

**OVERSIGHT HEARING TITLED “AMERICA’S  
MINERAL RESOURCES: CREATING MIN-  
ING AND MANUFACTURING JOBS AND  
SECURING AMERICA”; AND LEGISLATIVE  
HEARING ON H.R. 1063, H.R. 687, H.R. 697,  
H.R. 761, H.R. 767, H.R. 957, AND H.R. 981**

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**OVERSIGHT AND  
LEGISLATIVE HEARING**

BEFORE THE

SUBCOMMITTEE ON ENERGY AND  
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

Thursday, March 21, 2013

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**OVERSIGHT HEARING ON “AMERICA’S  
MINERAL RESOURCES: CREATING MINING  
AND MANUFACTURING JOBS AND  
SECURING AMERICA”; AND A LEGISLATIVE  
HEARING ON H.R. 1063, “NATIONAL  
STRATEGIC AND CRITICAL MINERALS  
POLICY ACT OF 2013”; H.R. 687, “SOUTHEAST  
ARIZONA LAND EXCHANGE AND CONSERVA-  
TION ACT OF 2013”; H.R. 697, “THREE KIDS  
MINE REMEDIATION AND RECLAMATION  
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CRITICAL MINERALS PRODUCTION ACT OF  
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H.R. 957, “AMERICAN SODA ASH COMPETI-  
TIVENESS ACT”; AND H.R. 981, “RESOURCE  
ASSESSMENT OF RARE EARTHS ACT OF  
2013.”**

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**Thursday, March 21, 2013  
U.S. House of Representatives  
Subcommittee on Energy and Mineral Resources  
Committee on Natural Resources  
Washington, D.C.**

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The Subcommittee met, pursuant to notice, at 10:07 a.m., in room 1334, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Broun, Lummis, Benishek, Duncan, Gosar, Daines, Cramer, Holt, Horsford, Huffman, Lowenthal, DeFazio, Grijalva, Hanabusa, and Garcia.

Also Present: Representatives Heck, Napolitano, Johnson of Georgia, and Kirkpatrick.

Mr. LAMBORN. The Committee will come to order. We are going to go ahead and get an expedited start here. As the Ranking Member comes in he will make his opening statement at an opportune time. But with votes pending, and then with people wanting to catch planes later in the day, we thought we should go ahead and get started.

The Chairman notes the presence of a quorum, which, under Committee Rule 3(e), is 2 Members. The Subcommittee on Energy

and Mineral Resources hearing today is to hear testimony on an oversight hearing on, America's Mineral Resources: Creating Mining and Manufacturing Jobs and Securing America, and we are going to have a legislative hearing on H.R. 1063, I introduced it, it is National, Strategic, and Critical Minerals Policy Act of 2013; H.R. 687 by Representatives Gosar and Kirkpatrick on Southeast Arizona Land Exchange and Conservation Act of 2013; H.R. 697 by Representative Heck, Three Kids Mine Remediation and Reclamation Act; H.R. 761, by Representative Amodei, National Strategic and Critical Minerals Production Act of 2013; H.R. 767 by Representative Cramer to amend the Energy Policy Act of 2005 to modify the Pilot Project offices of the Federal Permit Streamlining Pilot Project; H.R. 957 by Representative Lummis, America Soda Ash Competitiveness Act; and H.R. 981 by Representative Johnson of Georgia and Markey, Resource Assessment of Rare Earths Act of 2013.

Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the clerk by close of business today.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

I also ask unanimous consent that the following Members be allowed to participate in today's hearing: the gentlelady from California, Mrs. Napolitano; the gentlelady from Arizona, Mrs. Kirkpatrick, the gentleman from Nevada, Mr. Heck, and the gentleman from Georgia, Mr. Johnson.

[No response.]

Mr. LAMBORN. Hearing no objection, so ordered.

**STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. I would like to welcome everybody to the hearing today, and who are listening via our webcast, to the Subcommittee on Energy and Mineral Resources oversight, and the legislative hearing focusing on assessing the Nation's solid mineral resources, and examining our national strategic and critical minerals policy.

As I have stated before, our national minerals policy has been neglected for far too long. And as evidenced by the bipartisan nature of the legislation we will be considering today, there is a clear recognition that, as a Nation, we can no longer afford to have our domestic mineral needs or policy put on the back burner.

Strategic and critical minerals are essential to our economy, livelihoods and national security, as well. Renewable energy, national defense equipment, agriculture, health care, and everyday items such as televisions, telephones, computers, light bulbs, and so on, are all dependent on minerals. Currently, the United States relies on foreign sources for a majority of our non-fuel mineral materials. And, according to the USGS, we are 100 percent dependent on foreign sources for rare earth minerals.

Mining creates tangible value, introducing new money into the Nation's economic system. Additional tangible value is added to the raw mined production through manufacturing, construction, and other uses. Harvesting domestic mineral resources contributes to

local economies, and it also contributes to the Nation's overall economic security from the most basic level up.

Mining and the associated businesses and industry have been one of the few growth areas during our country's prolonged recession, and has provided employment opportunities for skilled labor, scientists, engineers, and others. These are not your everyday, run-of-the-mill jobs, but high-paying, family wage jobs with generous benefits. A recent CRS analysis shows the non-supervisory positions in the energy and mineral sectors pays \$1,200 to \$1,500 per week, respectively.

I would like to point out that domestic mining isn't just about jobs in the mines. It is thousands of geologists, biologists, and environmental engineers. It is about the tens of thousands of jobs in the industries that support our miners, from the Caterpillar factories in Illinois to Redwing Boots in Minnesota, from St. Pierre chains in Worcester, Massachusetts to AirFlow Catalyst Systems in Rochester, New York.

As an added benefit, the Nation will become more self-reliant on the raw, mined materials our society depends on, as well as increasing opportunities for growth in our domestic manufacturing sector. We will also have improved economic and national security. The end result is Americans everywhere benefit from more domestic mining.

Now, we have an interesting and exciting hearing before us today. We will start with a bipartisan panel of our colleagues on both sides of the legislation before us. We will have an oversight panel following that will provide testimony on America's mineral resources creating mining and manufacturing jobs and securing America.

Domestic mining faces many challenges in the U.S., permitting and access being only a sliver of the numerous challenges facing mine development. However, it holds great promise. So we will hear from folks who see a bright future and opportunity. Just as the United States has experienced significant growth in oil and natural gas reserves and resources, mainly from private and State mineral-rich lands, there is an opportunity for significant growth in domestic, non-fuel, strategic, and critical minerals production, as well.

Now, this oversight hearing will be followed by an administration panel that will provide testimony on the legislation under consideration today.

And finally, we will hear from our legislative panel. We are getting a lot of things done today. With the exception of my colleague Kevin Cramer's bill to amend the Energy Policy Act of 2005 to modify the Pilot Project offices that were referred to earlier, the other pieces of legislation have passed out of the House Committee on Natural Resources and, in some cases, the Floor of the House during the last Congress, unfortunately only to languish in the Senate.

Here I would like to make a pitch for my legislation, H.R. 1063, the National Strategic and Critical Minerals Policy Act of 2013, which I strongly believe will provide the agencies with the information they need to make better decisions for the country when it comes to the development of our non-fuel solid mineral resources.

Other important bipartisan pieces of legislation under consideration today that will not be considered by the Members panel, so I should give them a little emphasis right here, H.R. 761, the National Strategic and Critical Minerals Production Act of 2013, which uses the President's Executive order requiring coordination between agencies when permitting infrastructure projects in order to expedite construction and job creation; and H.R. 957, the American Soda Ash Competitiveness Act, which sets the Federal royalty rate for soda ash at 2 percent, allowing the domestic soda ash industry to remain competitive with international producers.

I look forward to hearing from our witnesses today, and I would like to recognize the Ranking Member, from New Jersey, Representative Holt.

[The prepared statement of Mr. Lamborn follows:]

PREPARED STATEMENT OF THE HONORABLE DOUG LAMBORN, CHAIRMAN,  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

I would like to welcome everyone in the room here today and listening via our webcast to the Subcommittee on Energy and Mineral Resources oversight and legislative hearing focusing on accessing the Nation's solid mineral resources and examining our national Strategic and Critical Minerals Policy. As I've stated before—our national minerals policy has been neglected for far too long. And as evidenced by the bipartisan nature of the legislation we will be considering today there is a clear recognition that as a Nation we can no longer afford to leave our domestic mineral needs or policy on the back burner.

Strategic and critical minerals are essential to our economy, livelihood and national security. Renewable energy, national defense equipment, agriculture, healthcare and everyday items such as televisions, telephones, computers and light bulbs are all dependent on minerals. Currently the United States relies on foreign sources for a majority of our non-fuel mineral materials and, according to the USGS, is 100 percent dependent on foreign sources for rare earth minerals.

Mining creates tangible value, introducing new money into the Nation's economic system. Additional tangible value is added to the raw mined product through manufacturing, construction, and other uses. Harvesting domestic mineral resources contributes to local economies, and to the nation's overall economic security from the most basic level up.

