prior balance replacement funds. (Suggested amendatory language is attached to our statement.)

In summary:

- Since the inception of SMCRA in 1977 and the approval of state/tribal AML programs in the early 1980's, the states and tribes have been allowed to use their state share distributions under section 402(g)(1) of the AML Trust Fund for high priority noncoal reclamation projects pursuant to section 409 of SMCRA and for the set-aside program for acid mine drainage (AMD) projects.
- In its most recent proposed rules, OSM has stated that these moneys cannot be used for noncoal reclamation or for the 30% AMD set-aside.
- Pursuant to Section 411(h)(1) of the 2006 Amendments, the states and tribes assert that these moneys should also be available for noncoal reclamation under

section 409 and for the 30% AMD set-aside. There is nothing in the new law that would preclude this interpretation. Policy and practice over the past 30 years confirm it.

Over the past 30 years, tens of thousands of acres of abandoned mine lands have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Be assured that States and Tribes are determined to address the unabated hazards at both coal and non-coal abandoned mines. We are all united to play an important role in achieving the goals and objectives as set forth by Congress when SMCRA was first enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal and noncoal mining. Passage of S. 2779 will further these congressional goals and objectives.

I appreciate the opportunity to submit this statement for the record with respect to the legislative hearing on S. 2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

SUGGESTED AMENDMENT TO S. 2779 TO INCLUDE THE AMD SET-ASIDE ACCOUNT
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Senator WYDEN. We are going to hear today a number of bills, S. 2443 and H.R. 2246, to release a reversionary interest of the United States in certain lands in Reno, Nevada; S. 2779, to amend the Surface Mining Control and Reclamation Act of 1977, to clarify that certain payments may be used for noncoal reclamation projects; S. 2875, to authorize the Fish and Wildlife Service to provide grants to reduce predation and compensate landowners for livestock loss due to predation; S. 2898 and H.R. 816, to release certain public land from the Sunrise Mountain Instant Study Area in the State of Nevada; S. 3157, to authorize an exchange of certain national forest land in Arizona to facilitate the development of a copper mine; S. 3179, to authorize the conveyance of certain land in the State of New Mexico to the Lovelace Respiratory Research Institute.

Let me close my opening remarks by just commenting briefly on two bills that I have introduced that are extremely important to my home State, the Oregon Badlands Wilderness Act of 2008, S. 3088, and 3089, the Spring Basin Wilderness Act of 2008. These two bills would protect as wilderness two especially unique treasures in the high desert of central and eastern Oregon. They reflect

the wild, rugged beauty that makes our State and our State's terrain east of the Cascade Mountains incomparable.

The Oregon Badlands Wilderness Act would designate as wilderness almost 30,000 acres of the area just east of Bend known as the Badlands, in addition to the area's natural attributes of lava flows and 1,000-year-old ancient junipers, many in the business consider this wilderness area as a very substantial boost to the region's hub as an area of great attraction for outdoor recreation. In the Bend area, people can enjoy virtually any sort of outdoor activity imaginable, and we are excited about the prospects of this legislation moving forward.

The Spring Basin Wilderness Act of 2008 would designate approximately 8,600 acres as wilderness, and with some of the revised exchanges that are being discussed and are supported widely, that would expand to more than 9,200 acres. This is one of central Oregon's premier wild areas. It overlooks the John Day Wild and Scenic River where you have spring wildflower blooms and canyons and diverse geology that again offers exceptional recreational opportunities for hikers, horseback riders, hunters, and other outdoor enthusiasts.

So we will talk more about this legislation and other bills, but I know colleagues have strong views on the measures before them that affect their home States. Let me recognize the ranking minority member, Senator Barrasso.

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

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate you holding this hearing today.

Mr. Chairman, Senator Tester and I have a bill, S. 2875, The Gray Wolf Livestock Loss Mitigation Act that we have introduced. It authorizes the Secretary of the Interior to provide grants to carry out programs to reduce the risk of livestock loss due to predation by gray wolves and other predators. The program will compensate landowners for livestock loss due to predation.

Mr. Chairman, as you know, ranching is the backbone of the Wyoming way of life and it is a time-honored and vital part of the fabric of our western heritage. The Federal Government reintroduced the gray wolf into our environment. The ranchers of Wyoming did not ask that the wolf be reintroduced. As a matter of fact, Wyoming ranchers opposed it because they knew what the consequences would be, and one of those ranchers is with us today. Often decisions are made in Washington and awful impacts are felt back at home, and for Wyoming ranchers the decision to reintroduce the wolf has led to livestock loss and a direct threat to our livelihood. The wolf has been devastating not just to our livestock but also to our wildlife.

The State of Wyoming, acting in good faith, has done its part.

The gray wolf was recently taken off of the Endangered Species Act, but it continues to be a serious problem and the introduction of the wolves continues to have a significant impact.

The State of Wyoming spent $1.2 million last year providing compensation to ranchers who lost livestock. The State needs additional assistance from the Federal Government to ensure that

ranchers get the assistance they need for a problem not of their own making. Washington forced the wolf on Wyoming and on our adjacent States in Montana and in Idaho, and Washington has a responsibility to help pay for the damage.

Additionally, Mr. Chairman, I want to comment briefly on S. 2779. This legislation addresses abandoned mines in the uncertified States and tribes, those which have not addressed all the priorities under the Surface Mining Control and Reclamation Act. The legislation before this subcommittee today would allow, even require, that these uncertified States and tribes use Abandoned Mine Land funds paid by the coal companies to address entryways and tunnels of the noncoal mines.

I understand this legislative fix serves the needs of western States like Utah and New Mexico and Colorado, but I am going to urge the full committee to include a related bill, S. 2448, in the same discussion. That second bill, Mr. Chairman, will also provide a legislative fix for western States and tribes like Wyoming and Montana, States that have been certified by the Department of the Interior as having addressed their reclamation priorities.

In Wyoming's case, the executive branch is operating under a twisted interpretation of the same law which is giving other western States fits. In Wyoming's case, the Administration is interpreting the phrase "seven equal annual installments" as an unlimited number of unequal grants. Legislation is needed to correct this erroneous interpretation. As a practical matter, Mr. Chairman, I trust that both corrections can be addressed concurrently.

Finally, Mr. Chairman, and most importantly, I want to extend a warm welcome to Mr. Charles Price of Daniel, Wyoming. He has traveled here today to testify on S. 2875 and share his experience with the Senate. Charles, I appreciate your taking the time away from the ranch to come to testify on this important piece of legislation.

Mr. Chairman, I look forward to the hearing. Thank you.

Senator WYDEN. Senator, thank you.

Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Chairman Wyden. I will not take much time at all. I appreciate you holding hearings on all these bills.

As Senator Barrasso pointed out, I am here primarily for S. 2875. I will save most of my comments for the questions. So thank you.

Senator WYDEN. Senator Smith.

STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Senator Wyden. It is good to be here with you.

I will start my remarks by addressing two wilderness bills that you have spoken to already, the Oregon Badlands and the Spring Basin Wilderness Acts. I would like to acknowledge all the extraor-

dinary efforts that have been made by all parties to develop these two pieces of legislation.

The Spring Basin area has been proposed as a wilderness since 1980. It is encouraging as a legislator to be presented with a proposal that has already been thoroughly vetted by local governments and stakeholders. The BLM, the Confederated Tribes of the Warm Springs Indian Reservation, local landowners, and the Oregon Natural Desert Association have joined together in supporting this proposal. So today I would like to lend my support and ask that I be added as a cosponsor.

Senator WYDEN. Senator Smith, that is a request that is granted, and I thank you for it.

Senator SMITH. This proposal contains four previously negotiated land exchanges between private landowners and the BLM, bringing the total area to be designated as contiguous wilderness to 8,632 acres. There is a proposal by the Warm Springs Tribe to increase the designated wilderness to 9,268 acres by revising the lands exchanged between the tribe and BLM. The revised land exchange I believe improves the proposed Spring Basin Wilderness, and I will work with you, Senator Wyden, to see if this can be incorporated as well.

The Oregon Badlands Area was also originally set aside for wilderness designation in 1980. The Badlands proposal includes two small land exchanges and creates a wilderness area of nearly 30,000 acres. This area is only 15 miles east of the city of Bend. It is replete with jagged rock formations, Native American pictographs, ancient western juniper trees, and a diversity of wildlife from deer and elk to mountain lions and golden eagles. There is no question that this is a special area and it is worth protecting.

I do want, though, to raise a couple of concerns for designating Badlands as wilderness, and that is—and we will work on this, Senator, to see if we can resolve this—the potential impact to offroad recreation. I understand that the Badlands were closed to off-highway vehicle use in 2005 and adjacent areas contain over 600 miles of trails for offroad use. I would like to ensure that these alternate areas are adequate to meet the local demand, and we will, I am confident, be able to come up with some accommodation on this.

Additionally, while both these wilderness proposals have broad support and do not affect grazing, this committee, I believe, should do all it can to ensure that family ranches are not regulated or litigated out of existence. I would ask the many conservation groups that back these wilderness bills to work with me and work with Oregon cattlemen to find a more appropriate way forward for grazing on public lands in eastern Oregon.

Part of the solution includes releasing lands designated as wilderness study areas when supported by local government and stakeholders, both the Spring Basin and Oregon Badlands areas have been held as WSA's since 1980. While I believe these areas are worthy of wilderness designation, some of the WSA's simply are not and are being locked away from those who are making their living off the land.

I would plead with conservation groups to stop the litigation. There is an accommodation that can be found here. Wilderness is

different than WSA. Some should be wilderness. We should finish the process, but this limbo that leaves cattlemen and everyone dissatisfied I think really deserves some kind of conclusion. Otherwise, I am left with little recourse but to respond with legislation to maintain cattle grazing at levels consistent with the land's capacity.

Also before the committee today, I am fully supportive of the Gray Wolf Livestock Loss Mitigation Act. Oregon's Department of Fish and Wildlife has a wolf management plan in place and ready to implement pending further State legislative action. The Federal plan proposed by Senators Tester and Barrasso is similar to the Oregon plan, including a compensation component for livestock owners whose animals are destroyed by wolf predation.

So I fully support the Senators' work on the gray wolf act, and I would like to encourage the geographic expansion of this legislation. In its current form, the bill covers Montana, Wyoming, and Idaho. The successful recovery of gray wolves, however, has expanded their habitat boundary into eastern Oregon and eastern Washington. I believe we have an obligation to protect not only the declining species, but also the ranching families who make their living off the land of this great country.

Once again, I would like to thank all of the parties who have assisted in crafting these bills, and I look forward to shepherding their refinement and their passage with Senator Wyden.

Senator WYDEN. Senator Smith, thank you, and we will be working together on these bills.

Let us go to Senator Salazar.

STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Senator SALAZAR. Thank you very much, Chairman Wyden, for holding this hearing.

I want to simply state my appreciation to Chairman Bingaman and to Senator Allard for their support of 2799. The abandoned mine land issue is a major issue for us in the western States. In Colorado alone, we have some 17,000 abandoned mines, and action needs to be taken on them. Under the current interpretation of the Department of the Interior, we cannot access those funds in the State of Colorado, and the same is true for many of our western States, including New Mexico. So I am here just to voice my support for that legislation.

I also would like to enter into the record a letter of June 6, 2007, which was signed by Senator Bingaman, Senator Domenici, Senator Allard, Senator Hatch, and myself, as well as other Senators whose names I cannot read, and ask that this letter of June 6 be included as part of the record.

Senator WYDEN. Without objection, that will be ordered.

[The information referred to follows:]

U.S. SENATE,
Washington, DC, June 6, 2007.

Hon. DIRK KEMPTHORNE,
Secretary, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC.

DEAR SECRETARY KEMPTHOME: We are writing to voice our serious concern over what we understand is a proposed interpretation by the Office of Surface Mining Reclamation and Enforcement (OSM) of certain provisions relating to the Aban-

doned Mine Land (AML) Program contained in the Tax Relief and Health Care Act of 2006. That law reauthorized collection of the AML fee and made certain modifications to the AML program. While we strongly support the AML program, we are concerned that OSM may interpret the new law in a manner that would prevent certain western states from addressing some of the most significant problems relating to abandoned mines—those involving abandoned non-coal mines.

Section 409 of the Surface Mining Control and Reclamation Act (SMCRA), provides that states may address public health and safety hazards at abandoned mine sites, both coal and non-coal. Western states such as New Mexico, Colorado, and Utah, have prioritized the use of AML funds to undertake the most pressing reclamation work on both coal and non-coal mine sites. While these activities consume a relatively insignificant piece of the funding provided for the overall AML program, the results in terms of the public health and safety in these states is considerable. There is significant work yet to be done. For example, we understand that New Mexico alone has over 10,000 remaining mine openings with a vast majority of these being non-coal, and that all fatalities there in the last few decades have been at non-coal mine sites.

We understand that OSM, nevertheless, is seriously considering an interpretation of the recently-enacted amendments to SMCRA that would prevent western, non-certified states from using for non-coal work their historic state share and the payments comprising their previously unappropriated balances. We believe this interpretation is in error. First, it disregards the fact that section 409 was left unamended by the Congress. Furthermore, this interpretation is inconsistent with assurances repeatedly given to us by OSM during the consideration of the legislation that non-coal work could continue to be undertaken with these AML funds. Finally, the interpretation apparently being considered by OSM would have the unacceptable result of requiring these states to devote funds to low priority coal sites while leaving dangerous non-coal sites unaddressed.

A fair reading of the recently-enacted amendments allows the use of AML funds, including historic and unappropriated balance allocations, for high priority non-coal sites in these uncertified western states. We strongly urge you to adopt this interpretation.

Sincerely,

JEFF BINGAMAN,
U.S. Senator.

PETE DOMENICI,
U.S. Senator.

KEN SALAZAR,
U.S. Senator.

WAYNE ALLARD,
U.S. Senator.

ROBERT F. BENNETT,
U.S. Senator.

ORRIN HATCH,
U.S. Senator.

Senator SALAZAR. Thank you, Mr. Chairman.

Senator WYDEN. I thank the Senator.

Senator Kyl is on his way, but I think in the interest of time, let us go forward and have the Administration panel come up. I do want to make clear that when Senator Kyl gets here, we will recognize Senator Kyl.

Alice Williams, Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration, Department of Energy; Michael Nedd, Assistant Director of Minerals and Realty Management, Bureau of Land Management, Department of the Interior; and Joel Holtrop, Deputy Chief of the National Forest System of the Forest Service, Department of Agriculture. Why do you three not come on up?

I am going to make your prepared statements a part of the record, and I always try—Mr. Holtrop has heard me say this—to see if I can persuade people to just summarize their principal con-

cerns and it will save some time along the way. So if I can persuade you all to do that, extra points awarded for that.

Ms. Williams, welcome, and please proceed.

STATEMENT OF ALICE WILLIAMS, ASSOCIATE ADMINISTRATOR FOR INFRASTRUCTURE AND ENVIRONMENT, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY

Ms. WILLIAMS. Thank you, Chairman Wyden, Ranking Member Barrasso, and distinguished members of the subcommittee. Thank you to Chairman Bingaman and Mr. Domenici for introducing the legislation.

My name is Alice Williams. I am the Associate Administrator for Infrastructure and Environment at the National Nuclear Security Administration of the Department of Energy.

I appreciate the opportunity to testify today on S. 3179, a bill to convey approximately 135 acres of land currently under the jurisdiction of the Secretary of the Air Force but leased to the Secretary of Energy and the DOE improvements on that land to the Lovelace Respiratory Research Institute. S. 3179 also directs the change in administrative jurisdiction of another approximately 7 acres of land from the Secretary of Energy to the Secretary of the Air Force.

The Department supports both elements of S. 3179.

The Inhalation Toxicology Laboratory, formerly known as the Inhalation Toxicology Research Institute, is located within the boundaries of Kirtland Air Force Base in Bernalillo County, New Mexico. The facility served an important role from 1960 to 1996 as a Government-owned, contractor-operated laboratory performing research for the DOE and its predecessor agencies on the effects of inhalation of hazardous substances.

In 1996, the Department determined that the facility was no longer required for its mission. In an effort to continue its productive use for research and to mitigate the economic impact that closing the facility would have on the Albuquerque community, the facility was placed under long-term lease to the Lovelace Respiratory Research Institute, which has operated it for the U.S. Government since its inception.

Should I continue?

Senator WYDEN. Why do we not do this, Ms. Williams? Why do you not finish your statement, because I know you were going to take 5 minutes, and Senator Kyl is a very gracious soul. When you are done with your statement, then we will go right to Senator Kyl.

Ms. WILLIAMS. Thank you.

S. 3179 provides for the completion of the privatization of this facility by transferring the real property and improvements from the Federal Government to the Lovelace Respiratory Research Institute. The bill specifies that the property and facilities must be used for the continuation of their current research, scientific, or educational purposes.

S. 3179 further requires that Lovelace Respiratory Research Institute will take title to the property as contaminated, regardless of whether that contamination originated from past Government operations, and conduct any and all environmental remediation that might be required in the future. The assumption of this re-

sponsibility provides for a significant benefit to the taxpayer by transferring an estimated liability in excess of $20 million in decontamination and demolition costs for a facility that is excess to the Department's mission.

Finally, S. 3179 directs the change in administrative jurisdiction of another approximately 7 acres of land from the Secretary of Energy to the Secretary of the Air Force. This property is no longer required by the Department, and we support its transfer for beneficial use to the Department of the Air Force.

Thank you for the opportunity to testify, and as appropriate, I will be happy to address questions.

[The prepared statement of Ms. Williams follows:]

PREPARED STATEMENT OF ALICE WILLIAMS, ASSOCIATE ADMINISTRATOR FOR INFRASTRUCTURE AND ENVIRONMENT, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY, ON S. 3179

Thank you Chairman Wyden, Ranking Member Barrasso and distinguished members of the subcommittee, and thank you to Chairman Bingaman and Mr. Domenici for introducing this legislation. My name is Alice Williams. I am the Associate Administrator for Infrastructure and Environment at the National Nuclear Security Administration of the Department of Energy (DOE). I appreciate the opportunity to testify today on S. 3179, a bill to convey approximately 135 acres of land currently under the jurisdiction of the Secretary of the Air Force but leased to the Secretary of Energy, and the DOE improvements on that land to the Lovelace Respiratory Research Institute (LRRI). S. 3179 also directs the change in administrative jurisdiction of another approximately 7 acres of land from the Secretary of Energy to the Secretary of the Air Force.

The Department of Energy supports both elements of S. 3179.

BACKGROUND

The Inhalation Toxicology Laboratory, formerly known as the Inhalation Toxicology Research Institute, is located within the boundaries of Kirtland Air Force Base in Bernalillo County, New Mexico. This facility served an important role from 1960 to 1996 as a government-owned, contractor-operated laboratory performing research for the DOE and its predecessor agencies on the effects of inhalation of hazardous substances. In 1996, the Department determined that the facility was no longer required for its mission. In an effort to continue its productive use for research, and to mitigate the economic impact that closing the facility would have on the Albuquerque community, the facility was placed under long-term lease to the Lovelace Respiratory Research Institute, which had operated it for the United States government since its inception.

This "privatization initiative" has been a significant success. The facility now has gross revenues exceeding $50M and provides employment for more than 500 workers in the Albuquerque area. The facility enjoys a very positive technical reputation for its work in inhalation toxicology supporting both the private and public sector.

S. 3179

S. 3179 provides for the completion of the privatization of this facility by transferring the real property and improvements from the federal government to the LRRI. The bill specifies that the property and facilities must be used for a continuation of their current research, scientific or educational purposes. S. 3179 further requires that LRRI will take title to the property "as contaminated" regardless of whether that contamination originated from past government operations and conduct any and all environmental remediation that might be required in the future. The assumption of this responsibility provides for a significant benefit to the taxpayer by transferring an estimated liability in excess of $20 million dollars in decontamination and demolition costs for a facility that is excess to the Department's Mission.

Finally, S. 3179 directs the change in administrative jurisdiction of another approximately 7 acres of land from the Secretary of Energy to the Secretary of the Air Force. This property is no longer required by the Department and we support its transfer for beneficial use to the Department of the Air Force.

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

Senator WYDEN. Ms. Williams, thank you.

Senator Kyl, I know you are very busy as a member of the Republican leadership, and please proceed.

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

Senator KYL. Thank you, Mr. Chairman. Just for the benefit of everyone here, we are right in between some votes, and I really appreciate the four of my colleagues being here to hear these important witnesses on these matters.

I am testifying about the Southwest Arizona Land Exchange and Conservation Act. I just want to say three quick things about this legislation.

We know that our copper needs in this country are going to increase exponentially, especially if we can produce more things like hybrid vehicles and other things which require more copper for electrical use. There has been a find in Arizona that is almost unsurpassed perhaps in the history of the United States with respect to copper, and I say that with some trepidation knowing that there is a lot of copper produced in the State of Montana as well, but this is huge.

Part of the problem is that there is some public land overlaying this. That gets to part two, the benefit to the public of being able to acquire some extraordinary lands currently private that would be put into public use. These lands have tremendous environmental value, and rather than just listing them and so on, I will refer them. Your staff is well aware of them. Just a couple of examples.

More than 2 miles of a perennial trout stream on East Clear Creek. I have been there. It is beautiful country, very important in our State that does not have very many perennial streams.

Almost 7 miles of land spanning both sides of the lower San Pedro. This is the last totally flowing river in the State of Arizona. It has got to be preserved. There are a lot of efforts underway to preserve it. This is part of those efforts. There are some ranches, some inholdings in the Tonto National Forest, and so on.

But the bottom line is that this mine, which does have to have a land exchange involved in it, offers us a wonderful opportunity to acquire these environmentally sensitive lands as well.

Incidentally, this mine that I speak of could have a total economic impact of more than $50 billion. That is just how big this thing is.

The third I want to mention is that when we first introduced this bill, despite the best efforts of all of the people in Arizona working on it—and there is virtual total unanimity among the leaders in the State of Arizona to support this, and they thought they had every single problem that could conceivably be brought up worked out. That is where the staffs of the minority and majority of this committee come in. They are really good at finding other things that need to be addressed, and the truth of the matter is there were a lot of serious questions that were asked by your staffs that have now been addressed. I think the best way for me to have you confirm that is just talk to your staff.

We basically took a lot of their recommendations in incorporating changes into the legislation. They involved three specific areas, one relating to NEPA. I mean, there can be no question that there has

to be NEPA analysis in connection with this, and there has been basically a belt and suspenders put on that in the legislation.

There was a question of market value because this copper is so deep into the ground, it is hard to know right now what the real value is and, therefore, how much land exchange you do. Built into this now is essentially a provision of whatever that value turns out to be, that is what the Government is going to get. There will be a value adjustment for the benefit of the Government. From my standpoint, that is a good thing for this bill because we can better assure our taxpayer constituents that they are going to get their money's worth no matter what, however it turns out the value of this is.

Then finally, there were some questions about a State park and climbing opportunities for mountain climbers—rock climbers, rather. I believe those issues have now all been worked out.

So we changed the legislation originally introduced in those three respects, again pursuant primarily to recommendations of staff. I think it has made it a better bill. It certainly has provided a unanimous or nearly unanimous point of view among all of the key stakeholders in Arizona. I am really hopeful because a lot rides on how quickly we can do this in terms of the financial commitment to develop the mine that we can complete this legislation this year. It is really critical that we be able to move it forward quickly.

Therefore, I very appreciate, Mr. Chairman, your holding this hearing and pledge to work with you if there are any other questions or issues that arise that we need to deal with. Thank you.

Senator WYDEN. Senator Kyl, we will work very closely with you, and we will make sure that it is bipartisan, that all the staff is involved and that we do it quickly.

Senator KYL. Great. Thank you very, very much, and I appreciate your attention. Thank you, colleagues, for letting me interrupt here.

Senator WYDEN. Let us go now to Mr. Holtrop.

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. HOLTROP. Mr. Chairman and members of the committee and subcommittee, thank you for inviting me to provide the Department of Agriculture's views on S. 3157. You have my full statement for the record and this afternoon I will summarize our views on provisions that relate to National Forest System lands.

S. 3157 is a complex land exchange bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining Company 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 U.S. Forest Service and the Bureau of Land Management.

Because this proposed exchange would result in the protection of lands that have outstanding natural qualities, as Senator Kyl just expressed, the Department supports the exchange and believes that overall it is in the public interest.

We provided testimony last November on a similar bill, and we understand that S. 3157 reflects modifications in response to var-

ious concerns and we appreciate these changes. However, some concerns remain and we have some new concerns which I will highlight.

A new provision adds a 95-acre parcel called The Pond, which would be conveyed to the Department of Agriculture. Rock climbers currently use this area, and it could serve as an alternative for those displaced from climbing areas that would be conveyed to Resolution Copper. While we agree this offers an attractive site for climbers, it lacks access and infrastructure for public use. This includes safe parking, pedestrian access, and sanitary facilities, and we would like to work with the subcommittee to amend the bill to require that improvements be completed prior to the parcel's conveyance.

This bill includes a new provision that specifies which pre-exchange processing tasks are to be done, including land survey and various reviews. It requires the exchange to be completed within 1 year. We still believe this is an insufficient time to complete all the work necessary to complete the exchange. This includes development and review of a mineral report, completion of appraisals and surveys, verification of title documents, and the many specified clearances, reviews, and consultation with Indian tribes.

Another new provision directs the Secretary to complete an environmental impact statement post-exchange, but prior to commencing mineral production regarding any Federal agency action carried out relating to commercial production. The bill does not specify which party would be responsible for the costs of these provisions and our support is contingent upon the requirement that Resolution Copper would be responsible for these costs.

We are concerned about provisions of section 5 regarding failure of the parties to agree on the value of any parcel. The bill would require that disputes be resolved through binding arbitration procedures found in a section of the Federal Land Policy and Management Act of 1976. That section, however, is intended for discretionary exchanges. Accordingly, we believe that the bill should be amended to more specifically address applicable options.

S. 3157 includes a new provision that would require a payment to the United States should actual mineral production exceed the projected production from the appraisal. The Administration generally supports this approach but would like to work with the subcommittee to clarify specific intent and implementation procedures, as well as the disposition of receipts.

The bill directs the Secretary to design and construct one or more campgrounds to replace the Oak Flat Campground. We appreciate that changes have been made to this provision based on previous testimony. We still believe, however, it will be difficult to find a suitable replacement site. The funding cited in the bill remains insufficient and it may be difficult to construct a replacement campground within 4 years. We would like to work with the subcommittee to consider alternatives.

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

[The prepared statement of Mr. Holtrop follows:]

PREPARED STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ON S. 3157

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 S. 3157, the "Southeast Arizona Land Exchange and Conservation Act of 2008."