Mining and the associated businesses and industry have been one of the few growth areas during the country's prolonged recession providing employment opportunities for skilled labor, scientist, engineers and others.

These are not your everyday run of the mill jobs but high-paying-family wage jobs with generous benefits. A recent CRS analysis shows the non-supervisory positions in the energy and minerals sector pay \$1,535 and \$1,220 per week respectively.

I'd like to point out that domestic mining isn't just about jobs in the mines, its thousands of geologists, biologists, and environmental engineers, it is about the tens of thousands of jobs in the industries that support our miners. From the Caterpillar factories in Illinois to Red Wing Boots in Minnesota, from St. Pierre Chains in Wooster, MA to Airflow Catalyst Systems in Rochester, NY.

As an added benefit—the Nation will become more self-reliant on the raw mined materials our society depends on as well as increasing opportunities for growth in our domestic manufacturing sector, and improving the Nation's economic and national security. The end result is Americans everywhere benefit from more domestic mining.

**Members Panel**

We have an exciting hearing before us today; we will start with a bipartisan panel of our colleagues, on both sides of the legislation before us.

**Oversight Panel**

The Members panel will be followed by our oversight panel that will provide testimony on "*America's Mineral Resources: Creating Mining and Manufacturing Jobs and Securing America.*" Domestic mining faces many challenges in the U.S., permitting and access being only a sliver of the numerous challenges facing mine development. However, it also holds great promise as we will hear from folks who see a bright future and opportunity.

Just as the U.S. has experienced significant growth in Oil and Natural Gas reserves and resources—mainly from private and state mineral rich lands—there is an opportunity for significant growth in domestic non-fuel strategic and critical minerals production as well.

#### **ADMINISTRTRION PANEL**

The Oversight panel will be followed by the Administration Panel that will provide testimony on the Legislation under consideration today.

#### **Legislative Panel**

Finally, we will hear from our legislative panel. With the Exception of my colleague Kevin Cramer's bill to amend the Energy Policy Act of 2005 to modify the Pilot Project offices of the Federal Permit Streamlining Pilot Project to include Montana and South Dakota, the other pieces of legislation have passed out of the House Committee on Natural Resources and in some cases the floor of the House during the last Congress only to languish in the Senate.

Here I'd like to make a pitch for my legislation H.R. 1063 the "*National Strategic and Critical Minerals Policy Act of 2013*," which I strongly believe will provide the agencies with the information they need to make better decisions for the country when it comes to the development of our non-fuel solid mineral resources.

Other important bipartisan pieces of legislation under consideration today that will not be discussed by the Members panel are:

- H.R. 761 the "*National Strategic and Critical Minerals Production Act of 2013*" which uses the President's Executive Order requiring coordination between agencies when permitting infrastructure projects in order to expedite construction and JOB creation as a template for permitting reform for advanced mineral exploration and mine development projects—the foundation of other more familiar Infrastructure projects such as roads and bridges—leading to JOB creation and economic and national security; and
- H.R. 957 the "*American Soda Ash Competitiveness Act*" sets the Federal royalty rate for soda ash at 2 percent allowing the domestic soda ash industry to remain competitive with international producers—namely China—and protects domestic JOBS in the mining, transportation and shipping sectors.

I look forward to hearing from our witnesses today.

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#### **STATEMENT OF THE HON. RUSH HOLT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Dr. HOLT. Thank you, Mr. Chairman. Let me see if I can keep my remarks to a minute or two. The bells have sounded. We have Members waiting, and we clearly won't be able to get through everything.

But I am pleased we are examining rare earth and critical minerals. I am pleased that H.R. 1063, introduced by Chairman Lamborn, includes compromised language agreed to in the last Congress.

I would point out that, despite being entitled, "*National Strategic and Critical Minerals Production Act of 2013*," H.R. 761 has nothing to do with developing these minerals. In fact, it is about gutting environmental safeguards and proper review of large mining projects.

Another bill today, H.R. 687 that looks at exchanging land at the Tonto National Forest with regard to copper mining, raises numerous concerns about the impacts on the environment. And I will be interested to hear more about that.

H.R. 957 would impose reduced royalty rate for soda ash produced on Federal lands. We can and should debate the impact of such a reduction. But the ability of the soda ash industry to increase production should be part of that conversation.

And, overall, we have to understand that all of this debate is done in the context of the archaic Mining Law of 1872. Ranking

Member Markey and Representative Grijalva and I will be introducing legislation that would ensure that large companies extracting minerals belonging to the taxpayer from public lands pay for the privilege of doing so, as they do for oil and gas. More about that later.

But to save time, let me end my remarks and come back to them in the course of the questioning. Thank you.

[The prepared statement of Dr. Holt follows:]

PREPARED STATEMENT OF THE HONORABLE RUSH HOLT, RANKING MEMBER,  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Thank you.

I am pleased that we are examining rare earth and other critical and strategic minerals that are indispensable in the manufacture of high-tech goods. Everything from solar panels and iPhones, to missile guidance systems and MRI machines requires one or several of the world's 17 minerals collectively known as rare earths. H.R. 981, the RARE Act, tasks the U.S. Geological Society with conducting a global assessment of rare earth mineral resources and potential supply sources. And I am pleased that H.R. 1063, introduced by Chairman Lamborn, also includes compromise language agreed to in the last Congress that would accomplish the same goals of improving our understanding of these important rare earth minerals.

Unfortunately, while these two bills will improve our understanding of critical and strategic minerals, other pieces of legislation that we are considering today represent nothing more than huge giveaways to the mining industry and rollbacks of environmental protections for our public lands. Many of these measures passed the House in the last Congress but were too extreme to pass the Senate. Yet, today we are considering these same extreme bills with few or no changes.

For instance, despite being entitled the "National Strategic and Critical Minerals Production Act of 2013," H.R. 761 has absolutely NOTHING to do with developing these minerals. In fact, this bill is all about gutting the environmental safeguards and the proper review of large mining projects on public lands for virtually all minerals. The bill would really waive proper environmental review and public input for large mining operations on public lands for abundant minerals like gold, silver or copper.

Another bill we are considering today, H.R. 687, would transfer approximately 2,400 acres of land in the Tonto National Forest, including 760 acres that were withdrawn from mining operations by President Eisenhower in 1955, to a subsidiary of two foreign mining companies—Rio Tinto and BHP Billiton. This bill raises numerous concerns about the impacts on the environment, surrounding communities and Native American sacred sites.

Allowing copper mining in this area could have significant impacts on the quality and quantity of drinking water for thousands of people in this already drought prone area. This proposal could decimate the economic benefits of recreation. It could devastate an area sacred to Native People. And this legislation would hand over billions of dollars worth of mineral resources to foreign mining companies without receiving a fair return. All while waiving proper review under the National Environmental Policy Act. In addition, support for this mining proposal has been eroding. The town of Superior, Arizona—the town that would be most directly impacted—recently adopted a resolution opposing the deal.

H.R. 957 would re-impose a reduced royalty rate for soda ash produced from Federal lands. We can and should debate the impact of such a reduction but the ability of the soda ash industry to increase production, exports, and employment last year following the expiration of the reduced royalty rate should be part of that conversation.

And while many of the bills we are considering today provide new giveaways to large, multinational mining companies, they do nothing to update the Mining Law of 1872, which allows mining companies to pull taxpayer-owned hardrock minerals out of our public lands virtually for free. In fact, under this 140-year old law, mining companies can extract gold, silver, uranium, copper and other hardrock minerals without paying taxpayers a dime in royalties for those minerals. This law isn't just outdated, it's outrageous. That is why I will be introducing legislation with Ranking Member Markey, and Representative Grijalva that would ensure that large companies extracting these minerals on public lands pay taxpayers for the privilege of doing so, just as oil, gas and coal companies do now. As we are looking at ways to

reduce our deficit, updating this law should be a common sense reform. But instead, the Majority continues to focus on heaping new giveaways on this industry.

Mr. LAMBORN. OK, certainly. And thank you, Representative Holt. We now have five Members who have come forward for our first panel. We have about 8 minutes or so before we have to scurry over there to catch the first vote, because the 15-minute period is running. Hopefully we can get through the testimony. If not, we will just reconvene after votes. But we will be in recess in about 8 minutes or so.

Let's start now with Representative Paul Gosar of Arizona.

**STATEMENT OF THE HON. PAUL A. GOSAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. Thank you, Chairman Lamborn, and thanks for scheduling today's legislative hearing on the Southeast Arizona Land Exchange and Conservation Act. When I was first elected to Congress a little over 2 years ago, one of the first initiatives the people of Arizona brought to my attention was this land exchange.

H.R. 687 facilitates a land exchange that will bring into Federal stewardship 5,500 acres of high-priority conservation lands that contain endangered species, sensitive ecosystems, recreational sites, and historical landmarks, in exchange for 2,600 acres of Federal land in Pinal County, Arizona, containing one of the largest undeveloped copper resources in the world. It is a critical first step in the development of the largest producing mine in North America.