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

S. 3157 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.

The Department believes that the acquisition of the non-federal parcels to be managed as part of the 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 provided testimony last November on a similar bill, H.R. 3301, and we understand that S. 3157 reflects modifications to that bill in response to various concerns. We appreciate these changes. However, some concerns remain and we have some new concerns regarding the new provisions in this bill. 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 parcel referred to as the "Oak Flat" parcel from the United States for nine parcels of land owned by Resolution Copper, six of which would be conveyed to the Department of Agriculture: 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 the 95-acre parcel referred to as The Pond 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.

As a condition of the exchange, the bill requires Resolution Copper to convey 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, which would be held by a qualified unit of government, an Indian tribe, a land trust or certain other organizations, would provide permanent protection for the parcel from surface disturbance and ensure future public access and use.

S. 3157 also directs the Secretary of Agriculture to convey to the Town of Superior, upon the Town's request, the 30-acre town cemetery and approximately 181 acres adjacent to the Superior airport. In addition, upon request by the Town, the Secretary shall convey the reversionary interest and any reserved mineral interest in the 265-acre Superior airport site already owned by the Town.

S. 3157 includes the 95-acre parcel called The Pond that was not a part of H.R. 3301, which would be conveyed to the Department of Agriculture. We understand that this area is currently used by rock climbers and could accommodate those who are displaced from current climbing areas that would be conveyed to Resolution Copper. While the Forest Service agrees that this would be an attractive site for climbers, it lacks the access and infrastructure to accommodate public use, such as safe parking, pedestrian access, and sanitary facilities. We would like to work with the Subcommittee and the bill's sponsor to amend the bill to require such accommodations be completed prior to the conveyance of the parcel to the Secretary.

If the value of the Federal land to be exchanged exceeds that of the non-Federal land in the specified 9 parcels, section 5(b) of the bill requires that Resolution Copper make a cash equalization payment. The payment may be greater than the 25 percent limit imposed by Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b). All cash equalization funds are to be deposited into the Federal Land Disposal Account and could be used for either 1) acquisition of additional lands from willing sellers within the hydrographic boundary of the San Pedro River within a 2-year period from the date of the deposit or 2) the management and protection of endangered species and other sensitive land or environmental values in the San Pedro Riparian National Conservation Area.

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

Section 4(d) of the bill requires that the exchange contemplated by S. 3157 will be completed within one year. The Department believes that this is insufficient time to complete all the work necessary to complete the exchange, including the develop-

ment 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 4(g) is a new provision not in H.R. 3301 that requires pre-exchange processing including land survey and specified reviews that are normally done in the course of a land exchange. Section 4(h) directs the Secretary to complete an environmental impact statement post-exchange but prior to commencing mineral production regarding any Federal agency action carried out relating to commercial production. The bill does not specify which party would be responsible for the costs of these provisions. The Department's support is contingent upon the clarification section 4(e) to require that Resolution Copper would be responsible for these costs.

We are concerned about the provisions of section 5(a)(3) regarding the failure of the parties to agree on the value of any parcel. As written, the bill would require that a dispute would be resolved through binding arbitration procedures pursuant to section 206(d) of FLPMA. However, section 206(d) is intended for discretionary exchanges. Accordingly, we believe section 5(a)(3) of the bill should be amended to more specifically address those options in section 206(d) of FLPMA that would be applicable to this exchange. We would like to work with the Subcommittee and the bill's sponsor to amend section 5(a)(3) accordingly.

S. 3157 includes a provision in Section 10 that would require a payment to the United States should the cumulative production of locatable minerals exceed the projected production used in the appraisal required by section 5(a)(4)(B). This provision recognizes that an accurate projection of future production will be difficult to develop, and provides a mechanism for additional payments to the United States should actual production exceed the projected production. The Administration generally supports this approach but would like to work with the committee to clarify the specific intent and implementation procedures, as well as the disposition of receipts.

We object to the language in Section 10(b)(2) that makes funds from potential mineral revenue payments available for expenditure without further appropriation. This provision is meant to ensure that the government is fairly compensated in the event that the valuation process underestimates the amount of mineral resource that is ultimately recovered, and we support this objective. However, the legislation addresses the exchange of lands with mineral interests, the value of which may not be fully realized until long after the exchange has taken place. We would like to work with the committee to ensure that the bill deposits the receipts into the Treasury, subject to future appropriation.

If the final appraised value of the non-Federal land exceeds the value of the Federal land, Section 5(d) reduces the Town's payment for land it elects to purchase from the Secretary by an amount equal to the difference in the values. We would like to work with the committee to ensure that the taxpayer receives full fair market value in the sale to the Town, in keeping with long-standing policy.

Section 8(a) directs the Secretary to design and construct one or more campgrounds, including access routes, on the Globe Ranger District of the Tonto National Forest within four years to replace the Oak Flat campground. We appreciate that changes have been made to this provision based on previous testimony on H.R. 3301, to double the amount of funding and time to accomplish this task. However, concerns remain. We still believe it will be difficult to find a suitable replacement site within the Globe Ranger District, the funding cited in the bill remains insufficient to construct a new campground to current standards, and construction of a replacement campground within 4 years may be difficult to accomplish. One alternative to constructing a replacement campground would be to add to or upgrade existing campgrounds on the Globe Ranger District. We would like to work with the Subcommittee and the bill's sponsor to address our concerns.

Section 8(b) also was added to address concerns raised in our testimony on H.R. 3301, but concerns remain regarding this provision as well. This section provides an interim period for the Forest Service to retain title to, operate, and maintain Oak Flat Campground. Due to the complex nature of this exchange, we are concerned that the completion of the land exchange could be delayed. We interpret the bill as requiring the Secretary to deed the campground and revoke the mineral withdrawal only if the land exchange is completed. We would like to work with the Subcommittee and bill sponsor to clarify this language.

Finally, we would like to work with the Subcommittee and bill's sponsor to address some technical issues with the bill and to ensure that the maps described in the bill accurately reflect bill language, and are referenced and dated properly.

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

Senator WYDEN. Mr. Holtrop, thank you.

Let us go next to you, Mr. Nedd.

STATEMENT OF MICHAEL NEDD, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY DANNY LYTTON, CHIEF, DIVISION OF RECLAMATION SUPPORT, OFFICE OF SURFACE MINING; AND ED BANGS, WOLF RECOVERY COORDINATOR, FISH AND WILDLIFE SERVICE, MONTANA

Mr. NEDD. Mr. Chairman and members of the committee and subcommittee, thank you for inviting me to testify on seven bills of interest to the Department of the Interior. Because there are so many bills before us, I will very briefly summarize the Administration's position on each of these and ask that our entire statement be made part of the record.

Senator WYDEN. Without objection, that will be done.

Mr. NEDD. The Department supports with minor modification S. 2443 and H.R. 2246 which release any reversionary interest of the Federal Government to lands granted to Union Pacific under the act of 1862 within a 2-mile subsurface railroad corridor in Reno, Nevada. We believe this bill takes the correct approach to clarify any potential land title question that could result from placing this section of railway below grade.

S. 2779 amends the Surface Mining Control and Reclamation Act of 1977 to authorize States and Indian tribes that have not certified completion of their coal-related abandoned mine land problems to expend funds received under section 411(h)(1) on noncoal-related AML problems. The Department is concerned that the bill would ultimately delay coal-related health and safety reclamation work that is a priority to ensure the health and safety of people who live in or near our national historic coal fields.

Danny Lytton, Chief, Division of Reclamation Support with the Office of Surface Mines, is accompanying me today and will be happy to answer any questions the subcommittee may have on S. 2779.

The Administration opposes S. 2875, the Gray Wolf Livestock Loss Mitigation Act of 2008. Ed Bangs, Wolf Recovery Coordinator with the Fish and Wildlife Service out of Montana, is accompanying me today and will be happy to answer any questions the subcommittee may have on S. 2875.

S. 2898 and H.R. 816 release 65 acres of public land within the Sunrise Mountain Instant Study Area to provide for construction of a flood control project. The BLM supports S. 2898 and H.R. 816, but we recommend amending the legislation to release the entire ISA from interim management of its wilderness value so that the land can be managed for other multiple use and under existing conservation agreements for the area.

The Department generally supports S. 3088, the Oregon Badlands Wilderness Act, and S. 3089, the Spring Basin Wilderness Act. Both of these bills designate public lands in Oregon as wilderness and provide for related land exchanges. However, we would like the opportunity to work with the sponsor and the committee

to make modification to some of the land exchanges, as well as some of the management and technical improvements to both bills.

In general, the Department of the Interior supports the efforts of congressional delegations to resolve wilderness issues in their States. Congress has the sole authority to designate land to be managed as wilderness and we have repeatedly urged that these issues be addressed legislatively.

The Department supports the principal goal of S. 3157, the Southeast Arizona Land Exchange and Conservation Act, though in general we defer to the United States Forest Service on issues directly related to National Forest Service System lands and associated validation issues. We appreciate that a number of changes have been made to the legislation in response to concerns raised in previous testimony. 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.

Thank you for the opportunity to present the Administration's position on these bills. I would be glad to answer any questions.

[The prepared statements of Mr. Nedd follow:]

PREPARED STATEMENTS OF MICHAEL NEDD, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 2443, H.R. 2246

Thank you for inviting me to testify on S. 2443, a bill to release any reversionary interest of the United States in and to certain lands located in Reno, Nevada. During consideration of similar legislation on October 23, 2007 before the House Natural Resources Committee, Subcommittee on National Parks, Forests and Public Lands, we testified that we believed the goals of the House bill could be accomplished in a more simplified manner. The House-passed bill, H.R. 2246 and S.2443 are identical bills that partially address our recommendations. The BLM appreciates the work of the sponsors in crafting these bills and we support S.2443 with a minor modification.

Background

In the mid-19th century, the Congress sought to encourage the development of the West by providing incentives for transcontinental railroads. Among those incentives was the Act of July 1, 1862, authorizing a transcontinental railroad to be built by the Union Pacific Railroad and Telegraph Company. As part of that authorization, the railroad was granted a right-of-way across public lands. One small piece of that right-of-way is addressed in S. 2443.

A portion of the Union Pacific rail line authorized under the 1862 Act runs through downtown Reno, Nevada. As an active rail line, there was increasing concern about safety and traffic flow issues. The city of Reno found a creative solution in the form of the ReTrac (Reno Transportation Rail Access Corridor) project, and in late 2005, the first trains began to run on a 2-mile long, 54-foot wide, 33-foot deep, train trench through downtown Reno. Unfortunately, there have been some questions raised about whether the right-of-way given to the railroad under the 1862 Act is affected by the subsurface nature of these two miles of line. In addition, it is unclear whether the Federal government retains a reversionary interest in the corridor.

S. 2443

S. 2443 would resolve these questions by releasing any reversionary interest of the Federal government to lands granted to Union Pacific under the Act of 1862 within the subsurface corridor. We would like the opportunity to work with the sponsor and the committee on minor modifications to the map so that the reversionary clause would only be released on those lands within the subsurface corridor. We believe this bill applies the correct approach to clarifying any potential land title questions to this 2 mile subsurface railroad corridor.

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

Thank you for the opportunity to present the Administration's views on S. 2875, the "Gray Wolf Livestock Loss Mitigation Act of 2008". For the reasons outlined below, the Administration opposes this legislation.

Background

On February 27, 2008, the U.S. Fish and Wildlife Service (Service) published a final rule to remove the gray wolf population in the northern Rocky Mountains from the Federal list of threatened and endangered species. In doing so, the Service announced that the wolf had exceeded its numerical, distributional, and temporal recovery goals every year since 2002, and that the States of Montana, Idaho, and Wyoming had made strong commitments to maintain wolf populations well above minimum recovery levels. The delisting was effective March 28, 2008.

Since the time of its reintroduction, wolf depredation of livestock has been a concern among some landowners and grazing permittees. The Service, Tribes, State fish and wildlife agencies in Montana, Idaho, and Wyoming, and USDA Wildlife Services currently work together to investigate and respond to reports of suspected wolf damage to livestock. The States and Tribes have signed cooperative management agreements with USDA Wildlife Services to assist them with wolf management. The States also have laws to protect private property from damage caused by wildlife that are similar to the Federal experimental population regulations that were in effect while wolves were listed. Under those laws, landowners and grazing permittees will be able to shoot wolves attacking or molesting their domestic animals, just as they now can shoot resident black bears or mountain lions that are seen attacking or harassing their livestock.

Since 1987, a private group, the Defenders of Wildlife, has paid nearly $900,000 for livestock and herding and guarding animals killed by wolves in the northern Rocky Mountains. However, it is uncertain if that private compensation program will continue now that wolves are delisted. Therefore, the States of Montana, Idaho, and Wyoming, as well as adjacent states, anticipate that State-administered compensation programs for wolf damage will complement or take the place of the Defenders program after delisting.

S. 2875

The "Gray Wolf Livestock Loss Mitigation Act" authorizes the Secretary of the Interior to provide grants to states and Indian tribes to pay a share of the cost of programs to compensate livestock producers for actions to reduce the risk of predation and for losses due to predation. The bill sets out eligibility requirements, provisions for allocation of funding, and provides for a maximum Federal cost share of 50 percent.

In our view, for predator compensation and damage mitigation to be effective components of wildlife conservation strategies, such programs must seek to accomplish specific goals that contribute to the overall strategy. Further, incentives to private landowners must operate on clear bases of fact and performance so as to maintain the credibility and fairness of expenditures. The program proposed in S. 2875 falls short of both these requirements and, because of its broad scope, it could also be unacceptably expensive and difficult to implement. As wolf management is now a matter for the State governments, whether and how to use compensation programs to advance State management goals is most appropriately for State governments to decide. We are concerned, however, that the proposed program would privilege for Federal cost-sharing purposes a particular approach, financial compensation for damage, to a specific conservation issue, human-predator conflict, regardless of the conservation priorities identified by the States.

Another of the Administration's major concerns with the legislation is its broad scope, which would cover a wide range of predatory species and livestock losses. The bill defines a "predatory species" as "gray wolves, grizzly bear, and other predatory species, as determined by the Secretary." Other predators that cause livestock damage could include mountain lion, golden eagle, black bear, coyote, fox, and many types of predatory birds. In the Northern Rocky Mountains of Montana, Wyoming, and Idaho alone, the Service estimates that there are over 1,000 grizzly bears, several thousand mountain lions and golden eagles, and tens of thousands of black bear, coyotes, fox, and raptors. All of these animals are capable of causing livestock losses due to predation, or necessitating some type of preventative measure that reduces the risk of livestock loss.

Because compensation programs generally require a rapid on-site inspection and physical confirmation of the purported damage by professional independent observers, such a broad program would result in a significant workload for the agency administering the program. In addition, the program would require Federal oversight

and management of some predatory species that are currently under state management, such as mountain lions, black bear, and coyotes. In regard to its geographic application, the bill refers specifically to Montana, Wyoming, and Idaho, but indicates that it also applies to "other States and Indian tribes as the Secretary determines." Because nearly every state contains predators that cause livestock damage, the program outlined in S. 2875 would potentially have nationwide application.

Existing programs to compensate and mitigate for damage caused by wildlife are varied and exceedingly complex. Although the Federal government has worked with states, tribes, and non-governmental organizations in order to conduct agency management activities to reduce and mitigate the risk of damage to agriculture by wildlife, including livestock loss due to wolf predation, it has never provided monetary compensation for losses caused by wildlife.

Numerous state and private compensation and mitigation programs for other types of wildlife damage (i.e., in addition to wolves) already exist in the United States. Damage caused by other predators such as black bears, grizzly bears, mountain lions and wild ungulates is paid in Wyoming and Idaho by State-run compensation programs. Other compensation programs pay for agricultural damage caused by wildlife such as elk and deer (the amount of damage by predators is typically much lower than that caused by ungulates or migratory birds). Consideration should also be given to whether creating additional programs to pay the public for predator damage might increase expectations for compensation for damage done by non-predatory wildlife as well, or might create incentives to raise livestock in areas with predators. In addition, depending on the scope of this bill, wildlife agencies in other states may have concerns that a Federal compensation program for wildlife damage may compete for limited state match funding and may negatively impact funding for higher priority state wildlife conservation programs. It is our belief that most states will not have the resources to participate in such a program.

Finally, we note that the program contemplated by S. 2875 would support activities that are within the authority of another Federal agency rather than within the Service's core mission to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Such a program could duplicate activities and overlap with other Federal agency programs.

Thank you for the opportunity to testify today. We would be happy to answer any questions you might have.

S. 2898, H.R. 816

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on S. 2898, the Orchard Detention Basin Flood Control Act. S. 2898, which is substantively the same as the House-passed bill, H.R. 816, would release approximately 65 acres of public land within the Sunrise Mountain Instant Study Area (ISA) [now referred to as a wilderness study area under Section 603 of the Federal Land Policy and Management Act (FLPMA)]. The Sunrise Mountain ISA is located on the east side of the Las Vegas Valley and within proximity to Las Vegas. The BLM supports S. 2898, but would like to work with the Committee on an amendment to the bill.

The Orchard Basin Detention Project would provide much-needed flood control for the eastern portion of the Las Vegas Valley. The project is intended to protect the fast-growing Las Vegas area from flooding due in part to stormwater drainage. The BLM understands the needs of this growing area and supports efforts to protect both the expansion of the city and the natural surroundings of the Las Vegas area.

The Sunrise Mountain ISA includes 10,240 acres of BLM-managed land. The ISA lacks wilderness characteristics; it is in a clearly unnatural condition and does not offer outstanding opportunities for solitude or primitive recreation. Sections of the ISA are affected by numerous off-highway-vehicle routes and illegal trash dumping, and there are remnants of a copper mining operation from the early 1900s. Furthermore, a portion of the ISA's western section is adjacent to expanding land development that increases the likelihood of further disturbances and unauthorized uses of the lands. Releasing the ISA from wilderness study status would provide the BLM with additional management tools for managing human activities, such as mechanically removing litter and fencing off areas to protect sensitive resource values. It would also allow the BLM to address other vital management issues associated with the long-standing human uses affecting this area. Among these issues is the need for an additional storm water detention basin that is an essential component of a remediation project for the Sunrise Landfill, a hazardous waste site on the ISA's southeastern boundary. The proposed detention basin would encroach several acres into the ISA.

The BLM recommends that S. 2898 be amended to release the entire ISA (10,240 acres) from interim management of its wilderness values so that the lands can be managed for other multiple uses and under existing conservation agreements for the area.

Thank you for the opportunity to testify on S. 2898. We look forward to working with the sponsors and the Committee on this piece of legislation.

S. 3088, S. 3089

Thank you for inviting me to testify on S. 3088, the Oregon Badlands Wilderness Act, and S. 3089, the Spring Basin Wilderness Act. Both of these bills designate public lands in Oregon as wilderness and provide for related land exchanges. The Bureau of Land Management (BLM) generally supports the wilderness designations. We also support most of the land exchanges, in principle, however we have several concerns. We would like the opportunity to modify the lands identified for exchange. We would also like the opportunity to work with the sponsor and the Committee to make management and technical improvements to both bills.

In general, the Department of the Interior supports the efforts of Congressional delegations to resolve wilderness issues in their states. Congress has the sole authority to designate lands to be managed as wilderness and we have repeatedly urged that these issues be addressed legislatively.

The Department is concerned about ensuring that consideration is given to energy potential when any legislative proposal for special designation is considered. The BLM has reviewed the traditional and renewable energy values of the areas proposed for designation, and has determined that there is low or no potential for energy development in the areas being designated. It is our understanding that there is substantial local support for both of these proposed wilderness designations. We support efforts to work together in the spirit of cooperative conservation to solve local land use issues.

S. 3088, Oregon Badlands Wilderness Act

The proposed Oregon Badlands Wilderness lies just 15 minutes east of the outdoor recreation-oriented community of Bend, Oregon. A trip into the Badlands area is an experience of ancient junipers and volcanic vistas. Visitors can explore ribbons of volcanic pressure ridges or walk narrow moat-like cracks in the ground. Windblown volcanic ash and eroded lava make up the sandy, light-colored soil that contrasts sharply with fields of lava. A variety of wildlife species inhabit the area including yellow-bellied marmots, bobcat, mule deer, elk, and pronghorn. The southern portion of the Badlands includes important winter range for mule deer. Avian species of local interest include prairie falcons and golden eagles.

S. 3088 proposes to designate nearly 30,000 acres of BLM-managed land as wilderness, release approximately 100 acres from Wilderness Study Area (WSA) status, and provide for two land exchanges which will add additional high resource value private lands to the public land estate.

The Department generally supports the wilderness designation and release in S. 3088 and would like to work with the sponsor and the Committee on minor boundary adjustments and management language modifications as is routine in such proposed designations. Among the boundary modifications we would recommend are minor alterations to protect adjacent landowner access and the exclusion of trailhead parking areas and trailheads from the proposed wilderness.

We have serious concerns with section 5 of the bill which excludes from the wilderness area a 25 feet corridor to accommodate the existing use of the route for purposes relating to the training of sled dogs by Rachael Scdoris. We applaud the efforts of Ms. Rachael Scdoris, a visually-impaired sled dog musher living outside of Bend, Oregon, to continue to train her sled dogs. It is our understanding that the techniques she uses to train her dogs involve both motorized and mechanized transport. The Wilderness Act of 1964 specifically prohibits the use of both motorized and mechanized transport in designated wilderness. If an exclusion from wilderness designation is going to be made by Congress in this single case for Ms. Scdoris, we would like the opportunity to work with the sponsor and the Committee to modify the language of Section 5. We believe that greater specificity is necessary.

Section 7 provides for land exchanges between the BLM, a private party, and the Central Oregon Irrigation District (COID). Section 206 of the Federal Land Policy Management Act (FLPMA) provides the BLM with the authority to undertake land exchanges that are in the public interest. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. In principle, we generally support the land exchanges envisioned by S. 3088, and we would like the opportunity to work with the sponsor and the Committee to address specific concerns.

The BLM supports the acquisition of the lands described in section 7(a) (the land exchange with Ray Clarno of Redmond, Oregon) and 7(b) (the land exchange with COID). Some of the lands to be acquired are within the area proposed for designation of wilderness and others are within a Wildlife Connectivity Corridor designated by the BLM in its 2005 Upper Deschutes Resource Management Plan. The wildlife corridor provides important connectivity habitat for pronghorn and other wildlife in the area.

While the BLM could support the exchange out of Federal ownership of some of the parcels identified by the legislation, many of these lands provide important resource values, including wildlife and recreation connectivity. There are alternative public lands within the general area that the BLM has identified for disposal which may be more appropriate for exchange. We would like the opportunity to work with the sponsor to modify the land exchanges envisioned by the bill to address these issues.

We would also like to work with the sponsor and the Committee to address more technical issues related to the proposed exchanges, including an extension of the current timeframe. Given the nature of the work to be accomplished on the proposed exchanges, we anticipate that it would take at least three years to complete the exchanges as they are currently contemplated. We note that the legislation does provide for an equal value exchange and standard appraisal provisions consistent with section 206 of FLPMA. We strongly support these provisions.

S. 3089, Spring Basin Wilderness Act

The proposed Spring Basin wilderness area lies just to the east of the Congressionally-designated John Day Wild & Scenic River in north central Oregon. Numerous vista points give visitors sweeping views of the beautiful John Day river valley. Rugged cliffs, remote canyons and colorful geologic features give the area a unique beauty. Wildlife species in the area include mule deer, golden eagles, prairie falcons, bobcats, California quail, meadowlarks, and mountain bluebirds. A destination for hunters, hikers, and nature lovers, the proposed Spring Basin Wilderness would comprise nearly 8,700 acres if the exchanges envisioned in the bill were completed.

S. 3089 would designate a total of approximately 8,661 acres as the Spring Basin Wilderness, including the current 5,982-acre Spring Basin WSA. It would also provide for a series of four land exchanges with private landowners and the Confederated Tribes of the Warm Springs Indian Reservation (CTWSIR). The proposed land exchanges include lands that would be included within the proposed wilderness boundary. These exchanges would add high resource value lands to Federal ownership along the John Day Wild & Scenic River as well as other environmentally sensitive lands.

The Department of the Interior generally supports the wilderness designation in S. 3089 and would like to work with the sponsor and the Committee on minor boundary adjustments and management language modifications as is routine in such proposed designations. Among the boundary modifications we would recommend are alterations to protect public access to the wilderness area as well as traditional hunting camps, current and future trailhead facilities and to provide for manageable boundaries. In addition, a possible modification to the CTWSIR exchange discussed below would result in further additions to the wilderness.

One of the land exchanges provided for in the bill includes the exchange of a small parcel of land out of Federal ownership that is currently within the WSA. The legislation should be modified to include WSA release language prior to exchange of these lands.

Section 4 provides for four land exchanges between the BLM, three private parties, and the CTWSIR. Section 206 of the FLPMA provides the BLM with the authority to undertake land exchanges that are in the public interest. Exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into private ownership for local needs and the consolidation of scattered tracts. In principle, we support the land exchanges envisioned by S. 3089; however we would like the opportunity to work with the sponsor and the Committee to address specific concerns. We would note that there may potentially be ongoing title issues regarding lands within the bed and banks of the John Day River. These issues will need to be resolved during the land exchange process.

Section 4(a) provides for the largest of the four exchanges, between the CTWSIR and the BLM. This exchange would bring into Federal ownership a large block of land proposed for inclusion within the wilderness as well as additional tracts a few miles south of the proposed wilderness within and adjacent to the John Day Wild & Scenic River boundary. Bringing these additional parcels into public ownership would increase public access to BLM-managed lands along the river for hunting and hiking purposes and help to resolve ongoing inadvertent trespass issues on CTWSIR

lands. The exchange would also transfer out of Federal ownership a number of parcels of BLM-managed land. These parcels are largely scattered inholdings and the exchange would provide for improved manageability for both the BLM and the CTWSIR.

The BLM in Oregon has been in discussions with the CTWSIR regarding land exchange opportunities in this area which are more extensive than those reflected in the legislation. We would like to work with the sponsor and the Committee to more accurately reflect those discussions.

Section 4(b) provides for an exchange between H. Kelly McGreer of Antelope, Oregon, and the BLM (McGreer Exchange). The lands proposed for acquisition by the Federal government include Wild & Scenic river frontage and a portion of Clarno East (a popular river access area with continuing trespass issues), and we support bringing these lands into Federal ownership.

The BLM supports the proposed exchange of lands out of Federal ownership which are agricultural lands adjacent to lands owned by Mr. McGreer. While we have not undertaken appraisals of the lands proposed for exchange, we are concerned that the values of the lands proposed for exchange under section 4(b) may not be relatively equal in value (as required both by FLPMA and this legislation). We believe this exchange may require substantial modification.

The proposed exchange under section 4(c) between the BLM and Bob Keys of Portland (Keys exchange) provides for additions to the proposed wilderness area and river frontage along the John Day Wild & Scenic River, and we support their acquisition. We also largely support exchanging out the Federal lands identified in this exchange except that we would like to modify the proposal to insure continued nonmotorized public access to the Spring Basin Canyon trailhead in the southwestern portion of the proposed wilderness. In addition, many of the lands proposed for exchange out of Federal ownership are along roads that would form the wilderness boundary. We wish to insure that the land underlying the boundary roads remain in Federal ownership in order to protect administrative access to the proposed wilderness.

Finally, section 4(d) provides for an exchange between the BLM and the Bowerman Family Trust (Bowerman Land Exchange). The lands proposed for acquisition by the Federal government include a small parcel within the wilderness boundary and the remainder of the Clarno East launch point. The parcel proposed for transfer out of Federal ownership is adjacent to a large agricultural field owned by Bowerman. We support this exchange.

We would also like to work with the Committee and the sponsor to address more technical issues related to the proposed exchanges including an extension of the current timeframe. Given the nature of the work to be accomplished on the proposed exchanges, we anticipate that it would take at least three years to complete the exchanges as they are currently contemplated. We note that the legislation does provide for an equal value exchange and that the exchanges be carried out consistent with section 206 of the FLPMA and we strongly support these provisions.

Conclusion

While we believe that the land exchanges in both S. 3088 and S. 3089 are generally in the public interest, work needs to be done to clarify boundaries and appropriate parcels for exchange, and we would like the opportunity to work with the Committee and the sponsor on these exchanges before the bill moves to markup.

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

S. 3157

Thank you for the opportunity to testify on S. 3157, 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 funds to acquire additional lands in the State of Arizona for management by the Forest Service and the Bureau of Land Management. Three 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 and associated valuation issues. We support the principal goals of S. 3157, and we appreciate that a number of changes have been made to the legislation in response to concerns raised in previous testimony. 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, Ari-

zona, 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 three 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 the administrative jurisdiction of the Bureau of Land Management (BLM). 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; and,
- The 956 acre Appleton Ranch parcel adjacent to the Las Cienegas National Conservation Area near Sonoita, Arizona.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance a key migratory bird habitat along the San Pedro River, and we would welcome them into BLM management. S. 3157 directs the BLM to manage the lower San Pedro parcel as part of the existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the San Pedro NCA, but is at least 60 miles downstream (north) of the existing NCA, and has substantially different resource issues and needs. The BLM intends to manage these lands as a separate unit of the existing NCA with its own management guidance. We understand there is a collaborative effort of stakeholders currently underway with which we would like to work in developing the direction for the management of this area.

The legislation proposes to transfer 160 acres in the Dripping Springs area northeast of Hayden to the BLM We would welcome the Dripping Springs parcel into federal management. The parcel has important resource values including sensitive Desert Tortoise habitat and allows the BLM to acquire this small private inholding within a larger block of federal lands. The BLM does not intend to manage these lands intensively for rock climbing as envisioned by earlier versions of the legislation.

Finally, the bill provides for the transfer to the BLM of the 956 acre Appleton Ranch parcel on the southern end of the Las Cienegas NCA. These lands lie within the "Sonoita Valley Acquisition Planning District" established by Public Law 106-538, which designated the Las Cienegas NCA. That law directs the Department of the Interior to acquire lands from willing sellers within the planning district for inclusion in the NCA to further protect the important resource values for which the NCA was designated. These lands enable wildlife to travel north through the NCA and beyond, and federal management will seek to maintain this function. We support this acquisition and would recommend that the legislation be amended to make clear that these lands would become part of the Las Cienegas NCA upon acquisition and managed under the provisions of that Act.

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.

We are concerned about the provisions of section 5(a)(3) regarding the failure of the parties to agree on the value of any parcel. As written, the bill would require that a dispute would be resolved through binding arbitration procedures pursuant to section 206(d) of FLPMA. However, section 206(d) is intended for discretionary exchanges. Accordingly, we believe section 5(a)(3) of the bill should be amended to more specifically address those options in section 206(d) of FLPMA that would be applicable to this exchange. We would like to work with the subcommittee and the bill's sponsor to amend section 5(a)(3) accordingly.

S. 3157 includes a provision in Section 10 that would require a payment to the United States should the cumulative production of locatable minerals exceed the projected production used in the appraisal required by section 5(a)(4)(B). This provision recognizes that an accurate projection of future production will be difficult to develop, and provides a mechanism for additional payments to the United States

should actual production exceed the projected production. The Administration generally supports this approach but would like to work with the committee to clarify the specific intent and implementation procedures, as well as the disposition of receipts.

We object to the language in Section 10(b)(2) that makes funds from potential mineral revenue payments available for expenditure without further appropriation. This provision is meant to ensure that the government is fairly compensated in the event that the valuation process underestimates the amount of mineral resource that is ultimately recovered, and we support this objective. However, the legislation addresses the exchange of lands with mineral interests, the value of which may not be fully realized until long after the exchange has taken place. We would like to work with the committee to ensure that the bill deposits the receipts into the Treasury, subject to future appropriation.

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, as well as clarifying several references within the bill text. 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.

PREPARED STATEMENT OF BRENT WAHLQUIST, DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

S. 2779

Mr. Chairman and Distinguished Members of the Committee, thank you for the opportunity to submit testimony on S. 2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. This bill would authorize States and Indian tribes that have not certified completion of their coal related abandoned mine land (AML) problems to expend funds received under section 411(h)(1) on non-coal related AML problems.

While this legislation would apply to all uncertified states, it is of particular importance to three States (New Mexico, Colorado, and Utah) that have traditionally spent a substantial portion of their AML funds to address hazardous non-coal AML problems.

We recognize that many states have used AML funds to support a variety of worthwhile goals in addition to reclamation of coal related health and safety issues. One of SMCRA's objectives is to provide funding to address these coal related issues. Accordingly, we are concerned that the bill would ultimately delay coal-related health and safety reclamation work that is a priority to ensuring the health and safety of people who live in or near our Nation's historic coalfields. Therefore the Administration cannot support the bill.

Background

There are 21 uncertified States receiving grants under the abandoned mine land (AML) program. Together, they have a recorded inventory of over $3.1 billion of high-priority, coal-related AML problems (those representing health and safety hazards to the public) remaining to be addressed. Each of these uncertified States is now receiving grants from at least three sources. Two of these sources, State share funds (SMCRA 402(g)(1)) and historic coal share funds (SMCRA 402(g)(5)), have been allocated to uncertified States since 1990. Historic coal share funds are allocated only to those States that have remaining high-priority coal problems in their inventory, while state share funds are allocated to any state that has not certified completion of all remaining coal AML problems even if it no longer has an inventory of high priority problems.

Also, since 1990, funds from these two sources are the only funds that may be used for non-coal reclamation by uncertified states. The 2006 amendments added Treasury payments (SMCRA 411(h)(1)), a third source, for repayment of unappropriated State share balances (prior balance replacement funds). However, these funds, which are paid out over seven years beginning in FY 2008, must be used for coal-related AML problems.

In some cases, a fourth funding source is available. Before the 2006 amendments were passed, SMCRA authorized all uncertified States with high-priority coal problems remaining to receive at least $2 million annually. The 2006 amendments raised that level to $3 million over a four year phase in period. When the sources of funding outlined above total less than the minimum funding level, an amount necessary to reach that threshold is granted from funds otherwise designated for the

Secretary of the Interior's (Secretary) use. Use of these funds is also limited to addressing high priority coal AML problems.

Historically, New Mexico, Colorado, and Utah have spent about half of their AML grants on non-coal problems. These three States received approximately two-thirds of their fiscal year 2008 funding in prior balance replacement funds. It is important to note that the 2006 amendments provide enough State share and historic coal share to allow each of these three States to maintain their current non-coal programs at historic levels. As mandatory funding under the 2006 amendments is fully phased in, these states will have substantially more funding available for non-coal AML work than they were spending on non-coal prior to the 2006 amendments.

S. 2779

As introduced, S. 2779 would amend SMCRA to enable uncertified States to use prior balance replacement funds to reclaim non-coal problems. Since prior balance replacement funds are a major source of AML funding for uncertified states through FY 2014, this will substantially increase funds available for non-coal. However, since S. 2779 does not increase overall funding available, any increase in expenditures by a State on non-coal problems will mean a corresponding decrease in funds spent to address coal related problems, thus delaying completion of high priority coal AML work shown in that State's inventory. This, in turn, would delay certification of completion of all coal problems for States that would increase spending on non-coal as a result of this bill.

Certification of Completion of Coal Reclamation

Once a State certifies completion of its coal AML problems, it is no longer eligible for AML funds. Instead, it receives payments from the Treasury in an amount equal to what the State share would have been (as well as any remaining prior balance replacement funds if certification occurs prior to 2014). This foregone State share, along with the historic share that state had been receiving, will be distributed as historic coal share funds to the remaining uncertified States to clean up high priority coal problems. Thus, the funding to states with remaining high priority problems is increased each time another state certifies. On the other hand, certified states have broad discretion and very little accountability to OSM for how they use their grants, which can certainly all be used for non-coal AML work.

In summary, while S.2779 will increase the funding available for non-coal AML problems for uncertified states, it will cause a corresponding delay in the completion of high priority coal AML problems in those states which spend more on non-coal problems as a result of this bill. Further, as states delay certification of completing their remaining coal problems, it limits funding that would otherwise be available to remaining uncertified states.

Senator WYDEN. Thank you very much, Mr. Nedd.

What we are going to do—because I think we are going to have a vote in a little bit, I am going to ask a couple of questions about the Oregon bills, and I am going to recognize colleagues because I know they have concerns about the status of their bills. Then at the end, I am going to come back and ask some questions with respect to Arizona.

Now, Mr. Nedd, we appreciate your support for the wilderness designations in Oregon. I know you have been in discussion with the Confederated Tribes of the Warm Springs Indian Reservation about more extensive land exchange opportunities so that we could boost the wilderness in there. Is it correct to say at this point that the Bureau of Land Management supports the concept of a larger exchange with the tribe?

Mr. NEDD. Senator, we are very interested in working with you and with the tribe on the proposed exchange and agree that there is an opportunity for a larger exchange.

Senator WYDEN. One other question just for you, Mr. Nedd, before colleagues. You raise concerns with the land selected for what is called the McGreer exchange and the question of potential inequality. It is certainly my intent to work with you all on your concerns, but you did note in your testimony that the legislation pro-

vides for an equal value exchange, which is where we clearly wish to go. Is that not the kind of language you need to address the question of potential inequality?

Mr. NEDD. Yes, Senator Wyden. Your legislation does provide that all exchanges are to be of equal value, and we strongly support your position on this. We simply felt we should point out that this particular exchange, the McGreer exchange, may require substantial modification.

Senator WYDEN. I think we want to continue those discussions with you because any proposed exchange—and we have dealt with I do not know how many during my time on this committee—is based on rough estimates prior to an actual appraisal being undertaken. So we are interested in working with you cooperatively, and I appreciate your comments.

Let me just recognize colleagues so they can get questions in at this point.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Nedd, I know you have people here for S. 2875 and for S. 2779. I think you mentioned there were some colleagues that you have with you that could help answer some questions.

If I could go to S. 2875 first, I would like to read a quote to you from the Twin Falls Times newspaper, and it says, "We didn't want it. They brought it to us. If the Federal Government is going to bring it to us over our objections"—and they are talking about the wolf—"then they need to pay for it."

That quote was from James Caswell, who at the time was the Administrator for the Governor of Idaho's Office of Species Conservation in regards to Idaho receiving Federal money through an earmark for Idaho's wolf compensation program. As you know, Mr. Caswell is now the Director of the Bureau of Land Management.

Do you agree with the director's statement that the Federal Government should pay compensation to ranchers for introducing the wolf to Wyoming and Montana and Idaho over the States' objections?

Mr. NEDD. Senator, I would like to refer to Mr. Ed Bangs who is here to answer any——

Senator BARRASSO. I see him smiling, and he is very happy to do that.

Mr. BANGS. Thank you. I guess the position of the Administration is that there are some serious problems with the bill as written and we oppose it.

Senator BARRASSO. So do you agree, though, that the Federal Government should pay compensation to ranchers for introducing the wolf into these States?

Mr. BANGS. I guess I am here to answer any technical questions I can. The Administration's position is that, no, there should not be compensation offered.

Senator BARRASSO. So you would disagree then with the statement of James Caswell, who is currently the Director of the Bureau of Land Management.

Mr. BANGS. I would say that the Administration's position is that no compensation should be offered.

Senator BARRASSO. Reading the testimony that you submitted, Mr. Nedd—I know you did not have time because of the number of bills to go through each and every one of the testimonies in full—the testimony says, "As wolf management is now a matter for the State governments, whether and how to use compensation programs to advance State management goals is most appropriately for State governments to decide." This seems to be implying that the management of the wolves is entirely a State issue. That is what I am hearing also from Mr. Bangs.

There are people in Wyoming—and we have one of them as our guest today to talk about this—who would eradicate the wolves entirely. That would be their position. So if Wyoming wanted to adopt that position—that was our management plan—could we do it?

Mr. NEDD. Senator, again, I would have to refer to Mr. Ed Bangs who is here to answer any questions.

Mr. BANGS. I think the wolves could be eliminated. We eliminated them once. If that happened, what you would see is a relisting under the Endangered Species Act. So you would get the Federal Government involved again.

Senator BARRASSO. So then the Federal Government does want to manage the wolves, but they just do not want to provide assistance to those whose livelihoods are threatened.

Mr. BANGS. I think the Federal Government wants to make sure that the wolves stay recovered and are managed as resident game species just like elk, deer, and other things are by the States.

Senator BARRASSO. Do these States have any say in the decision by the Federal Government to reintroduce the wolves into the State?

Mr. BANGS. I think that they did. The State of Idaho helped prepare the EIS. We had the State involvement. I think in the end they all opposed wolf restoration, but in the early development stages, they certainly had a voice in the issue.

Senator BARRASSO. So they were forced upon the States in spite of the States not wanting them, but then you are willing to sit there and tell me and the members of this panel that it is now up to the States to deal with it on their own. Is that what you are really suggesting, that the Federal Government should have no responsibility for the damage that has occurred?

Mr. BANGS. I think the issue is that the wolf population is recovered. The States of Idaho and Montana have been managing wolves under cooperative agreement with the Service for years while they were listed. Now that they are delisted, that management authority is transferred entirely to the States.

Senator BARRASSO. So the additional damage being done by wolves to livestock—the position of the Administration is we came in, we created this mess, we are not responsible. Now it is up to you to clean up and pay for it.

Mr. BANGS. Actually there is mitigation for wolf damage in the form of USDA Wildlife Services who partners with the States to remove problem wolves. So there is mitigation for wolf-caused damage even while delisted.

Senator BARRASSO. If I could move on to S. 2779, Mr. Nedd. This is the Surface Mining Control and Reclamation Act of 1977. One of the statements in your testimony raises some real concerns. You

state, "Certified States have broad discretion and very little accountability to the Office of Surface Mining for how they use their grants which can certainly all be used," it says, "for non-coal AML work." If that is, indeed, the case, are you telling me that all of these hoops that certified States like Wyoming and Montana have to jump through are just that? Bureaucratic mazes that serve very little purpose and just slow down the distribution of money to the States?

Mr. NEDD. Senator, I have Mr. Danny Lytton, who is Chief, Division of Reclamation Support, with the Office of Surface Mining. He will be glad to answer any questions.

Senator WYDEN. Let us do this. Let us recognize Mr. Lytton, but briefly because we have got Senator Tester and Senator Smith.

Senator BARRASSO. That will be my final question.

Senator WYDEN. Great.

Mr. LYTTON. Senator, first of all, let me just say that our Solicitor's Office has advised us that we must use grants to distribute the funds that certified States are getting. Recognizing that there is a tremendous amount of discretion that the certified States have in how they use their funds, we have actually changed our grant process for certified States in general. We require less information up front. We have cut in half the time it takes—time allotted for us to approve a grant. We do not require the listing or your show—certified States showing us what projects will be done. Finally, we cannot approve those projects. We are required to allow any project that falls within your purview, either through the State legislature or through the program's decisions. We are required to approve those projects. The only requirement that we have placed is that we approve the use of the fund for your purposes. In other words, we have to approve a grant and we do.

Senator BARRASSO. You can see, Mr. Chairman, the difficulty in dealing with a bureaucracy that says seven equal payments, an equal payment each year for 7 years, and it says nothing about a grant process and gives you this kind of an answer.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator.

Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman.

I would assume, Mr. Nedd, you are going to refer all questions about the wolf mitigation bill to Mr. Bangs?

Mr. NEDD. Yes, Senator.

Senator TESTER. Mr. Bangs, do you still work for the Fish and Wildlife Service, since the wolves have been delisted?

Mr. BANGS. I do.

Senator TESTER. How long are you on the payroll for?

Mr. BANGS. Until October 1 they told me.

Senator TESTER. OK, that is good. I would hope that you are not the sacrificial lamb here. No pun intended.

I can tell you that this program is very, very important and it is somewhat disconcerting that the person who makes the presentation refers all questions to somebody who is going to be gone October 1. That is not to say anything negative about you, Mr. Bangs. You have done a great job in your capacity. I hope you get a job that is very, very good down the line.

I will ask some questions revolving around the wolf program. Does the agency believe that public acceptance is an important part of wolf reintroduction?

Mr. BANGS. Yes.

Senator TESTER. Do you think there will be public acceptance as long as cattle ranchers are having their cattle preyed upon by wolves with no mitigation funds for that?

Mr. BANGS. If there was no mitigation, I think support for wolf recovery would go down.

Senator TESTER. Are Defenders of Wildlife still in the business, since the wolf has been taken off Endangered Species, of putting up money for predation?

Mr. BANGS. In Wyoming and Idaho, yes. In Montana, no. They have turned that program over to the State for compensation.

Senator TESTER. Is it long-term? Are they going to continue to put money into those programs year after year?

Mr. BANGS. I suspect not, no.

Senator TESTER. Do you think this will probably be the last year for it?

Mr. BANGS. I would suspect so, yes.

Senator TESTER. So what are the impacts when we do not take care of predation with ranchers? What is going to be the long-term impact on all the work that has been done for the last 10 or 11 years?

Mr. BANGS. I guess the wolf predation will still be taken care of. The Wildlife Service participates in mitigation, killing problem wolves. The States will have hunting seasons. So there is a lot of mitigation of wolf damage. The compensation itself——

Senator TESTER. Right.

Mr. BANGS. Each of the States has a compensation program that they are trying to raise money for.

Senator TESTER. How successful do you think those States are going to be in raising money for wolf predation when both parties on both sides really do not have any obligation to step up to the plate?

Mr. BANGS. I think raising private funds or funds within the States is going to be a tough row to hoe.

Senator TESTER. Thank you. So what role should the Federal Government be playing?

Mr. BANGS. The Administration believes that the current bill in terms of compensation—we cannot support that. I might point out that in terms of mitigation, in terms of rider programs or something like that, there is Federal money through different grant programs available to the States for that currently.

Senator TESTER. Is the Administration aware that over the last 15 years, they have believed that public acceptance is critical for wolf introduction to be successful?

Mr. BANGS. Yes.

Senator TESTER. Do you see any sort of diametric opposition to what you are saying and what the Administration is telling you to say?

Mr. BANGS. I think the goal of the program was to get the wolf population recovered and delisted so the States can manage them

just as they do other resident wildlife with deer, elk, that kind of thing.

Senator TESTER. Yes, but what about the compensation part of it? It is not a huge part of the whole overall program, but I think it is a critical part. Would you not agree?

Mr. BANGS. I can see where you would feel that way.

Senator TESTER. You are very, very good at what you do, Ed. I can see why they put you up here.

All kidding aside, I will just tell you this, and Senator Barrasso alluded to it. Idaho has had an earmark for $100,000 for compensation for livestock losses. The reason that is important is because two of the folks, who I respect both very, very much, who are high up in the Department are from Idaho. Yet, the Department comes down and says, no, we are not in favor of this when in fact, if they were not in favor of this, why did they request the earmark and why did they get the earmark? Why did they utilize the earmark? Why did they not turn the money back? You do not have to answer that.

Mr. BANGS. I do not really know.

Senator TESTER. You do not have to answer that.

I would just ask this. I mean, go back to the people that you work with. I can tell you that I think it is totally unfair. All the points that Senator Barrasso brought up were dead-on. I think it is totally inappropriate and unfortunate that the Federal Government is walking away from this. I think it is terrible.

I think the fact—and this is not to speak poorly of you, Mr. Bangs—that they did not send somebody higher up in the office that made this decision because quite honestly, I do not think you have bought into it either. You do not have to answer that either because the truth is it is compensation for a select few people that raise livestock. We are not talking about a lot of livestock, but it is the same people that get hammered every time. A select few people to get compensation is the right thing to do, and for the Department to say, no, we are going to wash our hands of it, it is a State problem now, is absolutely ridiculous. It is absolutely ridiculous.

I appreciate the work you have done in Montana. You have done a great job. You need to influence the people above you for the next 3 or 4 months to step back and take a look at this and ask if this is really the right position because it is not. Unequivocally common sense will tell you that this is not the right decision to be making because if we think wolf introduction is the right thing to do, which I would guess the Department does, if we are going to keep public acceptance at a high level, this has to be a part of the equation. That is all I am going to say.

I got to tell you I wish you would have sent—and this is nothing against you, Mr. Bangs, I wish you would have sent somebody from the Department that I could nail to the wall because it is pretty difficult when you got a guy who is going to be gone October 1.

Thank you very much.

Senator WYDEN. Thank you, Senator.

Senator Smith.

Senator SMITH. Mr. Nedd, can you speak for the BLM whether or not you believe that off-highway vehicle recreation demand is

currently being met by the BLM's existing program in central Oregon?

Mr. NEDD. Senator, I do not have first-hand knowledge and I cannot speak for the BLM on that.

Senator SMITH. I wonder if you can get someone from the BLM who has some knowledge of that—if they can get back to me with an answer whether they think that they are meeting that demand.

Mr. NEDD. Yes, Senator.

Senator SMITH. Could you also get back to me with a list of all WSA's in eastern Oregon that have been studied and were deemed not suitable for wilderness designation?

Mr. NEDD. Yes, Senator.

Senator SMITH. Thank you. That would be great.

On a different issue, it is my understanding that the BLM has about 130 permits pending for solar energy development on public domain lands. Can you explain the backlog in processing these permits, and does the BLM need more resources to process these permit applications?

Mr. NEDD. Senator, I will have to get back to you with the exact reasons for the backlog and other information, Senator.

Senator SMITH. That would be great. We need energy. Thank you.

Senator WYDEN. Thank you, Senator Smith.

We do need to have a few matters on the record with respect to the Arizona legislation, 3157. So let me, if I might, start with you, Mr. Holtrop.

As I understand it, all parties believe that S. 3157 would limit the review of environmental impacts prior to the conveyance of Federal land and would, instead, require the Secretary to conduct the EIS at a later date prior to commercial production at the proposed mine. As written in the bill, if the EIS showed that the mine would cause unacceptable environmental impact, would the Forest Service still have the authority to prevent that from occurring, having already conveyed the land?

Mr. HOLTROP. My understanding of the way the bill is worded is we would do an environmental impact statement that would be on those associated activities on the Federal lands that would be required to be looked at at that time. So what we would be looking at would be the impact of associated activities on the remaining Federal lands.

Senator WYDEN. Now, you testified, Mr. Holtrop, that the Forest Service supports the exchange, believes it can be offered in the public interest. How do you all go about making that determination without knowing what the potential impact is of the proposed mine?

Mr. HOLTROP. Mr. Chairman, that is a good question. I think the language of the testimony saying we believe that it is in the public interest—that the exchange is in the public interest—I will tell you the couple of things that I think we weighed when we looked at that. One was we looked at the benefits of the mine itself. We looked at the incredible resources that the lands that would be conveyed to the Federal Government would have with them, especially in a dry area of Arizona, the precious resource of water and riparian areas, as well as threatened and endangered cactus habitat and

some things like that, and the fact that it is a 1.8 or 1.9 to 1 acre-for-acre exchange coming into the public ownership. All of those things, I think, weighed together, lead us to the point of being able to say we believe, on balance, that this is in the public interest.

Senator WYDEN. Now, Mr. Holtrop, the Inter Tribal Council's testimony goes into a number of concerns about the impact of the proposed mine on the Apache Leap escarpment. My question is, is it possible that the subsistence that is anticipated as a result of the development of the mine would in your view significantly impact Apache Leap?

Mr. HOLTROP. I am not feeling like I am qualified to answer that question. As you know, the legislation includes a conservation easement to protect the Apache Leap. I think that that was part of the intent of the legislation, and I am not qualified to answer a question about subsistence.

Senator WYDEN. We will hold the record open on that because I think that is an important point, and it seems to me at some sort of basic level we really need to have a yes or no answer to that because if it is yes, we want to know how the exchange is in the public interest, even if Apache Leap is significantly impacted, and if no, we want to know how you all got about getting to that position. So we will hold the record open on that question.

To be sensitive to Senator Kyl's concerns, can you have answers to those questions for us a week from today?

Mr. HOLTROP. I am sure we can.

Senator WYDEN. OK.

Then one question for you, Mr. Nedd, and perhaps you have thoughts on this as well, Mr. Holtrop. It is our understanding that the Oak Flat Campground was administratively withdrawn and it appears that the Administration has the authority to revoke the withdrawal and undertake an administrative land exchange to facilitate the development of the mine. So our interest here is, is that your understanding, and if it is, why has the Department not pursued that?

Mr. NEDD. Senator, I am not familiar with the specifics of the Forest Service withdrawal and would defer to the Forest Service on that specific——

Senator WYDEN. Mr. Holtrop, do you want to——

Mr. HOLTROP. I would be happy to address that. The withdrawal occurred, I believe, in 1955 or some time close to that, to protect the resources of the campground, the Federal investment in the campground. My understanding is that administratively a withdrawal like that could be revoked. There are other aspects of the exchange and the operation which are beyond our Federal authority to be able to deal with, things such as an exchange that involves more than one Federal agency, because there are lands that would become managed by the Forest Service, as well as by the Bureau of Land Management. We do not have the authority to handle something like that. The greater than 25 percent cash equalization is another thing that we do not have the authority to deal with. So there are other aspects of the bill that are beyond our administrative authority.

Senator WYDEN. All right. Thank you all.

Senator Barrasso, do you have any questions about Arizona? Otherwise, we will excuse this panel and get on to the next one.

Senator BARRASSO. No specific questions about Arizona. Thank you, Mr. Chairman.