The potential economic benefits of this legislation are staggering. Upon passage of the bill, Resolution Copper estimates that it will be able to employ nearly 3,000 workers during a 6-year construction period, and that is just the start. The mine, assuming the company's mine plan of operation, complies with all environmental laws. Let me repeat. It is a requirement explicitly by my bill that they comply with all environmental bills.

When they go into full production, they will directly employ another 1,400 people. These are high-paying jobs, ranging from \$40,000 to \$120,000 salaries per year in a region that is struggling, economically. As many people familiar with mining communities know, an influx of over 1,000 mining jobs will spur economic development growth in the community. These mine workers need restaurants to eat at, convenience stores to shop at, and homes to live in. A recent economic study estimates an additional 2,300 jobs could be created due to these demands. That brings the estimated total number of jobs resulting from this legislation to 3,700.

Overall, independent analysis estimates the total economic impact of the project will be over \$61 billion. That is over \$1 billion per year over the life of the mine, which equates to over \$19 billion to Federal, State, county, and local tax revenues—\$19 billion in tax revenues. In these tough fiscal times, I think we could all agree our local governments, and certainly the U.S. Treasury, could use those funds.

This legislation has national security implications. The U.S. currently imports 30 percent of our copper demands, and the demand is skyrocketing. This critical mineral is used in virtually all mod-

ern-day technology, ranging from renewable energy and hybrid cars to everyday electronics like cell phones and iPads. Our country must use domestic resources to meet this growing demand, and this project could yield enough copper to meet 25 percent of our current needs.

This legislation is not only a jobs bill, it is a conservation bill. The lands that the Federal Government acquires in the exchange are highly coveted recreational and conservation areas. It protects one of the few remaining undammed rivers in Arizona, the San Pedro River. The Dripping Springs property is a superb hiking and climbing location. The Cave Creek property will protect a riparian corridor, as well as numerous archeological sites, and nearly 100 acres of private land adjacent to culturally important Apache Leap is placed into the Federal stewardship.

A few of the witnesses today are going to testify that Congress is rushing consideration of the land project exchange, and that there are many unanswered questions surrounding the project. That could not be further from the truth. Over the past 8 years, this exchange and the potential mine have been subject to intensive review, public consideration, and modification. Today will be the fifth legislative hearing in either the House or the Senate held to examine the specifics of this legislation. This exact language passed the U.S. House with bipartisan support, and was almost signed into law last year.

Many of the issues that the detractors of this project will bring up in today's hearing have been addressed in the Congressional Record at some point. Congresswoman Kirkpatrick and I are committed to addressing the few concerns that have not as we move forward in this legislative process, in particular the concerns about the land that will be conveyed to the Town of Superior.

But don't be fooled. This land exchange has strong bipartisan support across the State of Arizona. I would like to submit letters of support from the State Government delegation of the affected region: Governor Jan Brewer, Democrat State Senator Barb McGuire, Republican State Representatives Frank Pratt and T.J. Shope, and Brenda Barton. I would like to submit these for the record.

Mr. LAMBORN. With no objection, so ordered.

Dr. GOSAR. Also for the record, a resolution unanimously passed by the bipartisan Pinal County Board of Supervisors and letters of support from the entire bipartisan Gila County Board of Supervisors.

Mr. LAMBORN. With no objection, so ordered.

Dr. GOSAR. These two counties encompass the area's most affected by the exchange.

And finally, I have letters from the Town of Payson; the Mayor of Globe, Terry Wheeler; a Superior Councilman, John Tameron; and a resolution of support from the Town of Kearny.

Mr. LAMBORN. Seeing no objection, so ordered.

[The information submitted for the record by Dr. Gosar has been retained in the Committee's official files:]

Dr. GOSAR. Each of these officials was elected to their position in some part because of their support for this land exchange. Their constituents—our constituents—want Congress to approve this land exchange.

Thank you for the opportunity to testify. I urge my colleagues to support the legislation because I know it will lead to a better future for my constituents and this country. Thank you, sir.

[The prepared statement of Dr. Gosar follows:]

PREPARED STATEMENT OF PAUL A. GOSAR, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF ARIZONA, ON H.R. 687

First, I would like to thank Chairman Lamborn for scheduling today's legislative hearing on the Southeast Arizona Land Exchange and Conservation Act. When I was first elected to Congress a little over 2 years ago, one of the first initiatives the people of Arizona brought to my attention was this land exchange.

H.R. 687 facilitates a land exchange that will bring into Federal stewardship 5,500 acres of high-priority conservation lands that contain endangered species, sensitive ecosystems, recreational sites, and historic landmarks, in exchange for 2,600 acres of Federal land in Pinal County, Arizona containing one of the largest undeveloped copper resources in the world. It is the critical first step to the development of the largest producing mine in North America.

The potential economic benefits of this legislation are staggering. Upon passage of the bill, Resolution Copper estimates it will be able to employ nearly 3,000 workers during a 6-year construction period—and that is just the start. The mine, assuming the company's mine plan of operation complies with all environmental laws, which let me repeat—is required explicitly by my bill before the company can begin production, will directly employ around 1,400 people. These are high-paying jobs, ranging from \$40,000 to \$120,000 salaries per year, in a region that is struggling economically.

As many people familiar with mining communities know, an influx of over 1,000 mining jobs will spur additional economic growth in a community. Those mine workers need restaurants to eat at, convenience stores to shop at, and homes to live. A recent economic study estimates an additional 2,300 jobs could be created due to these demands. That brings the estimated total number of jobs resulting from this legislation to 3,700.

Overall, independent analysis estimates the total economic impact of the project will be over \$61 billion. That is over \$1 billion per year over the life of the mine, which equates to over \$19 billion in Federal, State, county, and local tax revenue. Nineteen billion dollars in tax revenue—in these tough fiscal times I think we can all agree our local governments and certainly the U.S. Treasury could use those funds.

This legislation also has national security implications. The United States currently imports 30 percent of our copper and demand is skyrocketing. This critical mineral is used in virtually all modern day technology ranging from renewable energy and hybrid cars, to your everyday electronics like cell phones and iPods. Our country must use domestic resources to meet this growing demand; this project could yield enough copper to meet 25 percent of our current needs.

This legislation is not only a jobs bill, it's a conservation bill. The lands the Federal Government acquires in the exchange are highly-coveted recreational and conservation areas. It protects one of the few remaining undammed rivers in Arizona, the San Pedro River. The Dripping Springs property is a superb hiking and climbing location. The Cave Creek property will protect a riparian corridor as well as numerous archaeological sites. And nearly 100 acres of private land adjacent to the culturally important Apache Leap is being placed into Federal stewardship.

A few of the witnesses today are going to testify that Congress is rushing consideration of the land exchange and that there are many unanswered questions surrounding the project. That could not be further from the truth. Over the past 8 years, this exchange and the potential mine has been subject to intensive review, public consideration, and modification. Today will be the sixth legislative hearing, in either the House or the Senate, held to examine the specifics of this legislation. This exact language passed the U.S. House with bipartisan support and was almost signed into law last year.

Many of the issues that the detractors of this project will bring up in today's hearing have been addressed in the Congressional record at some point. Congresswoman Kirkpatrick and I are committed to addressing the few concerns that have not as we move forward in the legislative process, in particular concerns about the land that will be conveyed to the Town of Superior.

But don't be fooled—this land exchange has strong bipartisan support across the State of Arizona.

I would like to submit letters of support from the State government delegation of the affected region—Democrat State Senator Barb McGuire, and Republican State Representatives Frank Pratt, T.J. Shope, and Brenda Barton.

Also for the record—a resolution unanimously passed by the bipartisan Pinal County Board of Supervisors and letters of support from the entire bipartisan Gila County Board of Supervisors. These two counties encompass the areas most affected by the exchange.

Finally, I have letters from the Town of Payson, the Mayor of Globe Terry Wheeler, Superior Councilman John Tameron, and a resolution of support from the Town of Kearney.

Each of these officials was elected to their positions in some part because of their support for this land exchange. Their constituents . . . OUR constituents, want Congress to approve this land exchange.

Thank you for the opportunity to testify. I urge my colleagues to support the legislation because I know it will lead to a better future for my constituents and this country.

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Mr. LAMBORN. OK, thank you.

We will now hear from Representative Grijalva.

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

Mr. GRIJALVA. Thank you, Mr. Chairman. I appreciate the time. And I think, as President Reagan said famously in a debate once, “Here we go again.” And as my friend, Mr. Gosar, said, this is about the fifth, sixth version of this piece of legislation.

And before I make any comments on this legislation, I want to advise the Chairman and the Ranking Member that I made a request to Chairman Hastings and Ranking Member Markey to delay this hearing until there is meaningful government-to-government consultation between the Federal Government and tribal Nations affected by this legislation. And that is consistent with the Federal agency and tribal memorandum of understanding that is in place right now. And I would again urge that consideration.

I am also asking that we ask the State Department to verify that this particular decision on H.R. 687 does not violate any resolution that this Congress has passed with regards to sanctions, economic sanctions in Iran, or any company or entity that does business with them. It is our understanding that Rio Tinto, the parent company of subsidiary Resolution Copper, jointly operates a uranium mine, of all things, in Namibia.

And I would suggest that before you take my word for it or take the denials as truth, that a formal request from the Chair and the Ranking Member to the State Department to validate and verify that. We have all passed resolutions and the urgency of those resolutions has come for the protection of Israel. I would suggest that that is one. The last time we had a motion to recommit on the same subject, we split entirely along party lines. Democrats supported the motion to recommit, and every Republican opposed to it. Before we cross that bridge again I would suggest we get information.

This legislation, quite frankly, Mr. Chairman, is a deception. Even today we have no one from Rio Tinto or its subsidiary, Resolution, as a witness available to answer questions, questions dealing with transparency, the due diligence, and what is the return for the taxpayer. There is a tattered history to this legislation and

this deal. But the fundamental and consistent reasons for opposition remain the same.

Pre or post-NEPA, the company says, "We are going to obey everything," but once it is in their hands and it is privatized, the Federal land, no matter what is found in NEPA, no matter what is found in the environmental impact statement, there is nothing the Government can do to assure compliance. So when we say we are OK with NEPA, after the fact, the law is moot after the fact.

Native Americans, and you are going to hear from them today, we have the Chairman and the President of the Hopi and Navajo Nation, as well as the Chairman of the All-Indian Pueblo Council, representing 20 pueblos in New Mexico and Texas that are here, not only in support of their colleagues, San Carlos Apaches, but also in opposition to this bill.

And the opposition continues the same. What is the value of the resource? \$60 billion? \$100 billion? What is under that land? And is the trade that we are talking about, is that a fair return for the taxpayer? I understand the value is proprietary to the company, but I think some due diligence on the part of this Committee to understand value and what we are giving back to the taxpayer is an important issue.

I mentioned the issue of sanctions. I think all the legitimate opposition and concerns that we have are always met with, "You are anti-jobs, you are anti-mining." Well, I think there is a rush for this legislation because there is an erosion of local support. There is unanimous opposition among Native Americans, not only in Arizona but across the country. And there is a track record for Rio Tinto with regards to labor violations, environmental violations, and failure to do reclamation.

So, why the rush? Perhaps there is a feeling there is a much more accommodating presence at the Senate that would allow this bill to go as is. Perhaps it is that there is hemorrhaging local support in the region for the mine, and let's do it now before that support eradicates entirely.

Mr. Chairman, I hope that we do our due diligence and be true stewards of our public lands and the responsibility we own. We are not Wal-Mart greeters for Rio Tinto or its subsidiary. We are not facilitators or brokers. This cozy deal before us today in the form of H.R. 687 is the same deal we saw before, and before, and before. We are doing it again, and the opposition to the points remain the same. Thank you, Mr. Chairman.

Mr. LAMBORN. OK, thank you for your testimony. I apologize that we couldn't finish the remainder of the panel. We will go into recess now to vote. I am going to let the audience know I am estimating about 45 minutes or so before we come back. But at that point we will reconvene, hear from the rest of the panel, and then go into our other panels.

We will be in recess.

[Recess.]

Mr. LAMBORN. The Subcommittee will come back to order. We have a couple Members who are on their way from the voting that just concluded, but one Member is here and I see another Member coming in. Excellent. So we will go ahead and, since Mrs. Kirk-

patrick is here and we are still on the subject of H.R. 687, we will hear her testimony and then go to Mr. Heck of Nevada.

Mrs. Kirkpatrick, the floor is yours.

**STATEMENT OF THE HON. ANN KIRKPATRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mrs. KIRKPATRICK. Thank you, Mr. Chairman and Ranking Member Holt. I am proud to represent Arizona's first district. It covers 60,000 square miles, 80 rural communities, including the Town of Superior, whose leaders are here today. And it has 12 Native American Tribes, including the San Carlos Apache Tribe, whose leaders are here today.

I am here today testifying in support of H.R. 687, the Southeastern Arizona Land Exchange, of which I am an original cosponsor. I would like to start by first recognizing there are pros and cons to this legislation and to the land exchange. My testimony will touch on both aspects of this project. However, it is my belief that there is a way to work together and use the legislative process to develop a piece of legislation that brings a diversified and stable economy to this region. But not without first addressing the project's impact on our environment, water, and lands.

My district includes Arizona's Copper Corridor, which has more than a century's legacy of copper mining. It includes communities like Superior, Globe, Miami, Hayden, Winkelman, and Kearny. Copper is part of Arizona's heritage. It is one of the four C's represented in our State Seal.

The Copper Corridor has played a major role in our State's early growth and economic development. Folks here have remained in these towns for generations, and have expressed strong support over the years for the Superior mine. They have raised their families here, worked the mines, run their own businesses. But small towns in Arizona have been hit hard by the Great Recession. They have been set back by changing economic realities. The median household income in my district is just over \$30,000. These are working families; they struggle. But they love their communities and they want to stay if there is a way.

Across the globe there is a great need, an economic demand for the high-grade copper these communities can produce. I know this, and so does my colleague, Congressman Gosar. That is why each of us tried in previous Congresses to make this project a reality. And that is why, in this Congress, we have joined together to try again in hopes that a bipartisan approach could make the difference.

My district is also home to the San Carlos Apache Tribe. The testimony of Chairman Rambler must also be taken into account as we move through the legislative process. The Tribe's concerns about the impact this project will have on sacred sites and land are valid concerns. The Tribe's concerns about the impact of the project on our environment, water, and public health are also valid concerns. I am committed to using the legislative process to represent their concerns. This process must be transparent. It must reflect our shared interest in the public good. And that means recognizing that these communities cannot have long-term economic stability without clean water, air, and land.

The voices of tribal and environmental groups should be heard and respected, and that is where the legislative process comes in. I support requiring government-to-government tribal consultations prior to the land exchange. We also need to include environmental protections for the water and land in and around the Copper Corridor very likely prior to the land exchange.

If people are going to live, work, and raise their families in these areas, these factors must be addressed. I will be working toward including responsible provisions like these in a final version of this legislation. I believe that if these provisions are included, it will help ensure that Superior Mine can finally move forward.

I offer my sincere thanks to all of those who came here today to testify about this legislation and make your voices heard.

And I want to especially thank Congressman Gosar and his staff for working together with us on this important effort. Thank you very much.

[The prepared statement of Mrs. Kirkpatrick follows:]

PREPARED STATEMENT OF THE HONORABLE ANN KIRKPATRICK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA, ON H.R. 687

I am proud to represent Arizona's first district, which covers 60,000 square miles, 80 rural communities, including the town of Superior whose leaders are here today, and 12 Native American tribes—including the San Carlos Apache Tribe, whose leaders are here today.

I stand here today testifying in support of H.R. 687—the Southeastern Arizona Land Exchange, of which I am an original co-sponsor.

I would like to start by recognizing there are pros and cons to this legislation and to the land exchange. My testimony will touch on both aspects of this project.

However, it is my belief that there is a way to work together, and use the legislative process to develop a piece of legislation that brings a diversified and stable economy to the region—but not without first addressing the project's impact on our environment, water and lands.

My district includes Arizona's Copper Corridor, which has more than a century's legacy of copper mining.

It includes communities like Superior. Globe. Miami. Hayden. Winkelman and Kearny.

Copper is part of Arizona's heritage—it's one of the five C's represented in our State seal.

The Copper Corridor has played a major role in our State's early growth and economic development.

Folks here have remained in these towns for generations and have expressed strong support over the years for the Superior mine.

They've raised their families here. Worked the mines. Run their own businesses.

But small towns in Arizona have been hit hard by the great recession.

They've been set back by changing economic realities.

The median income in my district is just over \$30,000 a year.

These are working families. They struggle.

But they love their communities and they want to stay—if there's a way.

Across the globe, there is a great need—an economic demand—for the high-grade copper these communities can produce.

I know this, and so does my colleague, Congressman Gosar.

That's why each of us tried in previous Congresses to make this project a reality.

And that's why in this Congress, we have joined together to try again, in hopes that a bipartisan approach could make the difference.

Now, my district is also home to the San Carlos Apache Tribe. The testimony of Chairman Rambler must also be taken into account as we move through the legislative process.

The tribe's concerns about the impact this project will have on sacred sites and land are valid concerns.

The tribe's concerns about the impact of the project on our environment, water and public health are also valid concerns.

I am committed to using the legislative process to represent their concerns.

This process must be transparent. It must reflect our shared interest in the public good.

And that means recognizing that these communities cannot have long-term economic stability without clean water, air and land.

The voices of tribal and environmental groups should be heard and respected.

And that's where the legislative process comes in:

I support requiring government-to-government tribal consultations prior to the land exchange.