Senator WYDEN. OK.

We thank all of you. We appreciate the cooperation of the Administration on all this legislation.

David Salisbury, President and CEO of Resolution Copper, if you will come forward. Shan Lewis, President of the Inter Tribal Council of Arizona, if you will come forward. Roger Featherstone, Southwest Circuit Rider, Earthworks, if you will come forward.

For all of you, so you will have a sense of what Senator Barrasso and I are juggling, there is an important vote scheduled for 4 o'clock. So we are going and try and get as far down the road. We have Mr. Featherstone, Mr. Salisbury. There is Shan Lewis. Very good. We will get as far with the three of you as we can and we will try to come back quickly afterwards.

Again, if you can summarize your principal concerns, we are going to make your printed statements a part of the hearing record in their entirety.

Mr. Salisbury, why do we not begin with you?

STATEMENT OF DAVID SALISBURY, PRESIDENT, RESOLUTION COPPER MINING, LLC, SUPERIOR, AZ

Mr. SALISBURY. Mr. Chairman and members of the committee, my name is David Salisbury. I am the President of Resolution Copper based in Superior, Arizona.

Thank you for the opportunity to testify in support of S. 3157. This legislation represents an important step toward restarting a mine in Arizona's historic Copper Triangle Mining District.

We also want to thank Senator Kyl for his longstanding leadership and support.

Upon completion of this land exchange, we propose to invest, at considerable risk, the time and funding required to develop a deep underground mine. We believe the innovative and proven technology will allow us to build a block cave mine 7,000 feet below ground with limited surface impact.

Mr. Chairman, there are six main reasons why we believe this land exchange is in the public interest.

First, S. 3157 provides fair value to the American taxpayer. The appraisal will be done by the Forest Service using Department of Justice methodology to determine the fair value of all land. Additionally, it provides full cash equalization. If the appraisal indicates we owe additional money, we will pay the difference to equalize the value. If, however, the valuation indicates that the value of the land we are exchanging is higher than the land we receive, we will donate the excess to the United States. Importantly, this legislation also includes a new, unprecedented value adjustment payment, which ensures that the Government will receive payment for any ore mined that was not included in the original valuation of the ore body.

Second, this legislation delivers significant environmental benefits and safeguards to the region. It includes language confirming that an environmental impact statement, pursuant to NEPA, will

be completed before we mine the ore body. Further, the parcels Resolution Copper would exchange to the Government are of high ecological value and were identified with the assistance of the BLM, Forest Service, and leading environmental NGO's like the Nature Conservancy and Audubon Arizona. Also, we plan to use tailings from our mine to reclaim an existing open pit mine in the region by filling it with our tailings and restoring the landscape.

Third, we are listening to the suggestions and concerns from various stakeholders and doing our best to work with them. Since the House hearing last November, we have had more than 300 meetings with stakeholders to address issues raised. S. 3157 reflects changes suggested during these discussions. Here are a few examples.

The Forest indicated that additional time and money would be required to relocate the Oak Flat Campground. This legislation doubles both the time and the money compared to the House bill.

Concerns have been raised by Native American nations. So we have taken steps to ensure protection of the Apache Leap, to ensure access to areas for traditional and cultural activities. We acknowledge the sovereignty of the tribal nations and respect their requests for government-to-government consultations. We welcome the chance to work with them to address their concerns.

We have addressed the mountain climbing community's request to transfer Resolution's Pond property to the Forest Service for future climbing. We have extended the duration of access to the Oak Flat area, and we will continue to work closely with the climbing community to provide additional opportunities.

Fourth, the mine is expected to produce up to 20 percent of our Nation's anticipated copper demand. This is important now more than ever because, for instance, hybrid vehicles use 70 to 100 percent more copper than conventional cars.

Fifth, the mine will create significant economic prosperity for Arizona and the Nation. We anticipate spending $10 billion and generating 1,400 jobs in connection with mining operations, as well as several thousand construction-related jobs and a thousand more indirect jobs. Resolution is working closely with the Town of Superior and throughout the region to create a diversified economy so that economic upswing created by the mine will act as a catalyst for growth and help build a sustainable economy.

I have submitted for the record a study which highlights the significant economic and fiscal benefits the project will generate, totaling in excess of $46 billion in economic activity and approximately $11 billion in taxes to various levels of government.

Sixth, more important than our view that the project is in the public interest, many Arizona leaders, including Governor Napolitano, a significant majority of the Arizona legislature, county supervisors, mayors, city councils of the Copper Triangle, community leaders, and the Arizona Republic, and many other individuals and organizations have expressed their support for moving this legislation forward.

In closing, this project represents a terrific opportunity for the State of Arizona and the Nation. We ask Congress to authorize this land exchange so that the promise of this project has a chance to be realized. We appreciate your consideration and respectfully re-

quest your prompt action to enact this legislation this year. Thank you.

[The prepared statement of Mr. Salisbury follows:]

PREPARED STATEMENT OF DAVID SALISBURY, PRESIDENT, RESOLUTION COPPER MINING, LLC, SUPERIOR, AZ, ON S. 3157

Mr. Chairman and Members of the Subcommittee: My name is David Salisbury. I am the President of the Resolution Copper Mining LLC ("Resolution Copper"), which is a company headquartered in Superior, Arizona and owned by subsidiaries of Rio Tinto plc and BHP-Billiton plc. I am here in support of S. 3157, and to briefly describe the efforts we have made to address various issues since this Subcommittee held a hearing on similar legislation two years ago. The Southeast Arizona Land Exchange and Conservation Act of 2008, S. 3157, represents an important step toward the development of a large, underground copper mine in a historic mining district. This legislation would allow us to acquire sufficient acreage of National Forest land, known as the Oak Flat parcel, where much of our new underground mine will be located. Most of the land needed is already blanketed by unpatented mining claims which we or our predecessors have owned and maintained for decades. As you can see from the map* attached to my testimony, the Oak Flat parcel abuts, or is intermingled with, private land we already own. That private land was the site of the Magma underground copper mine, which operated from 1912 to 1996, and produced 25 million tons of copper ore.

In the late 1990's, exploratory drilling revealed the existence of a very large copper deposit located adjacent to the old mine workings, but at a far greater depth of 4,500 to 7,000 feet below the surface. This will require us to sink deep shafts and tunnels to access the ore body. Once we have done this, we will complete a model of the precise geotechnical conditions and determine if it is feasible to construct the mine.

Developing a mine a mile to a mile and a half beneath the surface, where the temperatures are up to 175 degrees Fahrenheit, is not only technologically difficult, but also an extremely expensive and financially risky proposition. Initially it will involve $750 million in exploration and feasibility work. If the mine is feasible, Resolution Copper will spend at least $4 billion toward capital investment before mine construction is finished and we ship our first load of copper. Resolution Copper has not made the final determination as to the economic and technological feasibility of mining this ore body. Despite a high level of confidence on the part of our engineering team, it will require a $750 million investment before we can make this determination.

To secure this type of investment, we believe it is critical both to possess an ownership interest in most of the land where we will be operating and to provide an adequate safety buffer around the mining area. Further, the area around the project is intermixed with public and Resolution's private lands preventing a safe and workable approach to mine permitting, development and operation. In addition, because we will intensively use the Oak Flat area for the mine, most of the land we are seeking to acquire, except for Apache Leap, will have a limited lifespan for continued public use in order to maintain safety for the public.

We realize that our land exchange will result in the loss of a Forest Service campground and other public recreation, but believe that this legislation provides for a beneficial transfer of lands with the added potential of a mine that will only enhance the national interest in this exchange. Why? Because once operational, this mine would provide approximately 20 percent of the Nation's annual needs for copper from a safe, domestic source for approximately 50 years.

Building upon the national interest I have just outlined, allow me to explain the significant economic and fiscal impact the mine will have. The ore body is located in a region with over 100 years of mining history known as the "Copper Triangle." This region has suffered with high unemployment for a number of years and our mine is expected to bring 1,400 permanent, high quality, technical jobs directly affiliated with the mine (1,200 direct jobs and 200 contract jobs) and a large number of service related jobs to the region. Further, we anticipate the creation of several thousand jobs during the construction phase of the mine.

Included with my testimony I have submitted the executive summary* of an economic and fiscal impact study prepared in April 2008 by Elliott D. Pollack & Com-

*Map has been retained in subcommittee files.
*Document has been retained in subcommittee files.

pany, and I would like to provide you with a few highlights directly from that report:

- The mine impact is estimated to last 66 years, with 16 years of feasibility and preparation and 50 years of mining operations.
- The total economic impact of the 66 year project on the State of Arizona, including the additional development of residential, commercial, and industrial land in Superior, is estimated to be $46.4 billion. During the peak years of mine projection, the annual impact of the mine itself is estimated to be $535.6 million. If the additional development of residential, commercial and industrial land is considered, the peak annual economic impact on the State is projected to be $798.2 million. For a comparative perspective, studies have estimated the economic impact of an NFL Super Bowl type event to be approximately between $250 million and $500 million.
- In terms of fiscal impacts, the project is estimated to generate total federal, state, county, and local tax revenue in excess of $10.7 billion.

It is important to understand that all of the fiscal and economic impacts were based on the assumption that copper is priced at $1.30 per pound (which was based on the long-term price as calculated by the Arizona Department of Revenue). Today, copper is trading at over $3.50 per pound, so the assumptions in this study are very conservative.

As I indicated, the planned mine will be a very deep underground mine utilizing a proven method of mining called block caving. Unlike an open pit mine, it will have minimal waste rock dumps. We plan to ship the ore from Oak Flat via underground tunnel to an existing open pit mine site in the area. We then expect to process the copper ore at that site and deposit the tailings to fill up one or more existing open pits from closed mines, and then reclaim and re-vegetate those pits. We believe that undertaking will significantly benefit the environment. In addition, Senator Kyl has included subsection 4(h) in this legislation to expressly confirm that before we open the mine, as already required by existing law, the entire operation and its environmental impacts will be subject to full review under the National Environmental Policy Act.

In developing the land exchange proposal in S. 3157, we have worked with the United States Forest Service, the Bureau of Land Management (BLM), the Arizona Game & Fish Department, and numerous Arizona conservation organizations to insure that the lands we are conveying to the United States have greater environmental and other public values than the lands we are receiving at Oak Flat. In S. 3157, Resolution Copper will convey nine parcels of land, totaling approximately 5,634 acres, to the United States in return for the Oak Flat parcel. Whereas most of Oak Flat is relatively flat, and has no permanent water—the nine parcels we have assembled for exchange have exceptionally rich ecological, recreational and other values, and many of them have significant year-round water resources. I want to emphasize that these parcels were recommended to us by The Nature Conservancy, The Audubon Society, the Sonoran Institute and in consultation with the BLM and the US Forest Service. The attributes of these offered lands include:

1) A new rock climbing parcel near Oak Flat which has just been added to the exchange;

2) 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 (as requested by the BLM at the November 2007 hearing on H.R. 3301 in the House Subcommittee on National Parks, Forests, and Public Lands, this parcel will be immediately added to the existing San Pedro Riparian National Conservation Area);

3) Two miles of trout stream and other fish and wildlife habitat along East Clear Creek in the Coconino National Forest;

4) Possibly the largest, and most ancient, mesquite forest (or bosque) in Arizona;

5) Nine hundred and fifty-six acres of extremely diverse grassland habitat in the AppletonWhittell Research Ranch—an existing preserve jointly managed by the Forest Service, BLM and the Audubon Society inside the Las Cienegas National Conservation Area; and

6) Four in-holdings in the Tonto National Forest which have significant riparian, recreational, cultural, historic and ecological amenities including populations of the endangered Arizona hedgehog cactus.

S. 3157 also provides that Resolution Copper must convey all nine parcels to the United States, regardless of value. If the nine parcels appraise at a higher value than the Oak Flat parcel, we will donate the excess value to the United States.

Accordingly, this land exchange will 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) habitat for innumerable species of flora and fauna; 4) important bird areas; and 5) year-round water resources—a rarity in many parts of Arizona.

Mr. Chairman, we have also agreed to several provisions in S. 3157 that are designed to assure that the taxpayers receive full fair market value in this land exchange and that any facilities or activities we displace at Oak Flat land are adequately replaced, or improved upon. I will briefly describe these key provisions:

- S. 3157 requires that the existing Forest Service campground at Oak Flat, which has 16 developed campsites, will be replaced with a new campground or campgrounds. Based on testimony presented at the hearing in the House last fall the US Forest Service, we have increased the amount we will pay for the replacement campground(s) from $500,000 to $1 million and increased the time for establishing the new campground(s) from 2 years to 4 years. The bill now provides that the US Forest Service will continue to own and operate the Oak Flat Campground for 4 years after bill enactment.
- Portions of the Oak Flat parcel and adjacent areas, including areas of our existing private land, are used for rock climbing. To accommodate these activities, we have agreed to two changes in the legislation. First, as mentioned earlier, we have now added our 95 acre Pond parcel to the land exchange. Second, we have dropped the immediate closure of certain other areas from the legislation and we will work at keeping them open for climbing for as long as it is safe to do so.
- Resolution Copper has committed to the working with neighboring Native American communities. Resolution Copper also acknowledges the sovereignty of the San Carlos and respects their request for government-to-government discussions. The exchange provides protections for the portion of the Oak Flat parcel that comprises Apache Leap, which is an area of cultural and historic importance to Apache and Yavapai tribal nations. Likewise, S. 3157 requires that the JI-Ranch parcel we will convey to the US Forest Service in the exchange will be available to the Apache or Yavapai for acorn gathering.
- Subsection 5(a) 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.

Finally, we are aware of the mining law reform legislation which passed the House and is pending in the Senate. While the Federal appraisal process to be used for this land exchange fully incorporates royalty considerations, as required by the Justice Department standards, and the lands and any cash equalization we convey to the United States in the exchange will constitute a full upfront royalty payment under the appraisal process, we have agreed to go a step further. Namely, section 10 of S. 3157 now provides that if the cumulative production from our mine ever exceeds the production assumed by the appraiser, we will pay a "value adjustment payment" on any excess production. In doing that, the public will be protected in the event the appraiser errs in the mine production assumptions or if subsequent mining operations discover and produce more ore than originally assumed. We believe this is an eminently fair proposal which, by definition, fully protects against potential production errors in the appraisal process.

That completes my testimony. I very much appreciate the opportunity to testify before you today and stand ready to answer any questions the Subcommittee may have.

Senator WYDEN. Thank you very much.

Mr. Lewis, let us go to you next.

STATEMENT OF SHAN LEWIS, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA, PHOENIX, AZ

Mr. LEWIS. Mr. Chairman and members of the subcommittee, my name is Shan Lewis. I serve as President of the Inter Tribal Council of Arizona. Our members include 20 American Indian tribes, nations, and communities in Arizona on matters of international, national, and statewide importance to the tribes. I also serve as the

vice chairman of the Fort Mojave Indian Tribe which has tribal lands in Arizona, California, and Nevada.

I speak today on behalf of the Inter Tribal Council of Arizona, and it is with deep concern that we respectfully oppose the passage by the Senate Energy and Natural Resources Committee and the Senate of S. 3157, as introduced on June 18, 2008.

We must say at the outset, as Chairman Wendsler Nosie of the San Carlos Apache Tribe and President Bear on behalf of the Fort McDowell Yavapai Nation testified before the House on November 1, 2007, that the Federal agencies involved have failed to consult with us on a government-to-government basis on this matter. In this regard, this hearing is quite premature. No consultation has occurred. No environmental impact statement has been developed, and Resolution Copper does not even know if the mine is feasible.

The Forest Service only announced on June 25, 2008 that Resolution Copper has filed a proposed plan of operation for a pre-feasibility study for the mine to be conducted around Oak Flat, the land Resolution Copper asked you to convey to it now. Comments on this pre-feasibility study are not due until July 18, 2008.

S. 3157 would direct Federal agencies to literally dismember a federally established recreation campground authorized during the presidency of President Dwight D. Eisenhower in an area within ancestral Indian tribal lands that are of unique cultural, spiritual, and archeological significance to American Indian tribes in the region.

This project would deplete and contaminate water resources from nearby watersheds and aquifers, leaving in its wake long-term and in some cases permanent religious, cultural, and environmental damage. Such destruction of the earth will remain long after Resolution Copper and its foreign-owned parent companies, Rio Tinto plc and BHP-Billiton, Ltd. have taken their profits from the copper ore and water, which it has no right, and have left the area. As American Indian tribes, we have seen this pattern repeated all too often and oftentimes with tragic consequences for our people and natural resources.

Aside from the unequivocal surface destruction that would occur on lands under which the mining is proposed to take place, given the unpredictable reaction of nature and the extent of damage of block and cave mining has on the surface of land, contrary to claims by the mining companies involved, there is not a soul on this earth who can with certainty assure that Apache Leap will not be damaged by this method of mining, nor that it would potentially jeopardize the highway running through the area, nor the water resources of other people in the region. They can guess, estimate, and surmise, but they cannot guarantee. We ask then why would the United States permit this to happen when it is the trustee of our people, our cultures, our interests, and our homelands, as well as the steward of forest lands involved that belong to people of the United States.

We strongly request and urge that you and your colleagues of the Senate Energy and Natural Resources Committee resist being pressured into giving these foreign entities such incredible rights to land and resources at the expense of so many environmental land

stewardship and trust responsibilities for which your committee has its own responsibilities.

ITCA and the San Carlos Apache Tribe, White Mountain Apache Tribe, Yavapai Apache Nation, Tonto Apache Tribe, Hualapai Tribe, Hopi Tribe, Fort McDowell Yavapai Nation, and many other tribes will submit more extended comments for the record of this hearing.

I thank you, Mr. Chairman, and the subcommittee for allowing me to speak today.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF SHAN LEWIS, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA, PHOENIX, AZ, ON S. 3157

Mr. Chairman and Members of the Subcommittee:

My name is Shan Lewis. I serve as President of the Inter Tribal Council of Arizona. Our members include twenty American Indian Tribes, Nations and Communities in Arizona on matters of international, national and statewide importance to the Tribes. I also serve as Vice-Chairman of the Fort Mojave Tribe, which has Tribal lands in Arizona, California and Nevada. Several ITCA Tribes have lands in more than one state.

I speak today on behalf of the Inter Tribal Council of Arizona. It is with deep concern that we respectfully oppose the passage by the Senate Energy and National Resources Committee and the Senate of S. 3157 as introduced on June 18, 2008.

We must say at the outset (as Chairman Wendsler Nosie of the San Carlos Apache Tribe and President Bear on behalf of the Fort McDowell Yavapai Nation testified before the House on November 1, 2007) that the Federal agencies involved have failed to consult with us on a government to government basis about this matter. Under the United States Constitution, and our treaties, agreements, and Congressional and Executive policy, we request that the United States consult with us on a government to government basis about this matter prior to any decision to move forward. In this regard, this hearing is quite premature. No consultation has occurred. No environmental impact statement has been developed, and Resolution Copper does not even know if the mine is feasible.

The Forest Service only announced on June 25, 2008 that Resolution Copper had filed a proposed "plan of operation for a pre-feasibility study" for the mine to be conducted around Oak Flats, the land Resolution Copper asks you to convey to it now. Comments on the pre-feasibility study are not due until July 18, 2008.

Senate Bill 3157 would direct federal agencies to literally dismember a federally established recreation campground authorized during the presidency of President Dwight D. Eisenhower in an area within ancestral Indian Tribal lands that are of unique cultural, spiritual and archeological significance to American Indian tribes in the region. It would facilitate a serious and highly damaging assault on the water, wildlife, and other natural as well as archeological and historic resources of the area by using highly surface-destructive block and cave mining all in the name of making the mining operation cheaper for the foreign multinational corporations that seek to extract the minerals from the ground there.

Although we are not opposed to mining in general, this form of mining and mining in this location does not make sense, is offensive to us, and would pose a danger to many important values of the region. Further, the proposed mining operation would cause the collapse of the surface of the earth on the public lands owned by the American People and endanger the historic terrain at Apache Leap, Oak Flat, and Devils Canyon as well as the surrounding countryside.

The project would deplete and contaminate water resources from nearby watersheds and aquifers leaving in its wake long-term, and in some cases, permanent religious, cultural and environmental damage. Such destruction of the Earth will remain long after Resolution Copper and its foreign-owned parent companies, Rio Tinto, PLC and BHP Billiton, Ltd. have taken their profits from the copper ore and water to which it has no right, and have left the area. As American Indian Tribes, we have seen this pattern repeated all too often and oftentimes with tragic consequences for our people and natural resources.

This mining operation by Rio Tinto and BHP call for a land exchange that entails taking public land located in a particularly sensitive area and transferring it to the subsidiary of these two foreign conglomerates. To us, it is inappropriate for the United States to go to such extraordinary lengths to accommodate these foreign interests' desires to mine an ore body with such profound adverse impacts.

These mining companies have sought to piece together a handful of small conservation projects in the state that may be meritorious individually in an attempt to soften the huge environmental blow that the mining project would deliver to the environment of the area. The proponents, in essence, advocate that the Congress agree to sacrifice the surface lands and the water that flows through their subsurface on lands immediately adjacent to Apache Leap; that is, to "look the other way," so as to consciously permit this substantial insult to the lands and the resources involved to advance, just to facilitate the less expensive form of mining to benefit Rio Tinto and BHP.

Aside from the unequivocal surface destruction that would take place on lands under which the mining is proposed to take place, given the unpredictable reaction of Nature and the extent of damage of block and cave mining on the surface of land, contrary to claims by the mining companies involved, there is not a soul on the Earth who can with certainty assure that Apache Leap will not be damaged by this method of mining, nor that it would potentially jeopardize the highway running through the area, nor the water resources of other people in the region. They can guess, estimate, and surmise . . . but they cannot guarantee. We ask, then, why would the United States permit this to happen when it is the Trustee for our People, our cultures, our interests, and our Homelands as well as the steward of forest lands involved that belong to the people of the United States?

These foreign interests, clearly concerned about bottom-line matters rather than cultural and related matters of indigenous peoples, are apparently willing to promise almost anything to obtain more lands owned by the American public today for the self-interests of their shareholders. We urge that should not be the driving force or deciding factor in the Congress's consideration of this ill-considered venture.

The environmental consequences to the lands in the proposed mining area as well as the harm to spiritual, cultural, archeological, and historic resources from the proposed mining by these huge foreign mining companies is to us, simply not something that our Trustee should willingly and consciously countenance and support all in the name of what is the "cheapest" way for these mining companies to turn a profit on resources. This land and its environmental beauty and resources are National treasures. There are time that our government should just say no and this is one of them. This type of mining in this location should not occur.

We strongly request and urge that you and your colleagues on the Senate Energy and Natural Resources Committee resist being pressured into giving these foreign entities such incredible rights to lands and resources at the expense of so many environmental, land stewardship, and trust responsibilities for which your committee has such solemn responsibilities.

ITCA and the San Carlos Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, Tonto Apache Tribe, Hulapai Tribe, Hopi Tribe, Fort McDowell Yavapai Nation and many other Tribes will submit more extended comments for the record of this hearing.

We thank the Chairman and the Subcommittee.

Senator WYDEN. Thank you very much, Mr. Lewis.

Where we are, we have a vote on the floor of the Senate now. So Senator Barrasso and I will go over and make that vote. It is my intention to come back. Then we will go to you, Mr. Featherstone. Then I will have some questions for the three of you. Senator Barrasso may have some as well.

Then for the third panel, which will be Mr. Price from Daniel, Wyoming, and Mr. Edwards from Montana, Senator Tester will chair.

So our thanks to all of you for the patience. I know that you have come on a particularly chaotic day here in the Senate, and just know we will be back as soon as we can.

With that, we are in recess until after this vote. Thank you.

[Recess.]

Senator WYDEN. Thank you all for your patience. We will hear now from Mr. Featherstone. Please proceed.

STATEMENT OF ROGER FEATHERSTONE, SOUTHWEST CIRCUIT RIDER, EARTHWORKS, TUCSON, AZ

Mr. FEATHERSTONE. My name is Roger Featherstone. I am the Southwest Circuit Rider for Earthworks based in Tucson, Arizona. My territory covers the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah.

I would like to start by thanking Senator Wyden for holding this hearing.

I would also like to say I am delivering my written and oral testimony today also on behalf of the Grand Canyon Chapter of the Sierra Club.

Earthworks is a nonprofit, nonpartisan environmental organization dedicated to protecting communities and the environment.

We are strongly opposed to S. 3157. This bill was written to benefit Rio Tinto and BHP-Billiton, two huge foreign mining companies, for the express purpose of expediting the building a mine in Arizona. These companies have formed a wholly owned and controlled subsidiary called Resolution Copper Company. This is the height of special interest legislation.

This bill does not benefit the taxpayer. It does not benefit the environment, and if passed, it would set a dangerous precedent of mining companies going straight to Congress for legislative relief from laws that they and every other mining company have had no trouble in following in the past. Every other mining company in the United States that wants to build a mine goes through an established process that has been around since 1872. Instead of circumventing that process and going to Congress with this bill, what Rio Tinto and BHP should be doing is writing a plan of operations for a mine and then submitting it to the U.S. Forest Service for consideration. This would allow the public to participate in this process to help the Forest Service decide whether the mine design is a good one and should be permitted.

Besides being unnecessary, there are numerous problems with this bill. The bill would override an executive order signed by President Eisenhower 50 years ago that recognized the value of having Oak Flat Campground as a haven for recreation and many other purposes.

The bill would trample on the rights of the Native American community by giving away to a foreign corporation land that has been used for generations for cultural and spiritual practices.

The bill purports to contain a NEPA provision, but upon closer examination, it does nothing but reiterate what is currently law. It does not allow a NEPA examination of the land exchange itself. If does not allow a NEPA examination of the mine proposal. All this NEPA language does is say that if Resolution Copper wants even more Federal land than what they would obtain in this land exchange for a road or other such structure, then an environmental impact statement would be prepared for that feature alone.

This version of the bill also purports to include some sort of royalty. Again, this sounds good on paper, but when you look closer, you find several flaws. The companies would hire and pay for an appraiser that would set the royalty amount, set the method of royalty, and would also attempt to determine the amount of copper in the ground that could be mined. There would be no public input

into the appraiser's decision. Only the Department of the Interior would oversee the appraisal, and as my written testimony points out, they have a track record of undervaluing public lands. If the appraisal comes in low or the royalty amount were set low, the public would be out of luck.

If a royalty is to be meaningful at all as part of this bill, Congress should set the royalty amount, the royalty method, and the method for determining the quantity of mineral upon which that royalty is based.