We also need to include environmental protections for the water and land in and around the Copper Corridor—very likely, prior to the land exchange.

If people are going to live, work and raise their families in these areas, these factors must be addressed.

I will be working toward including responsible provisions like these in a final version of this legislation.

I believe that if these provisions are included, it will help ensure the Superior mine can finally move forward.

I offer my sincere thanks to all those who came here today to testify about this legislation and make your voices heard.

And I want to thank Congressman Gosar and his staff for working together with us on this important effort.

Thank you.

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Mr. LAMBORN. Thank you, Representative. And as each Member provides their testimony, feel free to be excused. I know there are other Committees going on and other pressing matters. Thank you.

Mrs. KIRKPATRICK. Mr. Chairman, may I be excused?

Mr. LAMBORN. Please, yes.

Mrs. KIRKPATRICK. Thank you.

Mr. LAMBORN. Thank you for being here. And now we will hear from Representative Heck of Nevada on his bill.

**STATEMENT OF THE HON. JOSEPH J. HECK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA**

Mr. HECK. Chairman Lamborn, thank you for inviting me back to testify before the Subcommittee on an innovative solution for restoring the environment, improving safety, and creating jobs in my district in Southern Nevada.

As you know, I originally introduced the Three Kids Mine Remediation and Reclamation Act in the previous Congress. This legislation was passed successfully through the Natural Resources Committee and passed the House by a voice vote, but unfortunately, did not receive consideration in the Senate before the 112th Congress adjourned. I have since re-introduced the legislation as H.R. 697.

Mr. LAMBORN. Representative, is your microphone on?

Mr. HECK. Yes, it is.

Mr. LAMBORN. OK, excellent. Maybe pull it a little closer.

Mr. HECK. And I appreciate the opportunity to come back and testify before the Subcommittee to talk about a serious environmental public safety and abandoned mine reclamation issue in the city of Henderson, Nevada. In the interest of time, I am going to abbreviate my remarks, but request that my full statement be entered into the record.

Mr. LAMBORN. No objection, so ordered.

Mr. HECK. And I also request that a written statement of The Honorable Andy Hafen, Mayor, City of Henderson, Nevada, be entered into the record.

Mr. LAMBORN. Without objection, so ordered.

[The information submitted for the record by Mr. Heck has been retained in the Committee's official files:]

Mr. HECK. The Three Kids Mine is an abandoned manganese mine and mill site consisting of approximately 1,262 acres of Federal and private lands which lies within the Henderson City limits, and is literally across from Lake Mead Parkway, from an increasing number of homes and businesses. The Three Kids Mine was owned and operated by various parties, including the United States, from approximately 1917 through 1961, and used as a storage area for Federal manganese ore reserves from the late 1950s through 2003.

The project site contains numerous large, unstable, sheer cliff open pits as deep as 400 feet, and huge volumes of mine overburden and tailings, mill facility remnants, and waste disposal areas.

To give a sense of scale, the mine overburden is 10 stories high in some areas. Abandoned waste ponds are up to 60 feet deep and filled with over 1 million cubic yards of gelatinous tailings containing high concentrations of arsenic, lead, and petroleum compounds. Reclaiming the project site will require the excavation and management of at least 12 million cubic yards of material, enough to fill a modern sports stadium 6 times. The presumptive remedy for the project site is to use the existing mine pits as permanent repositories for the mine residue in an appropriately engineered manner.

The legislation I have introduced with the support of the entire Nevada Delegation is the result of over 5 years of work among the City of Henderson Redevelopment Agency, the Department of the Interior, the State of Nevada, and private entities to develop a program to finally clean up the Three Kids Mine site.

Boiled down to its simplest form, the Secretary of the Interior will convey the Federal lands at the project site, approximately 948 acres, at fair market value, taking into account the cost of investigating and remediating the entire site, which includes an additional 314 acres of now private lands that were used historically in mine operations. The Federal Government will receive a release of liability for clean-up of both the Federal lands and the private lands.

This is a unique and complex public-private partnership proposal. It will finally lead to the clean-up of the Three Kids Mine site at no cost to the Federal Government.

In closing, I want to once again thank Chairman Lamborn and Ranking Member Holt, as well as the other members of the Subcommittee for holding a hearing on this serious problem of abandoned mine lands and innovative solutions for addressing the problem. And I would be happy to answer any questions the Subcommittee might have.

[The prepared statement of Mr. Heck follows:]

PREPARED STATEMENT OF THE HONORABLE JOSEPH J. HECK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA, ON H.R. 697

Chairman Lamborn and Ranking Member Holt, thank you for inviting me back testify before the Subcommittee on an innovative solution for restoring the environment, improving safety, and creating jobs in my District in southern Nevada. As you know, I originally introduced the Three Kids Mine Remediation and Reclamation Act in the previous Congress. This legislation was passed successfully through the

Natural Resources Committee and the House, but unfortunately, did not receive consideration in the Senate before the 112th Congress adjourned. I have since re-introduced this legislation as H.R. 697, and I appreciate the opportunity to come back and testify before the Subcommittee to talk about a serious environmental, public safety, and abandoned mine reclamation issue in the City of Henderson, Nevada.

\* \* \*

The Three Kids Mine is an abandoned manganese mine and mill site consisting of approximately 1,262 acres of Federal and private lands which lies within the Henderson City limits and is literally across Lake Mead Parkway from an increasing number of homes and businesses. The Three Kids Mine was owned and operated by various parties, including the United States, from approximately 1917 through 1961, and used as a storage area for Federal manganese ore reserves from the late 1950s through 2003. The project site contains numerous large unstable sheer-cliff open pits as deep as 400 feet, huge volumes of mine overburden/tailings, mill facility remnants and waste disposal areas. To give a sense of scale, mine overburden is ten stories high in some areas; abandoned waste “ponds” are up to 60 feet deep and filled with over 1 million cubic yards of gelatinous tailings containing high concentrations of arsenic, lead and petroleum compounds. Reclaiming the Project Site will require the excavation and management of at least 12 million cubic yards of material (enough to fill a modern sports stadium six times). The “Presumptive Remedy” for the Project Site is to use the existing mine pits as permanent repositories for the mine residue, in an appropriately engineered manner.

\* \* \*

The Nevada Division of Environmental Protection has identified the Three Kids Mine as a high priority for the implementation of a comprehensive environmental investigation, remediation, and reclamation program. Numerous unsuccessful proposals to clean up and redevelop the Project Site have been advanced over the years. All were ultimately abandoned due to unrealistic estimates of the scale of required remediation, as well as the complexities posed by the mix of private and Federal ownership at the Project Site. Something must be done to address this serious blight on the Henderson community.

\* \* \*

The legislation I have introduced, with the support of the entire Nevada Delegation, is the result of over 5 years of work among the City of Henderson Redevelopment Agency, the Department of the Interior, the State of Nevada, and private entities to develop a program to finally clean up the Three Kids Mine site. Boiled down to its simplest form, the Secretary of the Interior will convey the Federal lands at the project site—approximately 948 acres—at fair market value taking into account the costs of investigating and remediating the entire site, which includes an additional 314 acres of now-private lands that were used historically in mine operations. The Federal Government will receive a release of liability for cleanup of both the Federal lands and the private lands. Under the legislation, before the Federal lands are conveyed, the State must enter into a binding consent agreement under which the cleanup of the entire Project Site will occur. The consent agreement must include financial assurances to ensure the completion of the remediation and reclamation of the Site. The cleanup will be financed with private capital and Nevada tax increment financing at no cost to the Federal Government.

In more detail, the legislation would direct the Secretary to convey the 948 Federal acres of the Three Kids Mine project site to the Henderson Redevelopment Agency for fair market value, discounted to reflect the costs of cleanup of the entire Project Site. According to preliminary estimates, the cleanup costs for the Project Site range from a low of \$300 million to a high of nearly \$1 billion. The BLM’s preliminary estimate of the value of the lands to be conveyed as if they were “clean” ranges from \$95 million to \$190 million. The value and costs will be determined by the Secretary under the legislation using established national appraisal methods, environmental assessment standards, and cost estimating procedures. We fully expect the cleanup costs to substantially exceed the value of the lands to be conveyed. Moreover, given the mix of private and Federal lands at the project site and the substantial cleanup costs involved, there is no viable solution to remediate and reclaim the Federal lands without the private lands.

Before any conveyance of Federal land, the legislation requires an executed Mine Remediation and Reclamation Agreement between a responsible party and the State of Nevada that would govern the “CERCLA-protective” cleanup program for the entire Project Site (Federal and private lands) and ensure that the program is fully funded. Finally, in exchange for the conveyance, the Federal Government’s responsi-

bility for the cleanup of this site will be assumed and paid for by a responsible third party and the Secretary's land will also be cleaned up at no cost to the Federal Government.

\* \* \*

Fundamental to the economic viability of the entire project is the availability of "tax increment financing" under the Nevada Community Redevelopment Law. The Nevada Redevelopment Law allows the Redevelopment Agency to fund the cleanup of blighted conditions such as an abandoned mine and environmental contamination through use of an "increment" of property taxes collected within a designated redevelopment area over a 30-year "capture period." The "increment" is a portion of the assessed value of the property which predictably increases in value following cleanup and as the subsequent commercial and residential redevelopment build-out occurs. To advance this important project, the City of Henderson completed annexation of the Three Kids site in January 2009, and the Lakemoor Canyon Redevelopment Area was established in February 2009.

\* \* \*

This is a unique and complex "public/private partnership" proposal. It will finally lead to the cleanup of the Three Kids Mine site at no cost to the Federal Government. Millions of dollars have been spent on this effort to date on environmental assessment work at the Project Site and to advance discussions and negotiations among project stakeholders. I believe that this initiative offers a viable solution for the cleanup and reclamation of the Three Kids Mine and could serve as a model for other similar sites across the country. I would respectfully request that the Subcommittee grant expeditious consideration of the Three Kids Mine Remediation and Reclamation Act.

In closing, I want to once again thank Chairman Lamborn and Ranking Member Holt, as well as the other members of the Subcommittee, for holding a hearing on the serious problem of abandoned mined lands, and innovative solutions for addressing the problem. I would be happy to answer any questions the Subcommittee might have.

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Mr. LAMBORN. OK, thank you for your testimony. Feel free to be excused. I know there are other pressing issues and Committee hearings. Thank you for being here.

We will now hear from Senator—excuse me, Representative Johnson—there is an interesting Senate race going on in Georgia, but I should say Representative Johnson of Georgia.

**STATEMENT OF THE HON. HENRY C. "HANK," JOHNSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. JOHNSON OF GEORGIA. Well, I tell you, I am going to stay right where I am and stay out of that big fight.

[Laughter.]

Mr. JOHNSON OF GEORGIA. But thanks for the elevation, anyway.

Mr. LAMBORN. We just made some news today here.

Mr. JOHNSON OF GEORGIA. Thanks, Mr. Chairman. I want to thank you, Chairman Lamborn. Also, Ranking Member Horsford, for allowing me to join you today.

Mr. Chairman, it is a testament to the statesmanship of the Chairman and Ranking Members that you have placed a bill offered by a Democrat on the table for discussion today. That bipartisan approach will be necessary if we are going to rise to the challenges of our time.

I also must thank Ranking Member Markey for his and his staff's hard work in developing H.R. 981, the Resource Assessment of Rare Earths Act of 2013, or the RARE Act, which we jointly introduced this year.

Ranking Member Holt I also want to thank for his support for this legislation.

This hearing on creating mining and manufacturing jobs here in America, and the securing of our access to necessary minerals is critically important. The RARE Act will help ensure that our Nation is able to assess rare earth elements, which are necessary components of numerous products, from wind turbines to solar panels to energy-efficient light bulbs and a number of Department of Defense applications, as well.

The bill is simple and I would also argue that it is also non-partisan. It directs the U.S. Geological Survey to lead a global, multi-lateral assessment of rare earth element deposits to develop a comprehensive understanding of their distribution around the world.

We need this bill because China now accounts for upwards of 90 percent of U.S. rare earth element supply. This Chinese monopoly is a potentially ruinous economic and geopolitical vulnerability for the United States. In recent years, China has shown a willingness to exploit its monopoly by restricting rare earth elements exports, undermining U.S. national security and competitiveness in defense and clean energy. A better understanding of where these critical elements are will enable us to adjust to supply disruptions from any particular region.

As I said, this is a non-partisan issue, and that is why I am happy to see Chairman Lamborn's bill, H.R. 1063, which is under consideration today, and which includes language that mirrors the rare earth assessments called for in my bill.

Thank you, Mr. Chairman, for holding this hearing today. I look forward to the comments from the witnesses which I will take in via webcast. And thank you, members of the Committee.

Mr. LAMBORN. OK, thank you, Representative Johnson, for being here today and providing your testimony.

That concludes our first panel. We will now move to the second panel of witnesses for oversight. And I invite forward Mr. James Iwanicki, Engineer Manager for the Marquette County Road Commission; Ms. Ruthe Batulis, President of the Dakota County Regional Chamber of Commerce, and President of the Minnesota Conference of Chamber Executives; Mr. Harry Melander, President of the Minnesota Building and Construction Trades Council; and Ms. Jennifer Krill, Executive Director of Earthworks.

Like all our witnesses, your written testimony will appear in full in the record. So I ask that you keep your oral statements to 5 minutes, as outlined in our invitation letter and our Committee rules.

Our microphones are not automatic, so you have to push a button to be heard. And the way the timing works is that when you press the button a green light comes on, and the 5-minute timer starts counting down. After 4 minutes, the yellow light comes on, and then the red light at 5 minutes.

So, we will start in with our testimony. Mr. Iwanicki, you may begin.

**STATEMENT OF JAMES M. IWANICKI, P.E., ENGINEER  
MANAGER, MARQUETTE COUNTY ROAD COMMISSION**

Mr. IWANICKI. Hi. I am James M. Iwanicki, Engineer and Manager of the Marquette County Road Commission. Thank you, Mr.

Chairman and members of the Committee. Thank you for asking me here to testify about our experiences with trying to create a new county road, County Road 595, to improve the quality of life, the health, safety, and welfare of our citizens. County Road 595 would have had a positive impact on the mining, logging, recreation, and tourist industries.

Rio Tinto was willing to fund an \$83 million, 21-mile public road project to access a remote but key area of the county. The road would have had a major positive economic and public safety impact for the area and region. The road is located in a working woods. It would have replaced a system of two track roads that are currently used to access the area.

As a local government official, it was very frustrating in dealing with the EPA throughout this project. If I operated the Marquette County Road Commission the way the EPA handled this permit, I would not be sitting here today. It is even more surprising, when you consider the list of support that we had. County Road 595 was supported by all local units of government in Marquette County and where County Road 595 would either go, or where the existing road to the mine goes through. This includes three cities, Marquette, Ishpeming, and Negaunee; eight townships; the Marquette County Board; two Michigan State House of Representative Members, one Democrat, one Republican; the Michigan State Senator of the area, a Republican; 63 of the 110 Members of the 96th Michigan State House; 28 of the 38 Senators from the 96th Michigan State Senate; the Governor of the State of Michigan; the Michigan Department of Transportation; the Michigan Department of Environmental Quality; the Michigan Department of Natural Resources; the Michigan State Police; Republican Dan Benishek of the U.S. House; and both Democratic U.S. Senators, Carl Levin and Debbie Stabenow.

EPA over-reached their authority on this project in at least five different ways to kill County Road 595. EPA did not allow Marquette County Road Commission to use any creation of wetlands for mitigation, forested wetlands in particular, as allowed by 40 CFR Part 230.92 and 230.92a2. The preservation ratios EPA required were beyond that which were reasonable, and not compliant with 40 CFR Part 230. Michigan Department of Environmental Quality rules allowed a maximum ratio of 12-to-1 for wetland preservation.

EPA imposed requirements that required mineral rights to be obtained for wetland preservation areas. Federal rules only required that site protection should include measures to protect sites to the extent appropriate and practical in regard to mineral extraction and other threats.

EPA continually changed the rules in regards to what was required for mitigation on the project. EPA suggested that wetland preservation be at 20-to-1 replacement ratio in June 2012 to cover indirect and secondary impacts. But in December 2012 it required additional mitigation to address secondary impacts and gave Marquette County Road Commission less than 30 days, including Christmas and New Year's holidays, to come up with such measures. The EPA public hearing in this process was held over 3 months prior to the December 4, 2012 EPA letter, and the timing

of the letter did not allow sufficient time for the Marquette County Road Commission and MDEQ to respond to the requirements of EPA's letter, due to the holidays.

EPA would not allow the Marquette County Road Commission, Marquette County, or Michigamme Township, all legal governmental entities in the State of Michigan, to be the land stewards for the proposed wetland mitigation area, as allowed in 230.97(a).

Because of the EPA decision, we have gone from having a common-sense practical solution to solve public safety issues and improve the economics of the region to the use of the existing road system which will not be as safe as the proposed solution, cause more air pollution, and stagnate the economic development of the area.

In conclusion, it is hard for the people in the area to understand how a Federal agency that does not live and work in our community can make such an important decision for us, 350 miles away in Chicago.

Thank you for your time. I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Iwanicki follows:]

PREPARED STATEMENT OF JAMES M. IWANICKI, P.E., ENGINEER MANAGER,  
MARQUETTE COUNTY ROAD COMMISSION

Mr. Chairperson and Members of the Committee:

Thank you for asking me here today to testify about our experiences with trying to create a new county road, CR 595, to improve the quality of life, the health, the safety, and the welfare of our citizens. CR 595 would have had a positive economic impact on the Mining, Logging, Recreation, and Tourism Industries.