Further, S. 3157 makes it clear that the land surface will be given no value in the appraisal. Considering the ecological and cultural values of Oak Flat and the surrounding areas, at the very least the appraisal and any royalty should be set high. Maricopa Audubon Society in Arizona has done an extensive, on-the-ground survey of the parcels included in the exchange. While some of them have some ecological value, Maricopa Audubon Society has found that they do not equal the environmental and cultural value of the Oak Flat, Apache Leap, Devil's Canyon area that we would lose. This legislation could help address the question of the value of the land the public would lose, but it is silent on that point.

In conclusion, this bill is bad public policy that benefits corporations at the expense of the taxpayers and the environment. This bill should not make it past this hearing.

Thank you again for your time, and I look forward to your questions.

[The prepared statement of Mr. Featherstone follows:]

PREPARED STATEMENT OF ROGER FEATHERSTONE, SOUTHWEST CIRCUIT RIDER, EARTHWORKS, TUCSON, AZ

Earthworks is a non-profit, non-partisan environmental organization dedicated to protecting communities and the environment from the adverse impacts of mineral development. Our national office, based in Washington D.C., provides support to citizens across the country and around the world. Our field offices in Arizona and Montana assist communities throughout the western United States concerned about the impact of mineral development in their backyards.

Earthworks supports responsible mining policies and practices and recognizes that some mining companies seek to operate in a manner that protects our environment.

The Sierra Club is America's oldest, largest and most influential grassroots environmental organization. Inspired by nature, the Sierra Club's members—including 14,000 in Arizona—work together to protect our communities and the planet. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. The Sierra Club's Grand Canyon Chapter has been actively involved in protecting public lands in Arizona for more than 40 years.

We appreciate the opportunity to express our view in front of the Subcommittee about S. 3157, the Southeast Arizona Land Exchange and Conservation Act of 2008 (Oak Flat Land Exchange).

BACKGROUND

Resolution Copper Company (RCC)—a wholly foreign-owned subsidiary of Rio Tinto and BHP, two of the largest mining companies in the world—is potentially planning to develop a deep underground copper mine. RCC seeks to acquire Oak Flat, Apache Leap, and surrounding public lands for its private use through this land exchange bill. There are many significant problems posed by this unusual bill. For example, if approved, more than 3,000 acres of the Tonto National Forest will become private property and forever off limits to recreationists and all those who enjoy public lands. Privatization of this land would end public access to some of the

most spectacular outdoor recreation and wildlife viewing areas in Arizona. If a mine is developed, this land would be affected by massive surface subsidence, leaving a permanent scar on the landscape among other lasting and ongoing damage.

The Oak Flat Campground was recognized by the Eisenhower Administration as an important recreational resource in 1955, and specifically placed off limits to future mining activity. This unique area is a world-class natural resource for birding, hunting, hiking, camping, rock climbing, bouldering, canyoneering, picnicking, responsible OHV driving, and other recreational uses. Oak Flat receives tens of thousands of visitors each year. On the eastern border of Oak Flat is Devil's Canyon, and the waters of Queen Creek, one of the crown jewels of Arizona's state trust lands, with some of the finest remaining riparian habitat in the state.

The Oak Flat Campground, Apache Leap, and the surrounding area are very important for recreation and respite to the citizens of the town of Superior and a large percentage of Superior residents oppose the Oak Flat Land Exchange.

Oak Flat, Apache Leap, Devil's Canyon, and the surrounding area have long been an important cultural site for Western Apaches as well as for the Fort McDowell Yavapai tribe. The Tonto National Forest has discovered at least a dozen archeological sites in and around Oak Flat. Apaches continue to use the Oak Flat area to gather acorns and pine nuts that are highly valued traditional and ceremonial foods. Making Oak Flat private land would forever eliminate those Apache traditional cultural and religious uses of that unique area. Apache Leap is an historical land known as the Apache's Masada. It is hallowed grounds where many dozens of Apaches leaped to their deaths when trapped by the US Army.

The bill contains no meaningful environmental studies. Furthermore, RCC has not yet filed a mining plan and has offered scant and often conflicting information about (1) what will become of Oak Flat, Apache Leap, and environs; (2) where the mountains of mining tailings will ultimately reside; (3) where the enormous amounts of water needed for mining will come from and be discharged; (4) how endangered species (such as the Arizona hedgehog cactus, *echinocereus triglochidiatus arizonicus*) will be protected and preserved; and (5) how necessary cultural resources will be protected. Importantly, the bill makes no mention of the subsidence that could occur if RCC is allowed to mine this area as it intends. Much has yet to still be dealt with in terms of environmental considerations.

This bill is at best premature. Before we can decide on the merits of any exchange, the public must review and debate a plan of operation for an actual mine. Only if, after full review of a plan of operations and alternatives, a decision is made to move forward with a mine, should it be determined if a land exchange is needed.

For this, and other reasons listed below, we are opposed to the land exchange in its current form.

LOSS OF 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 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.

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.

In addition to privatizing this important area, S. 3157 also rescinds P.L.O. 1229. In Section 9 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 DEVIL'S CANYON

Devil's 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. Devil's 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 Devil's Canyon's water and also provide valuable habitat for wildlife.

Considering its proximity to the proposed mine and the amount of water the mine would utilize, between 17,000 and 19,000 acre feet of water per year, the risks of dewatering Devil's 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

For the first time, this version of the Oak Flat land exchange bill mentions the National Environmental Policy Act (NEPA). While this may sound like a step forward, the bill language does not change the status quo.

There would be no NEPA analysis on the land exchange. The bill forbids any NEPA analysis of impact except for commercial production and then ONLY if there were a Federal nexus to what would become RCC private land. The very fact that the entire section that deals with NEPA is titled "POST-EXCHANGE PROCESSING" makes it clear that no NEPA would occur until the land exchange was a done deal. At that point, the bill clearly states that NEPA would only happen "regarding any Federal agency action carried our relating to the commercial production..." This is already the case. A mine on private land that, for example, wanted to build a road across Federal land would require NEPA on that action. The only real difference this "NEPA" section would make is that an EIS would need to be done instead of a simpler Environmental Assessment.

Even if this provision would somehow invoke a NEPA analysis on a mine design (and this would be highly unlikely), the exchange and the mine would already be a done deal and the NEPA analysis would be moot at best and more likely a complete waste of taxpayer money done simply to give RCC some extra "window dressing.".

There would still be no analysis in the bill of the impacts on the land traded out of public ownership, including impacts from mining or other uses of the land on adjacent lands.

There is plenty of time to undertake the full public review of any possible mine under Oak Flat and Apache Leap. Full public review and input would show that the area is critically important to Western Apache and others—a point that is being glossed over in the current rush to approve the exchange.

S. 3157 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 impacts. 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 clear that the public would not get a fair return on the loss of Oak Flat, the possible damage to Devil's Canyon, and the threats to Apache Leap.

Because there is no NEPA process associated with the exchange itself, there is no opportunity for the public to review a Mining Plan of Operation up front.

There are key questions outstanding on this proposal which make it impossible to say the exchange is in the larger public's interest. Where would all mining waste go? What is the plan for the mine 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.

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 Devil's 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. The exchange will not be modified.

If the information that Resolution Copper Company has provided on this proposed mine is accurate, this mine will be the largest mining operation in Arizona. It would be larger than the Phelps Dodge (now Freeport McMoRan) 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 be potentially harmful to Arizonans and United States taxpayers.

SHAM ROYALTY

Section 10 of this version of the land exchange contains a provision for RCC to possibly pay a royalty to the Federal government. While this provision may look good on the surface,, it is essentially an attempt to "greenwash" the bill to make it more palatable to decision-makers.

There is no mention in the bill of either the royalty amount or the royalty method. We have attached to our written comments copies of reports EARTHWORKS has prepared showing the problems with different kinds of royalties. Congress should, at the very least, specify both the royalty amount and define the royalty calculation method. Royalty amounts paid on private lands in the United States are as high as 18 percent. Especially since Oak Flat and Apache Leap are so important to the public (including Native American communities, recreationists, and for conservation purposes)purposes) the royalty amount should be enough to attempt to compensate for these losses. Especially since the bill language makes it clear that the appraiser will not be placing a value on the surface estate of Oak Flat and Apache Leap.

The bill places the entire burden of setting the rate and method of the royalty to the appraiser and out of the hands of Congress and the public. This is bad policy. Since most appraisers that are experts in setting royalties spend the majority of their time working for the mining industry, there is a high likelihood that, without oversight by Congress or the public, that the royalty amount would be set far too low. The way the bill is written, only RCC and the Department of Interior will have any input into setting the royalty amount or method.

This royalty section also does not specify the quantity of mineral production used in the appraisal calculations or any analysis of how the estimate was calculated. Again, the company (who would be responsible both in hiring and paying for the appraisal) would wish to lowball these calculations to avoid paying money up front for the value of minerals taken out of the public domain.

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 US 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.

INHERENT PROBLEMS WITH LAND EXCHANGES

In particular, this land exchange bill does little to ensure that the land trade would fairly compensate the American public for the loss of Oak Flat and Apache Leap. The bill requires that an appraisal be completed within one year, yet the company itself will have no idea of the full value of the minerals that are now held in the public trust. This is particularly important given that the royalty payments in Section 10 of the bill are based on this appraisal.

There is no mandate that RCC build a mine if the exchange were to be approved. If the company decides not to mine, Rio Tinto and BHP would be able to enter into the real estate development business. If this bill passes, the land will be private land, allowing mining companies to sell the land for condominiums or golf courses. Rio Tinto is currently planning a massive housing development on its mine land outside of Salt Lake City that could house as many as 500,000-600,000 people. BHP is planning a large subdivision for 3,500 at its mine site near San Manuel. There

is nothing to stop RCC from using this bill as a grab of public land under the guise of mining.

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.

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.

RECLAMATION

There is no discussion about reclamation or closure of a mine in the bill. If the land were privatized, Arizona state law would allow the company itself to insure the cost of reclamation. This type of self-guaranteed bond leaves the taxpayers vulnerable if the mining company is to go bankrupt. We should learn from the example of the bankruptcies of ASARCO and other mining companies. Without cash up front for reclamation, the taxpayer would be left responsible for reclamation costs.

CATERING TO SPECIAL INTERESTS

RCC has gone to great lengths in this bill to attempt to accommodate several interest groups. The bill bends over backwards to provide incentives for rock climber support of the bill. Yet in spite of this effort, all but a few climbers oppose the exchange. The bill's sponsors have offered parcels of land that would benefit only certain conservation organizations. Yet, the bill locks other groups out of areas traditionally used by the public. Not only would Native Americans be locked out of traditional-use areas, but so would recreationists and birdwatchers. Such a divide and conquer strategy of talking to and appeasing only certain special interest groups is not the way to conduct good public policy.

In addition, RCC has used what could certainly be considered strong-arm tactics in eliciting letters of support from local governments including the town council and Mayor of Superior. If similar tactics, including working behind the scenes to force the firing of individuals opposing the Land Exchange, were used in other countries, Americans would be outraged. Such behavior is hardly consistent with an environmentally and socially conscious corporate citizen.

SUMMARY

There is no need for a land exchange in order for RCC to move forward with plans to mine on public land. The 1872 Mining Law, which governs hard rock mining on public land, makes it clear that RCC has the ability to propose a mine on public land. Of the 183 major hard rock mines in the US that have opened since 1975, 137 have operated on public land.

The real solution is to put this land exchange bill on hold and ask RCC to submit a Plan of Operation to the U.S. Forest Service so that an Environmental Impact Statement can be written to cover all the alternatives in the project. RCC has stated that it will not be ready to mine for at least 10 years, giving the Forest Service and the public plenty of time to scrutinize the mine plan and come up with a solution that benefits the mining company, recreationists, and the traditional-use tribal interests.

Unfortunately, this land exchange bill leaves many affected parties out of decision-making process. The bill takes the decision from the many and puts it in the hands of a few, undercutting good decision-making that would involve and benefit the public and surrounding communities. Rather than working out the details behind closed doors, RCC should allow for full disclosure and scrutiny. This will allow any environmental issues—such as subsidence, water use, and pollution issues—to be dealt with early on in the process. It will also allow RCC to fully consult with the tribes and other constituencies that will be affected by the exchange. There seems to be only one reason this bill is being rushed through the process—the companies know that the only way to get what they want is to circumvent America's tried and true public process by asking Congress to mandate a quick fix.

This land exchange bill would set a chilling precedent, allowing for the revocation of similar land withdrawals such as parks, recreation areas, and wildlife refuges. Public lands such as Oak Flat that are set aside for recreation should remain protected for future generations. This land exchange bill would sacrifice the interests of Arizonans and all Americans, to benefit a mining company. Twenty years from now—if a mine is built and ceases operation and the jobs once again leave—what will be the fate of these towns and landscapes? We strongly urge you to protect these public lands for the public's future use and preserve the unique opportunities for Arizonans that the Oak Flat area provides.

Recently the public has spoken loudly on several occasions about keeping America's public lands public. This is just another land grab under the guise of mining. Do not let this happen. There is time to do this right.

Senator WYDEN. Thank you all. I just have a couple of questions at this point.

For you, Mr. Salisbury, S. 3157 would lift a withdrawal and provide for the conveyance of this Oak Flat Campground, this popular campground. That is certainly part of the debate surrounding the legislation. Is the withdrawal and the conveyance of that national forest land essential to the development of the mine or could you proceed to develop the mine without it?

Mr. SALISBURY. Thank you, Mr. Chairman. The known ore body that we have abuts the campground boundaries. Therefore, the mineral exclusion of the campground prohibits us from exploring and identifying what the extent of the ore body is. Therefore, as we look at the ability to fully develop a mine plan, to fully develop a plan of operations, we would be unable to carry that work out without knowing what the ore body extent is and what its extent is that extends under the campground. So therefore, that is why we need the campground in order to be able to drill under there and determine what the ore body capacity is.

Senator WYDEN. So on a yes or no with respect to my question, you would say that you could not develop the mine without it.

Mr. SALISBURY. The ore body, because it abuts to the campground—it would not be advisable for us to move forward with the mine development without knowing what is under there, and the exchange is essential to the development of the mine.

Senator WYDEN. So the answer is yes.

Mr. SALISBURY. The answer is yes. The exchange is essential to the full development of the mine.

Senator WYDEN. Now, it is my understanding that a number of people, including the Governor and members of the congressional delegation, have contacted you to urge you to include in the exchange a piece of property along the lower San Pedro River, an important piece of property evidently. It is near the Town of San Manuel that is owned by your minority partner in the project, BHP-Billiton.

Can you tell the subcommittee why you have not included that piece of property in the proposal?

Mr. SALISBURY. We have a relationship with BHP-Billiton as a minority partner where we have encouraged them to consider that addition. However, we have no control absolute over their inclusion of that in this bill. While we have encouraged their participation and they do participate in the Lower San Pedro Working Group, we can only encourage and solicit their participation or consideration of that, but we cannot command them to make that parcel a part of this exchange.

Senator WYDEN. Now, Mr. Featherstone suggested that Resolution Copper should develop a plan of operations and alternative before a decision is made on whether to move forward with the land exchange. In your mind, is that a feasible approach?

Mr. SALISBURY. Because we do not understand and cannot drill under the campground area, we can only do a partial design of a mine. It is important for us to know precisely the mineral capacity, the mineral quality, the geotechnical capacity that exists there in order for us to fully complete a mine design. This includes the determination of the degree of subsidence that may exist under the mine.

May I just respond to an earlier question, chairman, if I might? Our infrastructure exists between the mine ore body and the Apache Leap. Therefore, any degradation to the Apache Leap would disable our mine. We would not be able to continue. So therefore, we are confident and our experience tells us in this mining process we know how to control, that we know how to monitor this kind of mining activity, and we will protect the Leap.

Senator WYDEN. Mr. Featherstone, do you want to respond to the answer Mr. Salisbury gave to my question?

Mr. FEATHERSTONE. The question of subsidence or the question of whether they need the campground?

I would point out that in respect to the campground, President Eisenhower—and reiterated by President Nixon—knew very well that this was in the middle of a mining district and felt that the values of that campground far outweighed any mineral extraction values. So now we are hearing that another mining company wants this area and we should just roll over and give it to them.

So I do not believe that—I mean, I think it is clear that the Apache Leap area—or the Oak Flat Campground can be sterilized in a mining operation, just as they would sterilize Apache Leap, and a mine could continue in that area, as the Old Magnum Mine happened, without interrupting or bothering that campground.

Senator WYDEN. Just one last question. Mr. Lewis, are the tribes opposed to the legislation under any circumstance, or are there a set of changes that would make the tribes support it?

Mr. LEWIS. I think right now with the current legislation that the tribes oppose, I do not think we are at the point where anything could be put into legislation to change our minds. We hope that a full, comprehensive environmental study be done to determine whether or not this project is even feasible. Obviously, government-to-government consultation would be part of that also.

Senator WYDEN. All right. I have finished my questions about Arizona. I know Senator Tester is very anxious to talk to Mr. Edwards and Mr. Price.

Senator Craig, did you have questions that you wanted to offer now? Because if you do, I think I may have Senator Tester chair. I will yield the gavel.

Senator CRAIG. Mr. Chairman, I am here primarily under the same interest that Jon is. So why do we not proceed to that?

Senator TESTER. If I might, Mr. Chairman. I did not hear the testimony of these three fine gentlemen, with the exception of Roger Featherstone. I do have a couple questions for David Salisbury, though.

Senator WYDEN. Then let us do this. I am going to—because I think fairly shortly we will move to the third panel, I will turn the gavel over to you, Senator Tester, for any questions you have of this panel and, Senator Barrasso, if you have any questions of this panel, and that will wrap up this panel. Then we will go on with the additional witnesses.

Senator TESTER. I just have two very simple questions for you. Do you know the size of the ore body, David Salisbury? Do you know the size of the ore body?

Mr. SALISBURY. We have been exploration drilling the property since 2004. We have just completed and publicly released a statement that indicates that there is an inferred reserve. This is according to standards that are required by the SEC—an inferred reserve of 1.3 billion tons of ore containing 1.5 percent copper and .04 molybdenum. So we do have an idea of what there is there on an inferred basis, yes.

Senator TESTER. How deep is the ore body?

Mr. SALISBURY. It ranges from a depth of 7,000 feet up to 4,000 feet below the surface at the present time. That is our knowledge.

Senator TESTER. Thank you very much.

No other questions? Then I will release you three guys. Thank you for your testimony. Thank you for being here.

We will call forward Mr. Edwards and Mr. Price. While they are getting situated, I want to thank Mr. Edwards and Mr. Price for being here today. I appreciate the trip. It is a long haul from Montana and Wyoming to get out here. So I appreciate you guys making the effort.

We look forward to your testimony, and once you get situated, Mr. Edwards, you can start with your testimony. Your complete testimony will be a part of the record. I will ask you to summarize as best as possible because we have got some questions, and we are getting into the day pretty good. I am sure you guys want to prob-

ably get somewhere tonight too. So, Mr. Edwards, you go ahead and go and summarize your high points. Thank you.

STATEMENT OF GEORGE EDWARDS, LIVESTOCK LOSS MITIGATION COORDINATOR, MONTANA DEPARTMENT OF LIVESTOCK, HELENA, MT

Mr. EDWARDS. Mr. Chairman and members of the committee, thank you for the opportunity to testify before you today.

The Gray Wolf Livestock Loss Mitigation Act of 2008 is similar to Montana's livestock loss reduction and mitigation program. Through our program, we are looking for ways to fund prevention efforts and livestock losses due to gray wolves in our State. Montana law also contains provisions so that we will be able to include Montana Indian tribes, provided they have adopted a wolf management plan that is consistent with Montana's State wolf management plan.

During the 2007 Montana legislative session, the Livestock Loss Reduction and Mitigation Board was created to administer programs for mitigation and reimbursement of livestock losses by wolves. This board is currently attached to the Montana Department of Livestock. Our mission is to help support Montana livestock communities by reducing the economic impacts of wolves on individual producers by reimbursing their confirmed and probable losses and helping to reduce their losses by approving projects and funding programs that will discourage wolves from killing livestock.

Our program's purpose is to acknowledge the importance of economic viability and sustainability of individual livestock owners who are negatively affected by wolf recovery.

Our program is based on the belief that both government and livestock owners want to take reasonable and cost effective measures to reduce losses and that livestock producers should not incur disproportionate impacts as a result of recovery of Montana's gray wolf population.

We began to process claims as of April 15 and pay 100 percent of the market value for confirmed and probable losses. All confirmed and probable losses are verified by USDA Wildlife Services personnel. Prior to beginning our claims process, a private organization, Defenders of Wildlife, had been paying claims. Defenders of Wildlife has made a donation of $50,000 in April 2008 and has pledged to donate another $50,000 in 2009. Without this donation, we would be unable to pay claims for livestock losses as of July 1, 2008.

The fiscal note for Montana's legislation creating our program estimated losses caused by wolves to be $200,000 annually. Since this legislation was originally drafted in 2006, the number of wolves in Montana has increased by 34 percent. Actual confirmed and probable livestock losses have more than doubled since this legislation was introduced.

Livestock owners are shouldering an economic burden beyond their control. This legislation will help address funding of livestock losses and activities to reduce predation. Prevention programs in this legislation are critical to our livestock industry and we want to be able to implement them. Hopefully, being able to fund pre-

ventative methods will reduce the financial and emotional toll to our livestock owners.

Programs like Montana's livestock loss reduction and mitigation program, with the help of Federal funding, will allow wolves and livestock to coexist. Help me help them and thank you for the support of this bill.

[The prepared statement of Mr. Edwards follows:]

PREPARED STATEMENT OF GEORGE EDWARDS, LIVESTOCK LOSS MITIGATION COORDINATOR, MONTANA DEPARTMENT OF LIVESTOCK, HELENA, MT

Mr. Chairman and members of the Committee, thank you for the opportunity to testify before you today.

The Gray Wolf Livestock Loss Mitigation Act of 2008 is similar to Montana's Livestock Loss Reduction and Mitigation program. Through our program, we are looking for ways to fund prevention efforts and livestock losses due to gray wolves in our state. Montana law also contains a provision so that we will be able to include Montana Indian Tribes provided that they have adopted a wolf management plan that is consistent with Montana's state wolf management plan.

In 2005, Montana entered a memorandum of understanding (MOU) that allowed the state to implement it's approved plan within federal law and guidelines in place at the time. The MOU allowed Montana and the Indian Tribes to lead wolf conservation and management activities within their respective boundaries. In its 2007 Annual Report, Montana reported over 420 wolves in about 73 packs and 39 breeding pairs, with demonstrated distribution among Montana's portion of all three Northern Rocky Mountain subpopulations.

In keeping with Montana's tradition of broad-based citizen participation in wolf conservation and management, a diverse, 30-member working group met 4 times in 2005. The working group was comprised of private citizens, representatives from non-governmental organizations, and representatives from state and federal agencies. A smaller subcommittee continued to meet in 2006. This group finalized a framework which became the basis for legislation in the 2007 Montana Legislature.

During the 2007 Montana Legislative session, a bill to establish the framework of the working group was introduced and passed (HB364). The legislation created the Livestock Loss Reduction and Mitigation Board to administer programs for the mitigation and reimbursement of livestock losses by wolves. It also established the quasi-judicial board, its purpose, membership, powers and duties, and reporting requirements. The Board is administratively attached to the Montana Department of Livestock, but its role and duties are wholly independent from Montana Fish, Wildlife and Parks and the Montana Board of Livestock.

Late in 2007, the Governor appointed the Board. The legislation also codified much of the actual draft framework in state law. It directed the Board to establish a program to cost-share with livestock producers who are interested in implementing measures to decrease the risk of wolf predation on livestock. It also directed the Board to establish and administer a program to reimburse livestock producers for losses caused by wolves. While some details of the grant program (loss reduction) and the reimbursement program (loss mitigation) are established in statute, the Board is in the process of establishing additional details through a rulemaking process, which will include public comment opportunities.

Board makeup consists of seven members appointed by our Governor. Three members were selected from a pool of names recommended by the Montana Department of Livestock, another three members were recommended by Montana Fish, Wildlife and Parks and one member from the general public.

Gray wolves are firmly established in Montana. The long term presence of wolves is dependent upon comprehensive programs that carefully balance complex biological, social, economic and political aspects of wolf management. One challenge that must be addressed in seeking this balance is that gray wolf recovery has and will continue to result in the loss of personal property and income to livestock owners.

Our mission is to help support Montana livestock communities by reducing the economic impacts of wolves on individual producers by reimbursing their confirmed and probable wolf-caused losses and helping to reduce their losses by approving projects and funding programs that will discourage wolves from killing livestock.

Our programs purpose is to acknowledge the importance of economic viability and sustainability of individual livestock owners in Montana who are negatively affected by wolf recovery and to ensure a viable, well distributed gray wolf population that meets recovery goals and is managed similar to that of other large carnivores. The

program was created to fulfill a compensation provision of Montana's Gray Wolf Conservation and Management Plan.

More specifically, the purpose of the loss reduction and mitigation programs are:

- to proactively apply prevention tools and incentives to decrease risks of wolf-caused losses;
- to provide financial reimbursements to livestock owners for losses caused by wolves.

The program is based on the belief that both government and livestock owners want to take reasonable and cost effective measures to reduce losses, the acknowledgement that it is not possible to prevent all losses, and that livestock producers should not incur disproportionate impacts as a result of recovery of Montana's gray wolf population.

To help fund this program, Montana legislators created a trust fund that may collect up to five million dollars. The livestock loss reduction and mitigation trust fund is to be funded with gifts, grants, appropriations, or allocations from any source.

In designing this program legislators envisioned using a trust fund, private donations, state appropriations and federal appropriations to provide loss reduction grants and payments for losses and mitigation efforts.

The Montana legislation creating this program provided $60,000 appropriation from the general fund in fiscal year 2008 for one full time employee, operating expenses to establish the board and board activities. Another $60,000 is appropriated for FY 2009. $30,000 was placed into a fund for fiscal year 2008 for our program to begin loss payments. Currently, there are no funds appropriated in our trust fund.

We began to process claims as of April 15th and pay 100% of the market value for confirmed and probable losses. All confirmed and probable losses are verified by USDA Wildlife Services personnel. Prior to beginning our claims process, a private organization, Defenders of Wildlife, had been paying 100% for confirmed losses and 50% for probable losses.

Defenders of Wildlife has made a donation of $50,000 in April 2008 and has pledged to donate another $50,000 in 2009. Without this donation we would be unable to pay claims for livestock losses as of July 1, 2008.

The loss reduction element is intended to minimize losses proactively by reducing risk of loss through prevention tools such as night pens, guarding animals, or increasing human presence with range riders and herders.