#### **Background Information**

In January of 2012 Marquette County Road Commission (MCRC) submitted a Section 404 permit application to fill approximately 26 acres of wetland to construct 21 miles of road at a cost of \$83 million. CR 595 was going to be funded by Rio Tinto through a public-private partnership. In addition Rio Tinto spent over \$20 million to permit CR 595.

Rio Tinto was interested in funding the project because they were constructing a new nickel and copper underground mine called the Eagle Mine. The company is also refurbishing the old Humboldt Mill to process the ore. The mine and the mill will create about 300 direct new jobs. (See Figure 2) The distance between the mine and the mill as the crow flies is about 19 miles. Using the existing road system to go from the mine to the mill would be approximately 60 miles one way. CR 595 would reduce travel time by an hour. The construction of CR 595 would have lasted 2 years and employed over 100 people during that timeframe.

CR 595 would have been built in a working woods not in pristine wilderness. The road alignment is based on existing public and private roads. (See Figures 4 and 6-9.),

CR 595 was the common sense solution to Marquette County's transportation needs.

If you cannot build CR 595 then you can never build any new road in Marquette County or the Upper Peninsula of Michigan.

#### **EPA**

- In April of 2012 EPA objected to MCRC's project purpose.
- EPA held a public hearing on CR 595 in August of 2012.
- EPA lifted their objection to the project purpose on December 4, 2012 but had other objections which needed to be satisfied by January 3, 2013 (within 30 days) or jurisdiction would revert to the Army Corps of Engineers.
- Rio Tinto needed certainty in their transportation route by January of 2013. Failure to have a permit for CR 595 in January 2013 would cause Rio Tinto to pull their \$83 million funding commitment for CR 595 and they would use the existing road system to truck the ore.
- EPA did not like how we proposed to mitigate the impacts of CR 595. Our proposed mitigation plan involved preserving over 1,576 Acres of land (2.5 square

miles) adjacent to McCormick Tract in the Ottawa National Forrest. The area included approximately 647 acres of high quality wetland (25 to 1 ratio) including an additional 929 acres of uplands (60 to 1, total acreage). (See Figure 5)

- EPA was very aloof doing the whole permit process. They would not tell us what would be acceptable. In fact during the last month of the project they would not even tell us who the decision maker was going to be. They were unwilling to negotiate resolutions openly by telling us directly what would satisfy their issues.
- EPA wanted additional wildlife protection and they proposed creating wildlife crossings (tunnels or bridges) large enough to accommodate moose, bear, and cougar and to place fencing to guide wildlife to the crossing. But they would not tell us where these crossings needed to go.
- EPA wanted to limit secondary road connections to CR 595 by placing deed restrictions on CR 595 so adjacent land owners could not connect to the road.

#### **EPA's Overreach of Their Authority**

The Marquette County Road Commission (MCRC) believes the EPA overstepped its authority in the following areas:

1. EPA would not allow MCRC to use any creation ("establishment") of wetlands for mitigation, forested wetlands in particular, as allowed by 40 CFR part 230.92 and 230.93(a)(2).

2. The preservation ratios EPA required (i.e. 20:1) were beyond what was reasonable and not compliant with 40 CFR part 230. Michigan Department of Environmental Quality (MDEQ) rules allow a maximum replacement ratio of 12:1 for wetland preservation.

3. EPA imposed requirements that required mineral rights to be obtained for the wetland preservation areas. Federal rules only require that site protection should include measures to protect sites "to the extent appropriate and practicable" (230.97(a)(2)) in regard to mineral extraction and other threats.

4. EPA continually changed the "rules" in regards to what was required for mitigation on the project. EPA suggested that wetland preservation be at a 20:1 replacement ratio in June 2012 to cover indirect and secondary impacts but in December 2012 it required additional mitigation measures to address secondary impacts and gave MCRC less than 30 days (including Christmas and New Year holidays) to come up with such measures. The EPA public hearing in this process was held over three months prior to the December 4, 2012 EPA letter and the timing of the letter did not allow sufficient time for MDEQ or MCRC to respond to the requirements of EPA's letter due in substantial part to the holidays.

5. EPA would not allow the Marquette County Road Commission, Marquette County, or Michigamme Township (all legal governmental entities in the State of Michigan) to be the land steward of the proposed wetland preservation area, as allowed in 230.97(a).

#### **Political Support for CR595**

CR 595 is supported by all local units of government in Marquette County where CR 595 would either go through or where the existing road to the mine goes through. This includes 3 cities, (Marquette, Ishpeming, Negaunee) 8 townships, the Marquette County Board, the two Michigan State House of Representatives members that represent Marquette County, the Michigan State Senate senator who represents Marquette County, 63 of the 110 members of the 96th Michigan State House, and 28 of 38 senators from the 96th Michigan State Senate, the Governor of the State of Michigan, Michigan Department of Transportation, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, the Michigan State Police, Dan Benishek (R) U.S. House of Representative, and both U.S. Senators Carl Levin (D), and Debbie Stabenow (D).

#### **Result of EPA's Overreach**

- Heavy truck traffic will now be routed through the populated areas of Marquette County.
- Local Units of government are trying to address the safety issues created by EPA's lack of regards for people and local units of government.
- The following are excerpts from The Mining Journal, the local newspaper:

#### **Headline: CR 595 project killed**

Date: January 4, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/583130/CR-595-project-killed.html>

Author: John Pepin, Staff Writer

## Quotes:

- Road Commission Engineer-Manager Jim Iwanicki said the U.S. Environmental Protection Agency's refusal to remove objections to the project prevented the DEQ from issuing a permit that had the required Federal backing.

"It's a shame that the EPA has killed a good project," Iwanicki said. "The EPA's action is going to affect a lot of lives in Marquette County and the road commission believes it will affect them negatively."

- Iwanicki said the EPA "stonewalled" road commission efforts to comply with the agency's request in several phone conversations held with the road commission, EPA and DEQ in December.

"The EPA moved the bar every time we got close," Iwanicki said. "Throughout the whole process, it's been an ever-changing target."

The road commission responded on Dec. 27 to the EPA's requirements for removing its remaining objections, but Iwanicki said it became clear before Christmas; the Federal agency would not be satisfied.

- Iwanicki said the agency never liked the project from the start and for months worked to change expectations and requirements. He said Thursday's official finality to the project was expected and was "just the bow on the package."

"They played a good game of bureaucratic nonsense," Iwanicki said of the EPA.

**Headline: City wants joint meeting on truck traffic**

Date: March 12, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/585271/City-wants-joint-meeting-on-truck-traffic.html>

Author: Kyle Whiney—Journal Staff Writer

## Quotes:

- In the wake of the Michigan Department of Environmental Quality's decision to not permit the proposed Marquette County Road 595, local groups have been working to determine the route mining company Rio Tinto will use to transport ore from its Eagle Mine to the Humboldt Mill.
- The city commission also charged its special legal counsel with determining how best to communicate with the U.S. Environmental Protection Agency concerning Rio Tinto traffic on city streets.

In an August letter to the EPA, the city voiced concerns related to the prospect of mine trucks traveling through Marquette.

At that time, according to the letter, the city had no plans "for expanding local infrastructure to support increased heavy truck traffic." The alternate route would "create substantial negative social impacts, as well as drastically undermine decades of transitional economic development and tens of millions of dollars of investment supporting Marquette's current economy."

**Editorial: Finding new truck route worth the effort**

Date: March 14, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/585322/Finding-new-truck-route-worth-the-effort.html>

Author: Mining Journal Editorial

## Quotes:

- Concerns over the increase in truck traffic from the mine, which is expected to begin production in 2014, became more significant when a plan to construct a new north-south haul road—Marquette County Road 595—through the woods from the mine to the mill was scrapped.

Rio Tinto now plans to use its originally intended route, which involves trucking the ore from Eagle Mine on County Road AAA to CR 510, then on CR 510 to CR 550, south on CR 550 to the City of Marquette, then on Wright Street to U.S. 41 and finally west on U.S. 41 to the mill. While we maintain our stance that the CR 595 option was by far the best route, particularly for public safety reasons, it's a good idea to have the county, city and township seriously explore an alternative to driving the trucks through residential areas and on busy roads.

Mr. LAMBORN. Mr. Iwanicki, thank you for your testimony. We will now hear from Ms. Batulis.

**STATEMENT OF RUTHE BATULIS, PRESIDENT, DAKOTA COUNTY REGIONAL CHAMBER OF COMMERCE, PRESIDENT, MINNESOTA CONFERENCE OF CHAMBER EXECUTIVES**

Ms. BATULIS. Mr. Chair and Members, thank you for having us here today. I want to bring greetings from Minnesota, where yesterday it was minus 7 degrees. So we are glad to be here. My name is Ruthe Batulis. I represent a statewide association of chamber of commerce executives, and I am President of Dakota County Regional Chamber of Commerce.

As you know, business and labor do not always agree. But when it comes to job creation, and specifically the jobs that come from the mining of strategic metals, we could not agree more. You will hear from my friend, Harry Melander next to me, from the Building and Trades Association in a minute. We are tremendously excited about the Jobs for Minnesotans Coalition, and what strategic metal mining can do for the entire State of Minnesota and our country.