The fiscal note for the legislation creating our program estimated losses caused by wolves to be $200,000 annually. Since this legislation was originally drafted in 2006, the number of wolves in Montana has increased by 34%. Actual confirmed and probable livestock losses have more than doubled since this legislation was introduced. Only a small fraction of predator-killed livestock are ever found. Loss figures in USDA Wildlife Services reports only reflect a fraction of predator related losses because no entity is able to verify all causes of livestock loss. As wolf populations increase, wolf/human conflicts are expanding on private land, other lands and across jurisdictions. The number of gray wolves is significantly increasing. Losses are occurring at a rapid pace and the importance of being able to fund prevention efforts becomes more vital to our livestock industry.

As with this bill, Montana's program covers cattle, swine, horses, mules, sheep, goats, and livestock guard animals.

The Montana Livestock Loss Reduction & Mitigation Program covers losses due to gray wolves. Losses due to coyotes, grizzly bears, black bears, mountain lions and red fox are not currently part of our program.

The following is a breakdown of animals killed in Montana by wolves since 2006:

YEAR	2006	2007	2008
CATTLE	32	75	74
HORSE			1
SHEEP	4	27	99
GOATS			14
GUARD ANIMAL	4	3	1
TOTALS	40	105	189

Loss numbers are supplied by USDA Wildlife Services. 2008 numbers reflect only an eight month long timeframe. This is very early in the summer and most livestock are just going to summer range where a lot of predator related losses historically occur.

Our program offers a transparent approach to our operations. All livestock loss claims begin when a livestock owner calls USDA Wildlife Services to investigate a loss. When it has been determined that the loss is caused by wolves, Wildlife Services personnel send the livestock owner an investigative report and our loss reimbursement application. The livestock owner then has the option of submitting a claim to our office. We use a weekly USDA market report to determine livestock values for commercial livestock. Registered livestock values are determined by sales receipts of similar age and sex at public or private sales for that registered breed.

The livestock owners of Montana, Wyoming and Idaho are shouldering an economic burden beyond their control. This legislation will address funding of livestock losses and activities to reduce predation. At the present time we don't have the necessary funding to offer preventative programs. Prevention programs in this legislation are critical to our livestock industry and we want to be able to implement them. Livestock losses are occurring at a rapid pace and we are having great difficulties in raising funds to keep up. Hopefully being able to fund preventative methods will reduce the financial and emotional toll to our livestock owners.

Benefits to the general public are immeasurable. Our three state regions offer the ability for our children and future generations to see wolves in their natural habitat.

We also need to keep our nations agricultural producers economically sound. Programs like Montana's Livestock Loss Reduction & Mitigation Program with help from federal funding will allow wolves and livestock to co-exist. Help me help them and thank you for your support.

[Additional information has been retained in subcommittee files.]

Senator TESTER. Thank you, George. I appreciate your testimony. We will have questions after Mr. Price gets done with his.

Mr. Price.

STATEMENT OF CHARLES C. PRICE, DANIEL, WY

Mr. PRICE. I am, of course, Charles Price from Wyoming, and Senator Wyden is not here, but Senator Tester, I got the invitation from Senator Wyden. So I will thank him for the invitation.

Senator TESTER. Good to have you here.

Mr. PRICE. John Barrasso or Senator Barrasso. I knew him as Dr. Barrasso in Wyoming. Thank you.

I guess I am addressing you on behalf of myself, the Upper Green River Cattle Growers Association, and the Wyoming Stock Growers Association and, to the best of my ability, the people or citizens of Wyoming who are being impacted by these large carnivores. In my discussion, it will be both grizzly bears and wolves because we are impacted by both of them.

I am a member of the Upper Green River Cattle Association, an association of 16 cattle ranchers who graze cattle in the Upper Green River area. This area is within about 50 miles of the Yellowstone Park. The numerical information that I am presenting today is based on the Upper Green River Cattle Association records from 1990 to 2004. I have also extracted information from 2005 to 2007 so that you will get an idea of the complete losses.

The details of this information are presented and analyzed in a draft of a paper that we are working on for publication. I have brought a number of copies of this paper today, and I left those with Senator Barrasso's office and you can obtain them. It has got detailed analysis, statistical analysis, to support the numbers that we have generated in this report. I feel pretty confident that the information is good.

We identified a predation problem in 1995 and began to compile a consistent record of the calf losses starting in 1990 using association members' records. Prior to 1995, we had no known grizzly or

wolf predations, although as we look back, we recognize we did have a low level of predation earlier.

In 1995, we had our first confirmed grizzly bear predation, and it is important to know what a confirmed kill or predation is. A confirmed predation kill or damage is one in which the responsible agency, U.S. Fish and Wildlife Service, U.S. Wildlife Services, or the Wyoming Fish and Game, examines the damaged animal and confirms that it is damaged by a particular predator and issues an affidavit to the owner of that animal. So it is a third party confirmation.

Analysis of our records shows that calf losses increased with the expansion of grizzly bears and wolves into our grazing area. From 1995 to 2004, there were 29,693 calves that were grazed on the allotment. Out of that, there were 1,332 calves that were lost to all causes, but the predator losses for grizzly bears were 520 in that period of time. Wolves, having just come in at that time, were 177 losses of those calves to those predators.

Although there have been and are still various levels of compensation for livestock loss due to predation, these previous compensation programs fall short. Our analysis estimates that the uncompensated impact to producers in our allotment amounts to $22,500 for that period of 1995 to 2004. Compensation is usually based on a confirmed kill. However, only a fraction of the calves damaged or killed are actually found and confirmed. In the case of grizzlies, our study shows only 1 in 3.8 calves are found. In the case of wolves, it is even worse than that. It is 1 in 6.3. This is based on our finding. This leads to the concept of a compensation factor, a multiplier that can be applied to the number of confirmed kills to fairly compensate producers for their predator losses.

As I said, I extracted information from 2005 to 2007, and from that period of time, we had 59 confirmed grizzly kills, 35 wolf kills. Using the multipliers of 3.8 for the grizzlies, means that there were 224 calves killed by grizzlies in that 3-year period. For wolves, using the 6.3 multiplier, there were 221 calves in that period that were killed by wolves. Using this estimation, I estimate that over 1,100 calves were killed from 1995 to 2007. Now, you can think about that a little bit. If a calf is $500, that is simple. That is over a half a million dollars of loss, direct loss, to the livestock owner. It is not including the management problems that occur.

The grizzly bear and reintroduced wolf have expanded into areas where they are increasingly conflicting with human activity. Both species are represented as having a large national support from the public. Yet, the burden of the damage these species cause falls on a very small number of individuals. The result is that a few citizens are being driven into ruin by the implicit and unfunded mandate.

To be fair, the Wyoming Fish and Game has been proactive in providing compensation for the grizzly damage at 3.5 to 1. With the delisting of the wolf, they are taking responsibility for it, and the compensation factor is set at 7 to 1. This is based on an Oakley study in Idaho that established that it was more like 7 to 8, and it was a very intense study. However, since the animals are of national public interest, I think the public interest should financially

bear some of the burden that these few people that are being impacted do.

Inadequate compensation results in resistance to large carnivore recovery programs. The development of compensation programs that fairly reimburse livestock producers for their losses is therefore a necessary component of large carnivore recovery programs.

Thank you for your attention and the opportunity to comment here.

[The prepared statement of Mr. Price follows:]

PREPARED STATEMENT OF CHARLES C. PRICE, DANIEL, WY

ECONOMIC IMPACTS OF LARGE CARNIVORE PREDATION ON CALVES

Impacts of grizzly bear (*Ursus arctos*) and gray wolf (*Canis lupus*) predation on calves in the Upper Green River Cattle Allotment in western Wyoming were quantified utilizing records of the number of animals grazed and the number lost from 1990-2004. Confirmed predations by grizzly bears began in 1995, while the first confirmed wolf predation was in 2000. A "Confirmed Predation", is defined as predation that is identified by a responsible agency, USDI-Fish & Wildlife Service, USDA-Wildlife Services, Wyoming Game & Fish Department (WGFD), as a predator damaged (2) animal for which an affidavit is issued to the owner of the animal. Our analysis indicates that calf loss increases coincide with grizzly bear and gray wolf arrival and population establishment. From 1995 through 2004, 29,693 calves grazed on the allotment. Of the 1,332 calves lost to all causes, an estimated 520 calves were lost to grizzly bear predation and 177 calves were lost to gray wolf predation.

Analysis of past and current grizzly and wolf compensation programs with respect to the reimbursement of producers estimated the value of the uncompensated financial impact on the allotment to be $222,500 for the period 1995-2004 (Ref. 1. pp 11-12).

Only a fraction of the predated calves are actually found and confirmed as predator damage. Based on our findings, only one damaged calf is found and confirmed for every 3.8 grizzly bear damaged calves, in the case of wolves only one damaged calf is found and confirmed for every 6.3 wolf damaged calves. This leads to the concept of a compensation factor, a multiplier that can be applied to the confirmed calf losses to fairly compensate livestock producers for damage to their livestock by large carnivores.

While the information is not in Ref. 1, I extracted the predator damage data from our records for the years 2005-2007. There were 59 confirmed kills for grizzly bears and 35 for wolves. Using the 3.8 and 6.3 multipliers yields 224 and 221 calves lost to grizzlies and wolves respectively for the 2005-2007 period. Using this information I estimate that over 1142 calves have been lost to grizzly bear and wolf predation for the 1995-2007 period.

The grizzly bear and reintroduced wolf have expanded into areas where they are in increasing conflict with human activity. Both species are represented as having a large national support from the public; yet, the burden for the damage these species cause falls on a very small number of individuals. The result is that a few private citizens are being driven into ruin by an implicit unfunded mandate. To be fair the WGFD have been proactive in providing compensation for the grizzly damage, 3.5 to 1, and with the delisting of the wolf they are taking responsibility for it with a compensation factor of 7 to 1. However, since these animals are of national public interest the public should support their interest financially.

Inadequate compensation results in resistance to large-carnivore recovery programs. The development of compensation programs that fairly reimburse livestock producers for losses is therefore a necessary component of carnivore recovery efforts. Our analysis suggests that disciplined grizzly bear management coupled with adequate compensation for bear caused damage by the Wyoming Game and Fish Department is effective in minimizing conflict and resistance by private citizens.

Reference 1: "Quantifying economic impacts of large carnivore predation on calves in the Upper Green River Cattle Allotment of western Wyoming", DRAFT, March 12, 2008; Albert P. Sommers, Charles C. Price, Cat D. Urbigkit, Eric M. Peterson.*

* Document has been retained in subcommittee files.

Reference 2: "Damaged" refers to a calf that may be killed or so badly mauled it can't be economically salvaged.

Senator TESTER. I want to thank you both for being here and for your testimony. I think we will just go right down the line. I will be last. Senator Craig, go ahead.

Senator CRAIG. First and foremost, let me thank you, Jon, and you, John, too who introduced this legislation. It is critically necessary and important, and I am very supportive of it in that respect.

Idaho, Montana, and Wyoming together over the last good number of years have felt the brunt of the reintroduction of the Canadian gray wolf, and finally, through exceptional efforts on the part of a variety of people, we have got it to the point of delisting and our States bringing in management plans. I am extremely proud of the State of Idaho and the cooperative effort of their management plan with both ranchers and public lands interests, environmental communities, pro-wolf interests. I think we can manage that wolf.

I think, Mr. Price, you stated it well. There is a public interest out there. At the same time, there has to be a reality. Our greatest problem is the fact that up until now, the wolf has no known predator, and therefore, he has become so used to the human species that we are not viewed as a threat. So his separation from us, staying in the back country, is almost nonexistent. Wolves are seen all over Idaho today. Of course, as a result, domestic livestock grazing of all forms is taking a fairly heavy hit. At the same time, so are all of our wildlife that are the prey base of the wolf.

Instead of asking questions, let me make this statement primarily to the Senators because I think it is a good window to look through that may address some of the issues of this legislation.

Because I serve on the Appropriations Committee, I have been able to get an appropriated earmark, one of those evil, bad things, for Idaho on an annualized basis since 2006, 2006, 2007, 2008, averaging about $1.2 million going to Idaho. This is broken up, and DOI directs about $750,000 of it to the Office of Species Management, about $200,000 to research on ungulates, about $400,000 to mitigation collars, and $100,000 to compensation for loss. There is an estimated $200,000 need because the compensation is in part money left over. So therefore, some of our losses to our ranchers—they get pennies on the dollar.

My guess is in Idaho alone, we are in need of about $1.5 million/$1.6 million a year. Now, if you spread that across the three States, I think we are similar to each other in the sense of total costs. I mean, I think it is reasonable to assume a bill like this could cost us somewhere in the range of $4 million or $5 million annualized. I do not see that as a big price to pay, in all fairness, to bringing about reasonable management and the cooperative between the States and the Feds and the U.S. Fish and Wildlife Service as it relates to managing these animals and developing a good management program.

So I thank both of you for the introduction of the legislation and you gentlemen for being here to testify.

I lost this fight. Your predecessor, Conrad Burns, and I kept wolves out of introduction for a good long while until the Administration changed and one Secretary of the Interior came, whose

name will go unmentioned. I chose not to speak his name anymore. He ignored the law and did what he did. We now have the situation that we are trying to deal with in a balanced way.

I do not think my attitude toward wolves has changed any since that day, but I do recognize reality and the need to build a balanced plan of management that keeps as whole as possible our domestic livestock industry in the State while recognizing the presence of the wolf.

So I give you that as some thoughts, Mr. Chairman. This is a realistic approach. If it is a public desire to have these wolves in our States, then there ought to be a public commitment to help us manage them at the cost of the American taxpayer.

Thank you all.

Senator TESTER. Thank you, Senator Craig, and we think it is a realistic approach too.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman.

Mr. Price, I appreciate you being here all the way from Wyoming. Could you visit with us just a little bit about how far back your family goes in Wyoming in ranching and your family's history with wolves in Wyoming?

Mr. PRICE. Yes. My grandfather homesteaded on the Green River in the late 1800s, and I guess I will say he was one of the ranchers that pursued and helped remove wolves from Wyoming. I can tell you stories about it, but it goes back.

I have my grandfather's homestead in my ranch. I still have the homestead. I have donated some of the buildings on it to museums and stuff. So it goes back over 100 years. The ranch was awarded here this previous year the Centennial Ranch Award for the State of Wyoming. They awarded all the ranchers who still had family living on the original homestead an award within the State, which I was grateful to get.

Senator BARRASSO. So when they proposed reintroducing wolves, you had a history, you had a background. I assume that you made predictions as to what would happen if wolves were reintroduced, and Fish and Wildlife officials made predictions about what would happen. Could you talk a little bit about what those predictions were and how they differed?

Mr. PRICE. You have to realize that when I came back to the ranch, there were still some of the old people alive there that had dealt with the wolves. Of course, we were strongly opposed to the reintroduction of the wolves because they knew what the problems were. I mean, they almost predicted what was going to happen. Now, I had never run into the wolves myself personally, but they knew. Some of those people were still alive.

So we resisted it strongly. I think you will recognize that Wyoming did strongly resist that, finally caved in kind of, because those wolves were turned loose before they should have been before all the hearings and things were done. So they were kind of forced on us.

Senator BARRASSO. Did the wolves stay in Yellowstone?

Mr. PRICE. Hell, no.

Senator BARRASSO. No surprise there. That is what you predicted. Right?

Mr. PRICE. Yes. We knew that.

But I will say this. They planted them in Yellowstone in 1995, and on the Upper Green, I was the first person of the association to have a confirmed wolf kill in 2000. So it took them 5 years to expand that far. From there, the number has just escalated. We are now getting confirmed kills. You heard some of the numbers. In 2005–2007, we estimate we have got kills, confirmed kills, of 35, but then you multiply it, and we are talking over 200 head of calves that are destroyed.

Senator BARRASSO. How far out of the park are you talking? You are not talking about right next to the border of the park.

Mr. PRICE. We are about 50 miles from the park, the closest point of the association grazing area to the edge of the park.

They are down around the ranch. They run around down there. We do not have as many problems. I have never had a kill down on the Green River itself, but up a little closer in the forested area, yes.

Senator BARRASSO. Now, you heard the testimony from the BLM today. I do not know if you want to comment on things you heard. Do you believe that the Federal Government has a responsibility? They said they do not believe that they do in terms of compensating ranchers.

Mr. PRICE. I will just repeat what I have said. These were introduced as a public interest, a national public icon. If you remember the words that were used, this is an icon of the wild, and the public was interested in it. They were put into the Yellowstone with the prediction that they would not go very far outside of Yellowstone. As I remember reading some of the early literature, they estimated like 15 bovine cattle would be killed a year, something less than 100 head of sheep killed a year. Shoot. I got 15 last—well, not last year, but I mean, I have got a lot more than 15 killed.

Senator BARRASSO. That was their total number predicted.

Mr. PRICE. That was their total number. I mean, that included Idaho, Montana, and Wyoming. You know what has happened. They are everywhere. The game populations are down. The moose population—I am on the Green River. The moose population on the Green River has stayed relatively constant, but I have land up in the western Wyoming range.

Senator BARRASSO. So what happened essentially is everything you have predicted and nothing about what Fish and Wildlife predicted.

Mr. PRICE. They underpredicted the damage, also underpredicted how fast those wolves would multiply. They also greatly underestimated the range of those animals.

Senator BARRASSO. Thank you very much, Mr. Price. I am very delighted that you could come here and share your story with the Senate.

I think, Senator Tester, my time is expired. Thank you.

Senator TESTER. Thank you, Senator Barrasso.

I have a few questions for Mr. Price and a few questions for Mr. Edwards.

You said that there are 16 ranches in the Green River Cattle Association. Does your ranch have more losses than others or is it——

Mr. PRICE. It is statistical. Some years one of us will be hit. Realize there is a twofold process. One is getting the animal confirmed.

Senator TESTER. Right.

Mr. PRICE. Sometimes we have had ranchers that have lost calves and never had an animal confirmed.

Senator TESTER. They never saw the calf?

Mr. PRICE. Never found a calf that they could identify. Yet, their losses are consistent with predation. In fact, that is the first thing you see. All of a sudden, your losses jump up.

Senator TESTER. You must have kept track of your losses pre-1995.

Mr. PRICE. Yes.

Senator TESTER. What percentage were they at pre-1995?

Mr. PRICE. Roughly 2 percent.

Senator TESTER. What are they now?

Mr. PRICE. It varies from year to year.

Senator TESTER. On average.

Mr. PRICE. In the 5 or 6 percent range.

Senator TESTER. How far south of the park do the wolves basically prey on cattle, on sheep?

Mr. PRICE. One hundred miles south toward Kemmerer, and they have moved over into the Big Horns. There are wolves there. They have moved down toward Laramie. I think there is some in the Snowy Range down there. So hundreds of miles.

Senator TESTER. But the whole State of Wyoming is not impacted as of yet.

Mr. PRICE. Not impacted hard. You understand we are in a dual classification, and they are going to get burned when they get out of that trophy game area.

Senator TESTER. Got you. OK, thank you, Mr. Price. I appreciate you being here and appreciate the work you do. I too farm the land my grandfather homesteaded, and there are very few of us left. So I appreciate that.

Mr. Edwards, do you think compensation for losses is important?

Mr. EDWARDS. Extremely important. We need to keep the livestock owners on that land, keep that land in production to feed our Nation.

Senator TESTER. Is there any other reason why you think it is important?

Mr. EDWARDS. It also gives an economic viability to the tourism industry in Montana as well.

Senator TESTER. Defenders of Wildlife dollars—I touched on that a little bit with the BLM. It was not the BLM fellow. It was the Fish and Wildlife fellow. He indicated and I just want you to confirm, do you anticipate the Defenders of Wildlife dollars—you talked about $50,000 in 2008, $50,000 in 2009—continuing into 2010, 2011, 2012?

Mr. EDWARDS. At this time I have no way of knowing. They initially—when they contacted me and said they were willing to make the donation, it was based on the fact that Montana had started a compensation program.

Senator TESTER. How available is the money out there in the private sector for compensation?

Mr. EDWARDS. So far, I have not been able to get another donation beyond Defenders of Wildlife.

Senator TESTER. How long have you been working on it?

Mr. EDWARDS. Approximately 7 months since the program began.

Senator TESTER. Hopefully, there are some folks listening today that might throw you some dough. But I am not going to hold my breath on that either.

What will happen if the compensation goes away? What will happen if the States cannot afford to pick this up, if the private sector does not pick it up, and the Federal Government does not step up to the plate? What happens?

Mr. EDWARDS. We will have producers that literally go out of business.

Senator TESTER. Is it going to affect all producers or just a select few?

Mr. EDWARDS. It is hard to predict at this time. There is the potential to affect all the producers in our State. Wolves travel great distances and are filling into the blank areas now.

Senator TESTER. Mr. Bangs talked about a USDA program that has dollars in it for predation. Are you able to access those dollars?

Mr. EDWARDS. No, I am not.

Senator TESTER. Have you tried?

Mr. EDWARDS. I have been trying, yes.

Senator TESTER. You cannot access them.

Mr. EDWARDS. No.

Senator TESTER. Supposedly they are there but you cannot get to them.

Mr. EDWARDS. What he was describing was Wildlife Services coming in and removing wolves that are causing a problem in our State. It was not expanded onto like alternative pastures, fencing, other mitigation efforts.

Senator TESTER. So that money is pretty well focused. It is not readily available. If you have a rancher that has some cattle or sheep loss, you cannot go to USDA and say, hey, I need 1,000 bucks or 10,000 bucks.

Mr. EDWARDS. No, I cannot.

Senator TESTER. I have no more questions. Do you, Senator Barrasso?

Senator BARRASSO. No. Thank you very much, Mr. Chairman.

Senator TESTER. I just want to thank both you gentlemen for coming. I make—and so does Senator Barrasso—a trip back, every weekend in my case, and it is not an easy shot, especially when you got haying to do and you got money to raise. So thank you guys both for being here. I appreciate the work you do. Thank you.

This committee is adjourned.

[Whereupon, at 5:27 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR BINGAMAN

S. 3157

Question 1. At the hearing, Mr. Salisbury indicated that the mine could not go forward without the revocation of the Oak Flat withdrawal and the conveyance of that land. As a follow-up to Chairman Wyden's question regarding the environmental review provided for in S. 3157, if the EIS required by section 4(h) revealed that the mine would cause unacceptable environmental impacts, would the Forest Service still have authority to prevent those impacts from occurring given that the withdrawal already will have been revoked and the land conveyed?

Answer. The Forest Service would not have this authority because it no longer has jurisdiction once the federal land is transferred to private ownership. However, development must comply with state or local surface management regulations. The Forest Service would continue to be responsible for conducting environmental analyses, reviewing, and approving any proposals for ancillary activities related to the mining development, such as roads, or rights-of-way for electric lines and pipelines, that would take place on the adjacent National Forest System lands.

Question 2. In follow-up to another question Chairman Wyden asked, do the Forest Service's experts believe it is possible that the subsidence that is anticipated as a result of the development of the mine will significantly impact Apache Leap?

Answer. At this point, we are unable to assess the impact of any subsidence on Apache Leap. Resolution Copper is currently conducting pre-feasibility studies and assessing the mining methods to be utilized. Although block caving has been mentioned as the possible mining method, we do not know if this is the only mining method under consideration. Because the mining development will occur on non-federal lands, there is no requirement for the company to submit a plan of operations to the agency. As a result, the Forest Service will not have supporting data from a plan of operations to evaluate the impact of the operation so we suggest that inquiry be made to Resolution Copper to provide more detailed technical data regarding its project to you and your staff.

Question 3. If the Forest Service cannot predict whether significant impacts to Apache Leap may occur or if it believes that such impacts are possible, then is it correct that the Forest Service believes that the exchange would be in the public interest despite those impacts?

Answer. It is the Department's view that, on balance, the exchange as a whole is in the public interest. The National Forest System lands identified for exchange contain significant ore deposits of copper, silver and gold. This area is historically important to the economic vitality of Arizona and today remains an active mining area, contributing significantly to the nation's mineral production.

In addition, most of the non-federal properties that would be acquired have high public resource values and would benefit from public ownership. The Forest Service could protect the riparian habitat, archeological sites, two miles of a permanently flowing trout stream, a year-round pond, and an endangered cactus species on the acquired lands. Further, as part of the exchange, a conservation easement for the Apache Leap escarpment would be transferred to the federal government by Resolution Copper.

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR BINGAMAN BARRASSO

ON RAINBOW FAMILY GATHERING IN WY

Mr. Holtrop, I'm sure you're aware that your agency recently played host to a Rainbow Family gathering in Wyoming. This event has been deeply troubling to the people of Wyoming.

The Rainbow Family brought nearly 10,000 people to one meadow in the Bridger-Teton National Forest. The group did not have a permit and were allowed to camp helter-skelter all over the Big Sandy. This forced the Boy Scouts to cancel a national gathering planned on that site. And it displaced livestock grazing, cabin owners, recreationists and lodge visitors.

It is unacceptable that this group—or anyone—would be exempted from the rules that all public land users must follow. The people of Wyoming were forced to deal with the impacts while these folks went on with their unauthorized gathering.

Enough is enough. We are expecting you to make this right for displaced users in Wyoming. And the Forest Service must handle this group differently next year.

No state should have to endure this kind of double standard. Everyone using public lands must follow the same rules.

Question 4. Can you provide the Committee a detailed explanation of the steps that the agency has taken to force the Rainbow Family to obtain the proper permits over the last decade?

Answer. To enhance the agency's ability to require compliance with the noncommercial group use permit requirement and to administer the permit, the Forest Service established an internal oversight committee to build relationships with the Rainbow Family, to monitor implementation of the noncommercial group use rule, and to make recommendations for improvements in implementation of the rule and administration of large group gatherings. The agency's goal is to provide a national, consistent approach to all large group gatherings. A National Incident Management Team was formed to provide consistent enforcement of the noncommercial group use permit requirement and effective noncommercial group use permit administration.

The following steps have been taken during the last ten years to enhance implementation of the noncommercial group use rule, which requires a permit for gatherings that involve 75 or more people, and to obtain the Rainbow Family's compliance with the rule:

- Town Hall Meetings have been held to allow the public to comment on any concerns they may have, due to the large group's presence and impacts on their community.
- Continual discussions with the Rainbow Family on compliance and permit requirements have occurred each year from the local to the national level, including discussions with the Chief of the Forest Service and the Under Secretary for Natural Resources and Environment.
- Local line officers and special uses personnel have met with the Rainbow Family to discuss the group's and the agency's concerns and to obtain compliance with the permit requirement and other Forest Service regulations.
- Forest Service Law Enforcement and Investigations Staff (LEI) have met with state and local law enforcement officials to address potential issues and to coordinate their efforts and resources to minimize impacts on national forest resources, public safety, and the local community and to obtain the Rainbow Family's compliance with federal, state, and local law.
- LEI has met with the local United States Attorney's Office to gain its support and assistance with prosecuting Rainbow Family gathering participants when permit requirements are ignored. In the past, cooperative efforts between the Forest Service and United States Attorney's Offices to gain compliance through law enforcement have been successful.
- The Forest Service has made numerous arrests and issued hundreds of citations at Rainbow Family gatherings for violations of law, including failure to obtain a noncommercial group use permit.

Question 5. If a family group, or church group, or the Boy Scouts want to hold a large (more than 50 person) picnic on the National Forests are they required to have a permit to hold that event?

Answer. Per Forest Service regulations at 36 CFR Part 251, Subpart B, noncommercial groups are required to obtain a free permit if their event will involve 75 or more people, either as participants or spectators. If a group event involves fewer than 75 people, a permit is not required. Applications for a noncommercial group use permit must be submitted at least 72 hours before the event. The Forest

Service must respond within 48 hours of receipt of a noncommercial group use application; otherwise, it will be deemed granted.

S. 3157, TO PROVIDE FOR THE EXCHANGE AND CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LAND AND OTHER LAND IN SOUTHEAST ARIZONA, AND FOR OTHER PURPOSES

I note the bill would limit the full environmental reviews typically carried out to analyze and approve a land conveyance, but it would provide that "before commencing production in commercial quantities of any valuable mineral from the Federal land conveyed to Resolution Copper. . ., the Secretary shall publish an environmental impact statement ... regarding any Federal agency action carried out relating to the commercial production."

Question 6. Is this a common requirement that your agency has seen in the past for other land exchanges that involve mining?

Answer. Section 4(h) is not a typical provision. It requires the agency to prepare an environmental impact statement after the land exchange is completed for federal agency actions related to commercial mineral production that would be carried out on non-National Forest System lands. In the vast majority of cases in which USDA has discretion in completing a land exchange, the Forest Service typically conducts NEPA analyses before land is exchanged out of federal ownership. Congress does not typically direct the agency to comply with NEPA after an exchange is completed.

Additionally, it is unclear what additional requirements the bill's sponsor intended to impose with this language. Normally, the Forest Service would not prepare an environmental analysis of activities that are proposed to be carried out solely on private land. On its face, section 4(h) would require the agency to prepare an EIS for "any federal agency action carried out relating to the commercial production." However, an activity related to commercial production carried out by Resolution Copper on the land that it receives in the exchange would not be considered to be a federal agency action. If the mineral development is confined to private land, the agency would not be required to prepare an EIS under section 4(h).

However, if the company needs to use NFS land for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads, section 4(h) could be read to require the agency to prepare an EIS for these activities. While agency approval of these types of ancillary activities on NFS lands would normally require compliance with NEPA regardless of the direction in section 4(h), the provision could be read to mandate preparation of an EIS (as opposed to an EA) for the authorizations. Additionally, the language could obligate the agency to consider the environmental consequences of the entire non-federal action in the EIS. Given the scope of this exchange and the complexity of the proposed mine, clarification of the direction in section 4(h) would aid the Forest Service in complying with the requirements of the bill.

Question 7. In your view, does this establish a precedent that you will have to carry out on other mining-related land exchanges?

Answer. No. The legislation is limited solely to this exchange and carries no other precedential value.

Question 8. Section 10 of S. 3157 provides for a value adjustment payment, whereby Resolution Copper would pay the United States a royalty for produced minerals if their value exceeds what was projected for purposes of valuing the Federal land at the time of the conveyance.

Is there precedence for this requirement?

Answer. We are not aware of any precedent.

Question 9. Is it common for companies to agree to provide a royalty or even a partial royalty, as called for in Section 10 of S. 3157 for hard rock mining?

Answer. Not in our experience.

Question 10. S. 3157 directs the Secretary of Agriculture to convey approximately 3,025 acres of the Tonto National Forest to Resolution Copper for approximately 1,445 acres of private land to be managed by the Forest Service and approximately 4,189 acres to be managed by the Bureau of Land Management.

I see that the federal government is getting about 1.86 acres in return for every acre they give up in this exchange.

Do you expect that the appraisals will show balance in value when they are completed?

Answer. We expect the outcome to be an equal value land exchange. We expect that our appraisals will show an approximate balance in value. However, we note that in the event that the appraisals indicate otherwise, the bill provides for cash payment that would exceed the 25% limitation in the Federal Land Policy and Management Act.

Question 11. The legislation provides the Secretary four years to design and construct one or more campgrounds in the area to replace the Oak Flat Campground that would be conveyed for the mine.

Are there other comparable areas to put a campground in the area?

Answer. Thus far, we have identified three possible locations for the replacement campground, but are concerned that each location presents challenges related to access, potential mining-related hazardous materials, and cultural sites. We would also like to discuss alternatives, such as enlarging or improving existing campgrounds in the area.

Question 12. Might the replacement have a water source which would be a significant improvement over the existing campground?

Answer. The Forest Service is still analyzing potential alternative campgrounds. One of the alternative places suggested by the proponent, the JI Ranch property, is on a floodplain which would not be suitable for a campground. Availability of water for domestic use would be an attractive feature of any proposed site.

RESPONSES OF DAVID SALISBURY TO QUESTIONS FROM SENATOR BARRASSO

Question 1. Mr. Salisbury, could you walk us through how much time and money has been expended by your company to get to this point regarding this mine?

Answer. Exploration work began in 2001 and Rio Tinto became manager of the project in 2003.

As of June 2008, $290 million has been invested in the Resolution Copper Project. Of this over $15 million has been spent on reclamation work on the 100-year old Superior mine site. Resolution Copper has recently received approval for $652 million (in addition to what has already been spent) to construct a new shaft.

This shaft, reaching 7000 feet below the surface, is an important step in the development of the mine and will allow the pre-feasibility team to further study the rock conditions and help us determine if the mine is feasible. Resolution Copper has not made the final determination as to the economic and technological feasibility of mining this ore body.

If we proceed, Resolution Copper will spend approximately $4 billion toward capital investment before mine construction is finished and we ship our first load of copper.

Question 2. As I understand the legislation, Senator Kyl is asking you to do several things that no other company has done to develop this mine, including a more complicated NEPA process, paying a royalty for the copper if you ever do mine it, providing a conservation easement to Apache Leap, and giving the federal government nearly 1.86 acres for every one acre that you get back. Are you aware of all these requirements and is your Company willing to agree to them?

Answer. We are aware of the environmental and financial requirements in S. 3157. Resolution Copper agrees to fully comply with all of these measures.

The company supports the public comment and review process included in NEPA and welcomes the opportunity to participate in this process. Resolution Copper feels that this process is consistent with our corporate commitment to transparency and community engagement.

Resolution Copper understands the importance of the value adjustment payment in the bill. Resolution Copper is prepared to pay this value adjustment payment to the United States on any production from the mine which exceeds the production assumed in the appraisal. The royalty rate will be any rate enacted by Congress prior to December 31, 2012, or the rate assumed in the appraisal if Congress does not enact a Federal royalty.

The company recognizes the importance of Apache Leap as a scenic and historical monument. Resolution Copper supports the preservation of Apache Leap and the protections called for in S. 3157.

Finally, the emphasis on the exchange was assuring equal value for the properties. The selection of the parcels in this exchange was conducted in consultation with the Forest Service, BLM, and leading NGOs. Resolution Copper believes in the conservation value of the properties in S. 3157 and looks forward to seeing them preserved for future generations.

Question 3. Can you tell us more about the public land order and its significance for your project?

Answer. Public Land Order (PLO) 1229 was executed in 1955. The withdrawal order was signed by an assistant secretary of the Interior Department, and included numerous other campgrounds, picnic areas, fire lookouts and other administrative sites. The Forest Service has provided testimony to both the House of Representatives and the Senate. In both cases, this testimony reflects that the Oak Flat with-

drawal was one of a series of routine withdrawals made to protect campgrounds and other government facility investments from disruption by other development. During the July 9th hearing before the Subcommittee on Public Lands and Forests on S. 3157, National Forest System Deputy Chief Joel Holtrop testified that the purpose of PLO 1229 was to protect, "the Federal investment in the campground (page 56, line 6 of the hearing transcript)." In l971, the withdrawal was modified to allow disposal of the area by land exchange and other means, and that is what Resolution Copper is asking Congress to do. Copies of both orders have been attached to this testimony.*

* Documents have been retained in subcommittee files.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF MICHAEL O. HING, MAYOR, TOWN OF SUPERIOR, AZ,

S. 2466

Mr. Chairman and Members of the Subcommittee:

I am Michael Hing, Mayor of Superior, Arizona. I am pleased to submit this testimony on behalf of the Town of Superior concerning S 2466.

My roots in Superior are deep. I was born and raised there. My grandparents opened their grocery store in the 1920s and I operate it now with other members of my family. As a small businessman and active community member, I've witnessed the town's success during boom times and its decline during busts. I plan to usher in a positive future for the town, and this land exchange is crucial to that future.

Please allow me to explain what I mean. When the Magma Mine was operating, our town was prosperous and grew to 7,500 people. Jobs were plentiful and Superior made a name for itself But we depended only on the mine for our well-being. Then, in 1987, Magma closed. Our community was devastated. The effects are lingering to this day. Our population shrank by more than half, to 3,500 residents. Major social problems surfaced as employment plummeted and people lost hope. Crime and drug use skyrocketed. Schools for our children lost funding, compromising our ability to provide a solid education. The mine left an environmental mess for others to clean up.

As mayor, I've absorbed an important lesson from witnessing that civic trauma. I know to never rely completely on mining again. Our economy needs to be diversified.

That's why I am so pleased that Resolution Copper Company has come to Superior. The company discovered a significant ore body 7,000 feet below the old Magma Mine. With such a major discovery, Resolution could've swept in to Superior with a flourish of promises and new mining jobs and then abandoned us when the ore was exhausted. But from the day company representatives first arrived, they have looked to the town's future. They approached me with ways to build up our economy and to do it right. The company is just in the early stages of eventually extracting the ore, but its representatives are already helping the town plan for the day the mine closes.

The company works with our schools, boosting math and science education to elementary-age children and providing summer jobs and college scholarships to older youth. They have spent and are continuing to spend millions in voluntary efforts to clean up, reclaim and improve their land and facilities. They helped arrange economic development meetings with the Arizona Department of Commerce to shape a workable plan that will diversify our economy in mining services, manufacturing, tourism, recreation and other businesses. They hire local contractors and provide job training to local citizens. They are working to beef up our infrastructure, including establishing Superior as a wireless Internet zone. If this land exchange legislation is successful, Superior will gain valuable property we can use for even more economic development. In short, from the beginning, Resolution Copper has worked with Superior and other area communities with a vision of sustainable development.

The company's willingness to build Superior's future is very important to our partnership. But even more importantly, company officials have been completely transparent about their operations. The company formed a citizens' committee to help town residents stay informed of company activities and to give our input. They routinely ask our opinions and include us in crucial discussions.

I testify before you today as a partner with Resolution Copper. The land exchange legislation before you is critical to our shared vision of the future. Resolution must complete the land exchange before it invests $2 billion in mine development.

I will not bore you today with every detail of the exchange, which will streamline the now-fragmented ownership of 3,000 acres in the Oak Flat area. Suffice it to say that the town, the state, the governor, and members of our Congressional delegation including Senators Jon Kyl and John McCain and Rep. Rick Renzi, agree that Resolution Copper should acquire the land, including campgrounds and rock-climbing areas. In return, the non-federal properties that Resolution has assembled to convey to the United States for the exchange are spectacular in their contribution to wildlife habitat, protection of streams and other water resources, endangered species habitat, land conservation, and opportunities for recreation.

Allow me to describe some of the other environmental benefits that S 2466 will include for Superior, surrounding communities and the State of Arizona.

First, Section 6 of S. 2466 permanently protects the Apache Leap escarpment, an environmental landmark above Superior that dominates our landscape. The Superstition Land Trust and Resolution Copper, working with the town, support the language of S. 2466 which insures that the Apache Leap escarpment is never disturbed by development and remains as it is today. Additionally, Resolution will spend up to $250,000 to provide public access, trails, or trailheads to Apache Leap, if the Land Trust, local Indian tribes and town deem it appropriate.

Second, Resolution, the town, and the U.S. Forest Service have been working together to identify a replacement campground or campgrounds for an existing 14-site Forest Service campground at Oak Flat. S 2466 requires the Secretary of Agriculture to design and construct one or more replacements in the Globe Ranger District, and requires Resolution to pay up to $500,000 for them.

Third, Resolution will compensate for the loss of recreational rock climbing at Oak Flat. The company funded a large-scale search to find a bigger and better climbing area. The resulting find, less than 20 miles away at Tam O'Shanter Peak, has sparked interest from climbers all over the world. The Arizona State Parks Board and the Arizona Legislature have recognized this incredible find and are pursuing a new State Park there devoted to climbing. A bill is moving through the Arizona Legislature to authorize the park's creation, assuming that S. 2466 is enacted.

The land exchange also creates new economic opportunities for Superior, which, as you can see from the map attached to testimony, is largely surrounded by the Tonto National Forest. S 2466 provides the town with an opportunity to acquire some of this adjacent property from the United States to meet anticipated growth.

Also, the Town's 30-acre cemetery is located on an isolated parcel of federal land managed by the Tonto National Forest. While hundreds of our forefathers have been buried there for the past century, no authorization exists for our cemetery. S. 2466 allows the Town to acquire this parcel at fair market value from the Forest Service.

Additionally, the Town owns a 265-acre parcel, which has a small landing strip. The property has a reversionary interest, so if it ever stops being used as an airport, it will be returned to the U.S. government. The Town wants to acquire this reversionary interest, and S. 2466 provides for a sale of the interest to the Town at fair market value. Moreover, S 2466 provides that the Town may acquire up to 181 additional acres of land contiguous to the airport, also at fair market value, and in a manner that provides the United States with manageable boundaries on retained parcels. These airport parcels represent a significant opportunity for the Town in terms of future growth, economic diversification and development. And future airport uses have been protected by the Arizona Department of Transportation. The department's 5-year capital improvement plan includes the ability to relocate the airport if we choose.

Finally, S. 2466 provides that if the lands offered by Resolution exceed the appraised value of the federal Oak Flat parcel, any excess value can be applied to the Town's purchase of the cemetery and airport parcels. Both Resolution and the Town are anxious for the Town to acquire these properties.

Mr. Chairman, as our governor has stated, the new mine is projected to produce 1,000 jobs during construction and 400 to 600 permanent jobs, plus more than a thousand related and indirect jobs. The economic impact of the new mine will allow us to grow in a way that ensures a future for our children and grandchildren. The possibilities the mine holds for Superior and Arizona are among the many reasons that Gov. Napolitano is joining us in strongly supported this land exchange.

Thank you for the opportunity to testify today. I would also like to thank the members of our Congressional delegation, including Sen. Kyl and McCain, and Rep. Renzi, for their efforts in bringing this legislation to fruition and our state delegation for promoting the creation of a state park. The town of Superior urges your thoughtful consideration and timely passage of S. 2466, so that this land exchange, which is so important to our future, can be implemented at the earliest possible date.

Mr. Chairman and Members of the Subcommittee:

My name is Michael Hing. I am the Mayor of Superior, Arizona—a small town in Pinal County, about 65 miles southeast of Phoenix. I would like to address the committee in support of the Southeast Arizona Land Exchange and Conservation Act of 2008. I firmly believe that this land exchange is in the best interest of the public.

This land exchange represents an unprecedented opportunity to improve the long term economic vitality of the state and the region. Additionally, this exchange would transfer to the citizens of the United States thousands of acres of conservation properties. These properties offer permanent protection to endangered species, preservation of key riparian habitats, and conservation of some of Arizona's most valuable lands.

In addition to the ecologically valuable land exchange, Resolution Copper Company leads the industry in taking action on a variety of fronts to benefit and protect the environment. From their cutting edge and forward-thinking water management and water procurement strategies to their close working partnerships with the Arizona Trail Association, Audubon Arizona, Boyce Thompson Arboretum, and The Nature Conservancy, Resolution Copper Company continually focuses on tangible ways to be better stewards of Arizona's precious natural resources. One excellent example is their ongoing $50 million rehabilitation effort to restore 1,500 acres of land affected by previous mining operations in Superior.

I provided testimony to this committee in 2005, of which I have attached a copy. In my previous remarks, I discussed the importance of speedy passage of the land exchange to the economic and social well being of Superior and neighboring communities. It is my belief that the present version of this legislation is an even better deal for the public.

Currently vast numbers of Superior residents are forced to commute into the Phoenix metro area and nearby towns to find employment. The lack of stable local employment has taken its toll on the residents of Superior. Families that have resided here for multiple generations are moving away. This situation has not improved since the last time I addressed this committee.

Families and businesses across Arizona are feeling the impact of the decline of the real estate market and the rising costs of energy. At the same time, state revenues have been negatively impacted, resulting in an estimated $1.6 billion deficit predicted for fiscal year 2009. In order to secure our State's long term employment and economic future, it is both prudent and reasonable to approve the Southeast Arizona Land Exchange Conservation Act.

Elliott D. Pollack and Company—commissioned by Resolution Copper—prepared an economic study recently. This study provides a preview into the enormous economic and fiscal impacts of the construction and operation of the mine project. The study predicted a jarring $46.4 billion of economic activity to the region. This is exactly the shot in the arm needed by Superior.

Mining towns have seen their share of boom and bust. We have learned from this and in partnership with Resolution Copper have already taken steps to diversify our economy. I believe our plan for the future will coupled with the economic development generated by the mine, will allow Superior to develop a sustainable economy.

To mark this partnership, the town and Resolution Copper have entered into a landmark agreement providing funding for programs that will help Superior enhance business and residential opportunities.

The land exchange will also allow Superior to acquire lands adjacent to the town. Mr. Chairman, Superior is only 4 square miles and is almost completely surrounded by public lands. The lands Superior will acquire through the exchange are crucial to attracting new development and will provide significant opportunities for us.

I believe Congress has an excellent opportunity to provide an ideal balance between the expansion of jobs, local and state revenues, and diverse economic activity while conserving ecologically sensitive and pristine lands for future generations. Following several years of in depth research, study, and debate we submit to you our sincere hope that this legislation can be swiftly approved so that the remarkable economic impacts of this exchange can begin to be fully implemented and realized.

I appreciate your consideration of this very important bill.

ATTACHMENT

TOWN OF SUPERIOR,
Superior, AZ, June 27, 2008.

Hon. SENATOR RON WYDEN,
Chairman, Public Lands and Forests Subcommittee, Committee on Energy and Natural Resources, 230 Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN WYDEN, As Mayor and on behalf of the Council of the Town of Superior, Arizona, I would like to address the Committee signifying the Town's fullest support for the Southeast Arizona Land Exchange and Conservation Act of 2008, S.3157, introduced in the Senate of the United States Congress. The Town recognizes Resolution Copper for its investments and efforts towards enhancement of our regional, state, and national economy.

As leaders of our community, the Council and I have always recognized the important role played by the copper industry since the birth of our State and its invaluable contribution to the development and strengthening of our region's, state's, and the nation's economy. In addition, Superior recognizes and appreciates the level of support and local commitment provided by Resolution Copper.

The Town of Superior has a comprehensive understanding of the evolving environmentally sound technologies and preventive measures incorporated by all new mining developments, operations, and closures, along with deepest appreciation for the mines' individual and collective contribution to the economy, productive employment, creation of the support industries, and to the overall quality of life of each affected town, city, county, region, state, and our nation over the last 100 years.

Mr. Chairman, I would like you to know that Superior has a comprehensive understanding of and fully supports the Southeast Arizona Land Exchange and Conservation Act of 2008 including the positive gain to the taxpayers and people of our nation by approval of the proposed exchange, due to the gain realized in further preservation of natural resources, land, and the inherently present flora and fauna for the enjoyment and heritage of generations to come, in return for exchanging the gained land for the acreage needed by the Resolution Copper Company's mine to facilitate its operations over the next three decades or more.

The Town of Superior is in hill support of S. 3157 and in full support of the Resolution Copper Company's Plans and Operations to develop the new copper mine in the area of Oak Flat.

Sincerely,

MICHAEL O. HING,
Mayor.

STATEMENT OF JOHN KEEDY, PRESIDENT, ARIZON MOUNTAINEERING CLUB, PHOENIX, AZ, ON S. 3157

As the President of the Arizona Mountaineering Club (AMC), the oldest and largest rock climbing and mountaineering club in Arizona with nearly 400 active dues paying members and literally 1,000's of past members, I want to take this opportunity to communicate our continuing concerns about the Southeast Arizona Land Exchange and Conservation Act of 2008 (Senate Bill S. 3157) introduced recently by Senator Jon Kyl.

Resolution Copper Mining, LLC will, over time, eliminate much of the rock climbing in the area of Oak Flat and the Queen Creek Canyon, destroy the present Oak Flat Campground and prevent access to many of the other areas that are frequented by rock climbers. These rock climbing areas have been developed over many years with literally thousands of routes being bolted for safety and for sport climbing. Additionally there are thousands of bouldering routes where bolts is not required. All this will be lost if the Southeast Arizona Land Exchange and Conservation Act of 2008 is passed without consideration of these valuable assets and reasonable accommodations for the loss of those climbing areas made to climbers.

Having worked with Queen Creek Coalition over the past several months and supporting efforts to preserve climbing opportunities in the Oak Flat area, the AMC Board of Directors supports the items presented in their position paper as listed below:

> Queen Creek Coalition (QCC) has as its goal maximum climbing and recreational opportunities in the Queen Creek area. Our greatest want and desire is to continue alongside the mining operations as it has been in the past. We have been asked to assemble items that we want with respect to the mining activities proposed.

Accordingly, we want:

- A mining technique that is consistent with and abides by existing protections, maintains surface integrity, complies with all environmental regulations, and respects multi-cultural traditions.
- A contiguous, permanent, publicly accessible recreational and conservation area of lands encompassing Apache Leap, Queen Creek Canyon, and Devils Canyon and all appropriate infrastructure including but not limited to trails, roads, parking, information kiosks, restrooms, etc.
- Fee Simple transfer of "The Pond," "Atlantis," and other privately held lands along Apache Leap, in Queen Creek Canyon, and any in Devil's Canyon surrounded by or adjacent to the contiguous area to either federal, state, or other 3rd party entity approved by the QCC.
- The full and complete funding and follow-through for a State Park dedicated to climbing at Tam O'Shanter. This includes but is not limited to proper access roads and infrastructure.
- Roads and infrastructure for the "Inconceivables," "Land of the Lost," "Steamboat Mountain," "The Drip," and "The Homestead."
- Campgrounds, recreational access points, and necessary infrastructure for the area north of "The Pond" and at the "Inconceivables."
- Coexistence agreement and climbing management plan for permanent, public recreational use of any lands involved with the "land trade."

Definitions, Assumptions, and Stipulations

1) Roads are defined as a minimum of all-weather surface, 2WD, with full permanent, continuous, legal, no-cost to the user access and rights to be located as determined by QCC. Roads are to be built to specifications of the public entity that will be responsible for maintenance and repair.

2) All lands transferred to the public or a 3rd party shall be transferred in Fee Simple to a transferee approved by QCC.

3) All lands within the Contiguous area shall be withdrawn from uses other than recreation and conservation.

4) All agreements will be made in writing.

5) All the foregoing, bulleted items shall be written into the land exchange bill.

6) Funding for all items shall not be borne by the public or come from public monies.

7) Infrastructure shall mean all items necessary to create, replace, and maintain rock climbing routes, hiking trails, internal access roads, trailheads, bouldering fall surface preparation, etc.

We welcome the opportunity to discuss our position.

STATEMENT OF MANUEL ORTEGA, CHAIRMAN, THE CONCERNED CITIZENS & RETIRED MINERS COALITION, SUPERIOR, AZ, ON S. 3157

The Concerned Citizens and Retired Miners Coalition is a group of citizens who: 1) reside in Superior, Arizona, or do not reside in Superior, Arizona, but are affiliated with relatives who are residents; 2) are retired hard-rock miners who previously worked in the now non-operational mine in Superior, Arizona, and were displaced due to mine closure or personal disability; or 3) are individuals who are concerned that important U.S. public recreational land will be conveyed to a foreign mining company for private use.

The Concerned Citizens and Retired Miners Coalition realizes that Superior, Arizona, was born as a mining community and has lived through the mining booms and busts of the Silver King Mine, the Queen Mine, the Belmont Mine, the Magma Mine and the Broken Hill Proprietary Mine over the history of our 100 plus years. Because we recognize that mining is a large part of our history and will potentially be a larger part of our future, we are not opposed to mining. In fact, we strongly support responsible mining policies and practices in and around our community. However, we believe that S. 3157 is unacceptable as it presents serious negative impacts to us and our surrounding community as it seeks to circumvent the important National Environmental Policy Act review and analysis process. We also believe that there is no need for a land exchange for the mine to move forward with their plans to mine this area.

We appreciate and thank you for the opportunity to express our views and voice our concerns about S. 3157, the Southeast Arizona Land Exchange and Conserva-

tion Act of 2008 (Oak Flat Land Exchange) that will profoundly affect our community.

OAK FLAT LAND EXCHANGE AND LOSS OF IMPORTANT PUBLIC CAMPGROUND AND RECREATIONAL AREAS

Resolution Copper Mining, LLC, a foreign-owned mining company, is planning a massive block-cave mine and seeks to acquire Oak Flat Campground and the surrounding public lands for its use through this land exchange bill. If they succeed, the campground and an additional 2,300 acres of the Tonto National Forest will become private property and forever off limits to recreationists and other users. Privatization of this land would end public access to some of the most spectacular outdoor recreation and wildlife viewing areas in Arizona. It would deprive the Town of Superior, currently land-locked at only 4 (four) square miles, from economic diversification in and around our community. It would also deprive the San Carlos Apache Tribe of their religious burial ground ceremonies and their age-old cultural attachments to the area.

Located just 5 miles east of Superior, Oak Flat is an important part of our history and our economic diversification. It has long been prized for its recreational variety. This area is exquisite and easily accessible to millions of visitors from the Phoenix and Tucson metropolitan areas, as well as the outlying areas of Gold Canyon, Queen Valley, Florence, Kearny, Winkelman, Hayden, Globe, Miami, Top of the World and Superior. It is significant to our neighbors, the Apache people, for their cultural values and religious heritage.

The Oak Flat Campground, Apache Leap, and the surrounding area important to the Apaches who gather acorns and pine nuts that are used both traditionally and ceremonially. Apache Leap is an historical land known as the Apache's Masada. It is there that many Apaches leaped to their deaths rather than be captured by the U.S. Army approximately 125 years ago. One of our local historians, Christine Marin, PhD, Archivist and Historian for Arizona State University and who is a former resident of Globe, Arizona, and still has family in Superior, Arizona, recently published an article in the Copper Country News dated June 11, 2008. In her article entitled, "Apache Leap Legend: Now We Have 'The Rest of the Story'," Dr. Marin indicated that the story of the Apache warriors is verified by two historical publications. We believe that these lands have significant import to the Apaches and that their wishes should be carefully considered and respected.

You, our Federal legislators, are being asked to give up these publicly owned lands that have been in trust for the American and Native peoples since 1955, when President Eisenhower signed BLM Public Land Order 1229. This Order specifically put Oak Flat off-limits to all future mining activity. In 1971, President Nixon issued BLM Public Land Order 5132 to modify PLO 1229 and allow "all forms of appropriation under the public land laws applicable to national forest lands—except under the U.S. mining laws." These two executive orders from two different Republican administrations both mandated that these lands were to be preserved in perpetuity with special emphasis on prohibiting mining activities on Oak Flat.

A decision regarding these public lands should be made with utmost knowledge and care. Once these lands are lost to the public, they can never be regained.

We are particularly concerned that a legislated land exchange of the Oak Flat Campground and surrounding area would bypass necessary and meaningful environmental impact studies. We fear that cultural resources will not be protected. We believe that subsidence will occur and that it will adversely affect our community. We don't have any information regarding RCC's proposed disposition of the massive amounts of tailings that will be produced and where they will reside. We are terrified that there will be downstream pollution that will affect the Town of Superior and everyone who depends upon the nearby aquifers for drinking water. Our local water supplier recently imposed an additional "arsenic surcharge." While The Magma Mine was operational, local residents were told that there was no pollution or effects on the water supply. Now, 20 years later, we find that there was—and continues to be—a price to pay for giving a foreign-owned mining company carte blanche because we trusted the mine explicitly.

It is for these reasons and many more that we oppose the Oak Flat land exchange legislation.

WATER, THE ENVIRONMENT, AND DESTRUCTION OF LAND SURFACE

The Concerned Citizens and Retired Miners Coalition believes it is critical that Hydrology Surveys, Environmental Impact Studies, Subsidence Analyses and Transportation and Circulation Plans be conducted PRIOR to discussion of any land exchange and/or different use.

Resolution Copper Company's Environmental Impact Assessment Manager, Bruce Marsh, indicated to one of our Coalition Members that the new mine would utilize 40,000 acre feet of water per year. He further indicated that they would be buying excess water from the tribes and other sources, however, they are merely banking those water rights and the sources are not secured. This is a concern because: 1) Arizona is still in the grip of a 13-year drought with dwindling Central Arizona Project supplies, and we do not have any assurances that water will still be available when Resolution Copper Company begins mining in the next ten (10) years; 2) Superior is located in the Maricopa AMA rather than the Pinal AMA, and Phoenix metropolitan area water supplies depend upon the Queen Creek aquifers; 3) The close proximity of the Queen Creek aquifer to a massive mining operation will negatively disrupt the underground water flow; and 4) Neither the State of Arizona nor the local residents should have to bear the burden of restoring clean and sustainable water utilized by mining.

The Concerned Citizens and Retired Miners Coalition have been concerned about the issue of subsidence by virtue of Resolution Copper Company's proposed block-cave mining method and its effect on the Oak Flat Campground, the Apache Leap escarpment, and the Town of Superior. Resolution Copper Company has finally admitted to "minimal subsidence." However, they admittedly have chosen this method of mining as it is the least expensive and quickest method to approach this massive ore body. Experts have demonstrated that there will be irreparable destruction to the surface utilizing the block-cave method of mining. This is absolutely unacceptable.

Resolution Copper Company has not yet determined the manner in which the tailings will be accumulated. Since there will be a considerable volume of tailings that will be created by this method of mining, The Concerned Citizens and Retired Miners Coalition is concerned about the contamination associated with this activity. We are also concerned regarding reclamation of these tailings upon mine closure.

S. 3157 does mention the National Environmental Policy Act (NEPA) but the bill does not provide for even the most basic study and analysis of these issues and concerns prior to obtaining the land exchange. Furthermore, if the land exchange is granted, the National Environment Policy Act study and analysis process will be bypassed.

The Concerned Citizens and Retired Miners Coalition believes that Resolution Copper Company should not be exempt from the required national permitting studies and analyses that have been required of the other mines in the area by virtue of a land exchange. No other mining corporation in this area has been allowed to bypass the Federal NEPA process.

If the start-up timeframe proposed by Resolution Copper Company is correct, then there is plenty of time to conduct the full public review process. Additionally, if Resolution Copper Company is as "transparent" as they profess, they should welcome this endeavor to put all the "cards on the table" and hear everyone's input.

We also believe that details of the project and potential impacts (Mining Plan of Operation) should be made available to our residents and to the general public up front. We continually hear that Resolution Copper Company will make this plan available later—after the Oak Flat land exchange. We feel that if the land exchange is of utmost importance, Resolution Copper Company should accelerate production of their plan NOW—before the Oak Flat land exchange.

PUBLIC RESPONSE OPPOSING THE FEDERAL LAND EXCHANGE OF OAK FLAT CAMPGROUND, AND SURROUNDING AREAS

The Concerned Citizens and Retired Miners Coalition began gathering signatures opposing the Federal Land Exchange of Oak Flat Campground and surrounding areas in March of 2007 and obtained 90 hard-copy petitions from the public over a 4-month period. Of the 692 individuals who signed, 315 were Superior residents and 377 were concerned citizens residing outside of Superior, Arizona. Additionally, we initiated an on-line petition process and to date have gathered 3,943 signatures world-wide opposing the Oak Flat land exchange.

On June 29, 2007, we hand delivered a cover letter, copies of the petitions and photographs of some of the spectacular scenery in this public land use area to Arizona Governor Janet Napolitano, the Superior Town Council, as well as each of Arizona's Senators and Representative to the United States Congress.

We entertained dialogue with Superior Mayor Michael Hing, who indicated he wrote a letter to Congressman Grijalva in May of 2007 expressing some concerns and issues with the land exchange and requesting delay of bill until such time that the Town of Superior and Resolution Copper Company worked out a number of issues that materially impact the Town and its citizens. On August 16, 2007, Mayor

Hing sent a similar letter, requesting delay of the bill, to Governor Napolitano and each of Arizona's U.S. Congressmen. Subsequently, the Vice Mayor and one additional Councilwoman attended our meetings to hear our concerns.

At a Special Town Council meeting held on August 23, 2007, the Council approved a letter written by Rosie Cordova, Superior Town Manager, to John Rickus, President of Resolution Copper Company, LLC, with a proposed Memorandum of Agreement regarding issues that materially impacted the Town and its citizens. Subsequently, on September 6, 2007, the Town Council approved a second letter be sent to the Governor and each of the Arizona's U.S. Congressmen—again requesting a delay of the bill and indicating that there were "other serious reservations due to a multitude of environmental concerns that may adversely affect the land, water and air quality of our community".

The following Town Council meeting held on September 20, 2007, was dedicated to a Resolution Copper Company presentation of their September 10, 2007, letter to Mayor Michael Hing indicating their disappointment in the recent developments from the Town Council regarding our (sic Resolution Copper Company's) land exchange and letter of August 24, 2007, and proposed a revised Memorandum of Understanding. The room was filled with a multitude of Resolution Copper Company supporters who presented petitions in support of the Resolution Copper Company land exchange. Some of these petitions were being signed before, during and after the Town Council meeting that was held in a public building. I have never know our local officials to allow any signature gathering for petitions to occur in a government building—at a government meeting.

During this meeting, public comments were provided by various individuals that were disparaging toward certain members of The Concerned Citizens and Retired Miners Coalition. Members of The Concerned Citizens and Retired Miners Coalition were not allowed to make any comments in support of our views and were heckled during their public comments. (Subsequent to this meeting, comments were directed to various employers asking that the employees opposing the land exchange be fired!) Signatures on petitions supporting Resolution Copper Company were obtained in the Town Council chambers prior to and during the meeting. Of the 386 individuals who signed, 163 were Superior residents with the remaining 223 individuals living outside the Town.

The Town council voted unanimously to support the Resolution Copper Company Memorandum of Understanding and agreed to write a letter to the Arizona U.S. Congressional delegation in support of the land exchange. The Mayor indicated that the Council felt compelled to vote positively since so many people turned out at the meeting who supported the land exchange. This did not make any sense since The Concerned Citizens and Retired Miners had provided more than twice as many local signatures in opposition to the land exchange!

Many changes have occurred over the past three (3) months—to include replacing Mr. John Rickus as President of Resolution Copper Company. The new President, Mr. David Salisbury, came on board and quickly led the Superior Town Council through the execution process (and corresponding photo opportunity) of the abovementioned Memorandum of Understanding. Mr. Salisbury has also provided a great deal of information regarding the abundant stakeholder meetings held and the positive response that they have received regarding their Superior Project.

In fact, at a Town Council meeting in April, 2008, Mr. Salisbury indicated that Governor Napolitano was now in full support of the Resolution Project. The Concerned Citizens and Retired Miners Coalition contacted Governor Napolitano's office subsequent to this council meeting and were told, NO, the Governor still has concerns regarding the project and that her position has not changed. Why would Resolution Copper Company misstate the Governor's position?

April 30, 2008, Resolution Copper Company included several signatures from Arizona's pool of local legislators in a sign-on letter. Interestingly enough, 14 of the legislators who originally signed on with Resolution Copper Company formally rescinded their sign-on on May 20, 2008, stating they did not have full information on the proposal at that time. This is again representative of RCC's strong-arm tactics in obtaining support without providing full disclosure. We are proud to know that these 14 researched RCC's position, obtained facts regarding the proposed land exchange and had the integrity to formally rescind their sign-on. We hope you do the same.

The Concerned Citizens and Retired Miners Coalition attendees find the RCC meetings to contain more "smoke and mirrors" than transparency. Any attempt to ask specific questions regarding their plan of operation, environmental impacts, other studies and the like are met with clear and concise statements and data provided by firms hired and paid by Resolution Copper Company. A frequent answer

to questions is that RCC will provide the information, details, copies and the like after the land exchange. That answer is unacceptable.

Resolution Copper Company hangs the promise of jobs over local residents and government officials heads. Many individuals and officials have bought into that theory. The Concerned Citizens and Retired Miners Coalition does not agree that our legislators, local officials or townspeople should be so anxious to support a land exchange because of a promise that may never materialize. We strongly urge everyone to ask difficult questions and expect that the process of the American people be respected. We ask that you do not act so cavalierly regarding some of our most important resources.

THREAT TO THE TOWN OF SUPERIOR'S ECONOMIC DIVERSIFICATION AND SUSTAINABILITY

Many members of our Coalition have lived through the boom and bust cycle of mining. After closure of the Magma/BHP mine in the 1990s, many people fled the community in search of jobs, medical treatment facilities and amenities that were not available in Superior. Voters taxed the political body to create a more diversified and sustainable economic basis for its residents. The Town received grants to develop an Industrial Park, a low-income housing subdivision, a new swimming pool, second fire station, airport, rest stop and numerous parks and trails. These projects were initiated to create jobs for our local residents, to increase state-shared revenue and local taxes and to encourage eco-tourism.

The Concerned Citizens and Miners Coalition believes that in order to sustain growth and development, we cannot rely on any one industry to support us. Mining has an allure and historical ties in our community. However, just as in the past, mining has a short life. We cannot base our future on one single industry or employer.

While Resolution Copper Company has promised great hope for another "boom," they do not willingly embrace annexation into our town limits, they have purposely depreciated their land values in anticipation of the land exchange and they have strong-armed our government officials and management into accepting less than adequate compensation for future use of the Town's services and support.

SUMMARY

Resolution Copper Company has divided this community by demanding that the Town Council speak for the residents of Superior in unwavering support of a land exchange that is not necessary in order for Resolution Copper Company to mine. Behind the scenes, their representatives have attempted to force the firing of individuals opposing the Land Exchange. Those individuals who question Resolution Copper Company in any fashion are deemed to be "anti-mine." Businesses deemed "anti-mine" are not supported by Resolution Copper Company, their employees or agents—in fact RCC employees are urged to boycott! These strong-arm tactics should not be allowed to pervade a community already distraught from previous "boom and bust" mining cycles.

S. 3157 does not represent a land exchange that is in the broader public interest. It is clear to The Concerned Citizens and Retired Miners Coalition that Presidents Eisenhower and Nixon believed that they were protecting Oak Flat from big business interests in acquiring public lands for development, mining and transportation. Oak Flat has been important enough to protect from mining and other elements for over 50 years, and it should not be so easily conveyed to a foreign-owned mining interest. This land exchange sets a terrible precedent.

The Concerned Citizens and Retired Miners Coalition strongly urges the Public Lands and Forests Subcommittee of the Senate Energy and Natural Resources Committee to ensure that the concerns of all public interests are addressed prior to consideration of any Federal land exchange. We believe you should protect these public lands for the public's future use and preserve the unique opportunities for Arizonans—and especially Superiorites—that the Oak Flat area provides.

For these and many other reasons, we oppose S. 3157, the Southeast Arizona Land Exchange and Conservation Act of 2008 and feel that it should be rejected.

Thank you for your time and consideration.

STATEMENT OF BENNY R. WAMPLER, ACTING DIRECTOR, VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY, RICHMOND, VA, ON S. 2779

My name is Benny Wampler and I serve as Acting Director of the Virginia Department of Mines, Minerals and Energy (DMME). I appreciate the opportunity to submit this statement for the record with respect to the legislative hearing on S.

2779, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal and acid mine drainage reclamation projects.

Virginia fully supports the statements submitted by The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP), organizations of which Virginia is a member, to the Committee at the July 9, 2008, hearing. We strongly urge Congress to clarify the current misinterpretation for the acid mine drainage (AMD) set aside program. Section 402(g)(6) has, since 1990, allowed a state or tribe to set aside a portion of its AML grant in a special AMD abatement account to address this pervasive problem. Virginia recently celebrated the completion of a $3.4 million AMD remediation project, partially funded with AML dollars, to treat two impaired streams in the Powell River watershed. The Powell River is one of the most ecologically diverse streams in the nation and is home to 29 species of rare mussels and 19 species of rare fish.

OSM's recent policy (and now regulatory) determination is denying the states the option to set aside moneys from that portion of its grant funding that comes from "prior balance replacement funds" each year to mitigate the effects of AMD on waters within their borders. AMD has ravaged many streams throughout the country, but especially in Appalachia. Given their long-term nature, these problems are technologically challenging to address and, more importantly, are very expensive. The states need the ability to set aside as much funding as possible to deal with these problems over the long term.

We therefore urge the Committee to amend S. 2779 to correct the current policy interpretation by Interior and allow the use of unappropriated state and tribal share balances ("prior balance replacement funds") for the AMD set aside, similar to the use of these balances for noncoal work. Suggested amendatory language is attached to our statement.

Thank you for the opportunity to submit this statement on S.2779. We welcome the opportunity to work with you to complete the legislative process and see this bill, as amended, become law.

SUGGESTED AMENDMENT TO S. 2779 TO INCLUDE THE AMD SET-ASIDE ACCOUNT
(AMENDMENTS ARE IN ITALICS)

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal *and acid mine drainage* reclamation projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABANDONED MINE RECLAMATION.

(a) Limitation on Funds.—Section 409(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239(b)) is amended by inserting "or section 411(h)(1)" after "section 402(g)". *Section 402(g)(6)(A) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(6)(A)) is amended by inserting "or section 411(h)(1)" after "paragraphs (1) and (5)".*

(b) Use of Funds.—Section 411(h)(1)(D)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)(1)(D)(ii)) is amended by inserting *"section 402(g)(6)" before "section 403" and inserting "section 409" after "section 403".*

STATEMENT OF NANCY FREEMAN, EXECUTIVE DIRECTOR, GROUNDWATER AWARENESS LEAGUE, ON S. 3157

There are several serious considerations why the land exchange proposed in SB 3157 is not a good idea for the public or the Native Americans in the region.

1) U.S. mining companies always go through the National Environment Policy Assessment (NEPA) to be able to mine on public lands. Why should Resolution with the legacy of its parent corporations' horrific environmental records be an exception? They want the land to become private—with no justification at all.

2) The nearby Apache Leap, a site of history of Native American heroes, should be protected and not be disturbed. The site should be made a national monument.

3) Oak Flat campground was set aside for protection by President Eisenhower in 1955. With the population growth and need for urban recreation, there is no reason to change that status—which is still in force.

4) Tailings Disposal: There is no place to put the waste tailings without spoiling the landscape for several miles, which will amount to a pile equivalent to a 20 story-building spread over 2,389 acres.

5) Cavity size: The underground cavity is estimated to be a mile in diameter and 3,000 plus feet high. Is there an insurance company that will provide insurance there will be no collapses or air blasts?

6) Resolution Copper projects a use of 40,000 acre feet = 13 billion gallons of water per year. The Superior area does not have this amount of groundwater; the old small-scale mining company was piping water from 15 miles away by Florence. They can contract for up to 36,000 af per year of CAP excess water—WHEN and IF it is available.

7) The proposed mine site is in an incredibly beautiful areas of Arizona, with oaks, riparian areas and a stream that provides a home of hundreds of sycamores. It is claimed that the private lands for exchange have endangered species. However, I have inquired of the Nature Conservancy and Senator Kyl for a list of the endangered species on the exchange lands. I have not received a reply from either party.

For a comprehensive analysis of the situation, see http://www.mining-law-reform.info/Congressional Report.htm, which was sent to the Energy and Natural Resource Committee and Public Lands and Forests subcommittee on July 7, 2008.

Why am I concerned? I live in mining territory and know what it does to the territory. I have spent over 1,000 hours collecting data and attending hearings, so that a local copper mine will stop its pollution to the water that is delivered in my own home. A picture is worth a thousand words. A bird's eye view is available on Google Earth maps.

ELABORATION ON POINTS 1 AND 2

1) Necessity of NEPA process

For some 25 years, U.S. companies have been mining on public lands with public process and environmental oversight. Records show that even with the NEPA process, there are serious contamination to groundwater, soil and air. (www.mining-law-reform.info/EIS REPORT.pdf) Why should Resolution Copper, a subsidiary of Rio Tinto, whose Kennecott operations have created the biggest groundwater toxic plume in the U.S. at Salt Lake region of Utah, be granted the ability to mine without public process and oversight? This week a report came out that a Rio Tinto/Kennecott operation in Nevada is accused of inaccurate mercury reporting: www.kiplinger.com/print.php?storyid=479706

In 1997, a massive blowout of the sulfuric acid leach pads into Pinto Creek's adjacent riparian watershed occurred at the BHP copper mine just a few miles east of Resolution Copper's proposed mining site. Pinto Creek empties into the Roosevelt Lake, which provides a potable drinking water supply. See photo below:*

Further, since this area is owned the other parent companies, BHP, Resolution Copper officials have proposed that they pipe the tailings waste up to this region, which is already a WQARF (Water Quality Assurance Revolving Fund) site. For further information, see www.g-a-l.info/Remedial Action.htm

2) Tailings Disposal

There is no place to put the waste tailings without spoiling the landscape for several miles. Augusta projects that they will be processing 110,000 tons of ore per day. Since the ore only has less than 3% copper and moly combined, the daily dump will be some 100,000 tons of waste. When put in a pile 200 ft. high (20-story building), it will require 2,389 acres for disposal over the life of the mine. The tailings impoundment in my home town of Green Valley covers 3,600 acres and grows higher by 8 to 10 feet per year.

ATTACHMENT.—ENVIRONMENTAL IMPACT OF PROPOSED MINING PROJECT AT APACHE LEAP AND OAK FLATS, SUPERIOR, ARIZONA

Note: This report is available on-line at www.mining-law-reform.info/Congressional%20Report.htm

* Photos have been retained in subcommittee files.

A foreign company Resolution Copper, a joint venture corporation formed by a British and Australian Company, is attempting to get an Act of Congress to undo the protection that President Eisenhower gave to certain public lands in Public Land Order 1229 in 1955, including Oak Flat in Tonto National Forest in Arizona. Oak Flat is just as unique today as it was then. Further the mining operations would more than likely impact a traditional Indian historical site, Apache Leap.

Although this region is not on designated Native American reservation land, it has historical, traditional significance for the Native Americans who have lived in the region for generations. It is a historical site of Apache heroes, rather like Custer's "last stand"—which has been made a National Monument.

The proposed exchange lands do not in any way equal the sacrifice of Oak Flat, Apache Leap, and Queen Creek, which abound with unique flora and fauna. The proposed sites are principally over-grazed abandoned ranches that offer no uniqueness of bird, animal or plant. For details, see Attachment One: Land Exchange Properties.

The exchange will limit the environmental oversight and the public process that proceeds with mining projects on public lands. One can not help but conjecture the motives of a mining company that is trying to convert public land into private land—when in fact public land is readily available for mining.

PROFITS MADE FROM MINING ON PUBLIC LANDS

TOP MINING COMPANIES ON BLM LAND IN THE U.S.—RANKED BY ACRES AFFECTED

Corporation	Headquarters	Profits US m$ (2005)	Acres of Land
1) Phelps Dodge	Phoenix	9,030.4	30,265
2) Barrick Gold Corp.	Canada	4,081.0	27,387
3) Newmont Mining	Denver	4,474.0	14,945
4) Kinross	Canada	23.8 (2003)	12,878
5) Rio Tinto	Australia	*	11,961

* Information not available to separate earning in U.S.

Tribal Coalition: The tribes of the region of formed a coalition to preserve the sanctity of the region. They have sent a letter of President Bush requesting that he continue to protect the region, which has been protected by former President Eisenhower. As you can ascertain by the above map, the mining site is to occur on the backside of the formation. See Attachment Two: Tribal Coalition Letter to President Bush

An online petition has been posted this week so that others can express their support the efforts of the Tribal Coalition to save their traditional sacred site of Apache Leap. People across the U.S. are rallying to the cause. To date, there are 3941 signatures See on-line petition: http://www.petitiononline.com/mod__perl/signed.cgi?coop2468

Impacts of mining: There are certain considerations that a person not familiar with mining practices would need to know before making any decisions concerning facilitating mining operations on or near these two sites.

1) Mining is not a sustainable operation. The impact on the area where the waste is dumped is more than considerable. Using the figures of Resolution Copper, they will mill some one billion tons, which have only some 3% copper. The other 97% has to be dumped somewhere. If the tailings are stacked, they will cover 2,389 acres at a height of a 20 story building. For details, see Attachment Three: Volume of Tailings

2) Water impact. This region has two streams that flow seasonally, but with some permanent pools—a rarity in Arizona. To construct any project that could drawdown the water table—thus emptying the creeks and streamlets—would be devastating to the birds and other wildlife, as well as the trees and other plant life. Even with the National Environmental Policy requirements and oversight, it has been shown by recent research that the Environmental Impact Statements underestimated the impact on water in 76% of the cases studied. For details, see Attachment Four: Predicting Water Quality Problems at Hard Rock Mines

Another issue is that Resolution Copper will need to pump nearly two billion gallons of toxic water out of the old Magma Mine "shaft 9" before they start new operations. They planned to discharge the water into a stream that flows

behind Boyce Thompson Arboretum State Park. After objections over sulfate levels by the Arboretum management, Resolution now plans to pipe the toxic water to Queen Creek, dilute it with water from the CAP canal, and have the area farmers use it. At this time, the residents of that region do not want the contaminated water to get into their groundwater table. Department of Environmental Quality as notified and is requiring Resolution Copper to obtain a discharge permit.

3) Probability of subsidence: The company asserts that there will be no subsidence with a tunnels running through terrain 4,000 to 7,000 feet deep and sq feet long and wide. Nevertheless, they would not give a guarantee to Access Fund of no impact to the Oak Flat climbing area and they plan to close the region for recreational use. The bottom line on subsidence: It's totally non-predictable.

Madan Singh, Director of the Arizona Department of Mines and Mineral Resources reports, "Subsidence is an inevitable consequence of underground mining—it may be small and localized or extend over large areas, it may be immediate or delayed for many years" (SME, 1992). In Mining publication, 1997, Fejes calls subsidence "a natural result of underground mining," and goes on to state that, "When a void is created nature will eventually seek the most stable geologic configuration, which is a collapse of the void and consolidation of the overburden material." Central to all these opinions is the underlying fact that subsidence will occur and will result in impacts to the overlying strata. There is no way to predict the rifts and faults in a cliff-type area such as Oak Flat and Apache Leap. For details, see Attachment Five: Subsidence and Hydrological Environmental Impacts

3) Environmental impact of processing. There are two methods for rendering the 3% copper (predicted grade ore at Resolution mine) from the general ore:

1) Electro-winning is a method of dissolving copper ore with sulfuric acid, then electroplating it to 99% pure copper. The positive aspect is that it creates less waste than the second method; however, only certain better grades of oxide ores can be processed with Electro-winning. The drawback is the sulfuric acid is stored in open ponds where any animal or bird unfamiliar with the territory would be dissolved instantly.

Further, although these ponds are lined, human and machine errors do occur. In 2002 at the ASARCO Silver Bell operations outside of Tucson, 242,000 gallons of sulfuric acid were released to the environment when a pond was inadvertently overfilled. Further, the caustic nature of sulfuric acid makes the pipes and equipment subject to breaks and leaks. For details, see Attachment Six: Environmental Impact of Sulfuric Acid Leaching

2) Flotation is the method used for lower grade, or sulfide ore. Toxic chemicals are used in the Flotation Process to separate the copper and molybdenum out of the milled powder. This Flotation process is the major extraction method at Duval/Sierrita mine because of the poor quality of the copper at this site. Some chemicals produce bubbles that that the copper adheres to and the "bad stuff" falls to the bottom. At this point, the unwanted minerals, salts and processing chemical residues are piped over to a tailing impoundment.

The concentrate is then smelted in order to separate the various metals and purify them. The smelting process also potentially introduces contaminants into the environment. It is noteworthy that at the historical mining sites in Arizona, the smelter was placed near the Latin town. For details, see Attachment Seven: Environmental Impact of Flotation

There is particular concern because Resolution Copper was formed by BHP Billiton and Rio Tinto Mining Companies. Both of these companies vie as the worst polluter of the environment—world wide. For details, see Attachment Eight: Rio Tinto Environmental Record For details, see Attachment Nine: BHP Billiton Environmental Record

Further, Rio Tinto is the parent company of Kennecott, a company that has created the largest toxic plume in the U. S. For details, see Attachment Ten: Kennecott Clean-up.

In closing, I would like to share with you an open letter from a resident of Superior and a former miner at the Magma mine. See Attachment Eleven: Open Letter

[Additional documents and attachments have been retained in subcommittee files.]

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