You have heard previous testimony about the jobs that are created, ancillary jobs that are created from the strategic metal mining and the production of materials and entrepreneurs that can really drive creation of jobs throughout the State. These strategic metals such as nickel and copper are used in the green economy in electric cars, wind turbines, and, of course smart phones and other high-tech equipment.

Imagine Minnesota's high-tech manufacturing industry, where contractors and suppliers have the opportunity to creatively utilize those strategic metals mined right in Minnesota. That is on the horizon.

In Minnesota, we have some of the best schools in the country. We know that providing for a good education and a good investment isn't cheap. Resources for our schools are constantly an issue of public debate and discussion. Our schools will gain tremendously from an emerging strategic metals industry in Minnesota because royalties generated from the projects directly benefit our schools. In Minnesota, these royalties from mining go directly into what our lawmakers call the School Trust Fund. At this time about \$5 million a year goes into the Trust Fund. That is \$26 for every student. Imagine the impact of \$2.5 billion going into the school district.

The addition of strategic metal mining in Minnesota will add to this existing fund. Businesses and construction unions alike need skilled workers. And, as such, the education and workforce development issues are paramount. The prospect of this kind of investment is thrilling.

Our members are always seeking ways to make their processes more efficient and effective to serve their customers. In fact, you are all working together to make the permitting process more efficient and effective, and it is a great sign for all of us, this renewed commitment and job creation.

We are blessed in Minnesota that any large-scale projects and the jobs that follow come with the equivalent of the Good Housekeeping Seal of Approval. Our environmental laws are among the

most stringent in the world, ensuring that our precious waters are protected from the outset through our permitting processes. Our citizens can always rest assured that permitting projects have undergone responsible and extensive scrutiny by the Department of Natural Resources, the Minnesota Pollution Control Agency and other State agencies.

Minnesotans have just recently worked across party lines to ensure responsible scrutiny is done in an effective manner that allows permit seekers to have certainty and investors to continue to seek opportunities in Minnesota and the United States.

I applaud you for all that you do here in Washington, and appreciate what you are about to accomplish to foster job creation in Minnesota and the United States.

Thank you for hearing us here today, and I can answer any questions that you might have.

[The prepared statement of Ms. Batulis follows:]

PREPARED STATEMENT OF RUTHE BATULIS, PRESIDENT OF THE MINNESOTA  
CONFERENCE OF CHAMBER EXECUTIVES

Mr. Chairman, Members of the Committee, good morning, my name is Ruthe Batulis and I am the President of the Dakota County Regional Chamber of Commerce, also in Minnesota. We are a regional chamber of commerce in the southeast suburbs of the Twin Cities. We proudly serve the cities of Eagan, Farmington, Lilydale, Mendota Heights, Mendota, Rosemount, Sunfish Lake, and West St. Paul. And we're proud to contribute to the outstanding quality of life our businesses enjoy every day. I also currently serve as President of the Minnesota Conference of Chamber Executives—the professional association for chamber leaders across our State.

We are also tremendously excited about the Jobs for Minnesotans Coalition, and what strategic metals mining means for the *entire* State of Minnesota and the country.

As you know—business and labor don't always agree, but when it comes to job creation, and specifically the jobs that will come with the mining of strategic metals in Northern Minnesota, we couldn't agree more.

Minnesota is fortunate to have an abundance of natural resources. We are literally "by nature" an agricultural state, a timber State and a mining State.

What people don't necessarily think of when it comes to our natural resources—and for us what is very exciting—is that thousands of associated and spinoff jobs are created as a result of our natural resources industry. When the strategic metals mines start producing materials, entrepreneurs and workers across Minnesota and throughout the Twin Cities will have new opportunities in all kinds of industries. These strategic metals are used in electric car batteries, smart phones, wind turbines and other high tech equipment. The sky is the limit.

Imagine Minnesota's medical device manufacturing industry, or Minnesota's many national defense contractors and suppliers with the opportunity to creatively utilize strategic metals mined right here in Minnesota. That is on the horizon.

Furthermore, Minnesota (especially Dakota County) has some of the best schools in the country. Providing for schools is a good investment, but it isn't cheap! Resources for our schools are constantly an issue of public discussion and debate. Our schools will gain tremendously from an emerging strategic metals industry in Minnesota, because of the royalties generated from the projects that directly benefit our schools. In Minnesota, royalties from mining go directly into what our law makers call our "school trust fund." The addition of Strategic Metals Mining in Minnesota will add to this existing fund. Businesses and construction unions alike need skilled workers for the future, and as such, education and workforce development issues are paramount. The prospect of this kind of new investment is thrilling.

My members are always seeking ways to make their processes more efficient and effective to serve their customers. The fact that you are all working together to make the permitting process more efficient and effective is a wonderful sign to us of a renewed commitment to my members and businesses in general.

We are blessed in Minnesota that any large-scale projects and the jobs that follow come with the equivalent of "Good Housekeeping Seal of Approval." Our environmental laws are among the most stringent in the world, ensuring that our precious waters are protected from the outset through our thorough permitting process. Our

citizens can always rest assured that permitted projects have undergone responsible and extensive scrutiny by the Department of Natural Resources, the Minnesota Pollution Control Agency and other State agencies.

As my friend Harry said during his testimony, Minnesotans just recently worked across party lines to ensure this responsible scrutiny is done in an efficient manner so that permit seekers have certainty and investors will continue to seek opportunities in Minnesota and the United States.

I applaud you all for working to do the same here in Washington, and appreciate what you are about to accomplish to help foster job creation in Minnesota and across the country.

I am happy to answer any questions you may have.

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Mr. LAMBORN. Thank you for your testimony and for being here. And we will now hear from Mr. Melander.

**STATEMENT OF HARRY MELANDER, PRESIDENT, MINNESOTA BUILDING AND CONSTRUCTION TRADES COUNCIL**

Mr. MELANDER. Chair, Committee members, my name is Harry Melander, and I work as the President of the Minnesota Building and Construction Trades Council, an organization that represents over 50,000 unionized workers throughout the State of Minnesota, and also the Co-Chair of Jobs for Minnesota, with David Olson, the President of the Minnesota Chamber of Commerce, and working very closely with Ruthe on this issue.

David, Ruthe, and I, along with other business, labor, local bodies of government, professional associations, and the heart and backbone of our State, small businesses, and its employers, form this diverse group of Minnesotans to focus on jobs, jobs that will be created in the development of strategic metals in our State.

Minnesota has a long history of iron ore mining for well over 100 years, and is on the verge of its next generation of mining metals. These metals, copper, nickel, and others, are used in the production, as indicated earlier, in smart and green products that we all use today. These metals will also be used in products yet to be designed that will save lives and also create new jobs for North-eastern Minnesota that will last for generations, revitalizing an industry and its region.

Minnesota has one of the largest untapped sources of these metals in the world. If allowed to move permitting forward, we will have the second-largest deposit of nickel, globally. We think that is important for our Nation's independence and its security.

Jobs for Minnesota is here today encouraging you and others to use what we call "The Minnesota Model." As indicated in our written comments, 2 years ago, with a Republican-led House and Senate and a Democratic Governor, we were able to create a law that limited the time applicants have to get permits. In the report submitted to you today, that good work by different interests has benefited Minnesota, limiting the time it takes to issue permits in our State.

What you are doing here today will have a positive effect on the permitting process on a national level. Members, we can no longer look to others for materials that are already limited, globally. We believe what Minnesota has done is only a start. The work you do today in efficient permitting will make our country prosperous and allow us to continue to grow technology with an abundant source of metals used in advancing technologies around the world.

You have an opportunity to create and expedite always safe means of permitting on our limited resources. Please do not lose sight of this opportunity. If we can do it in Minnesota, others can do that. Thousands of Minnesotans and others in our country are waiting for jobs.

Thank you. And if there is any questions, I would be more than happy to answer those.

[The prepared statement of Mr. Melander follows:]

PREPARED STATEMENT OF HARRY MELANDER, PRESIDENT, MINNESOTA BUILDING AND CONSTRUCTION TRADES COUNCIL

Mr. Chairman, Members of the Committee, good morning, my name is Harry Melander and I am the President of the Minnesota Building and Construction Trades Council. We are the advocate and voice for unionized construction workers in Minnesota. Fifty thousand members strong, we have provided leadership and advocacy for construction workers in Minnesota for 60 years.

On behalf of my members, I have recently teamed up with David Olson, the President of the Minnesota Chamber of Commerce, to form the Jobs for Minnesotans Coalition.

Jobs for Minnesotans is a growing coalition of labor organizations, businesses and business associations, middle class workers, local governments, educators and other supporters of job creation in the State of Minnesota. The initial focus of this diverse coalition is to champion the development of critical and strategic metals (copper, nickel, platinum, palladium and gold) mining in Minnesota and provide information about the direct and ancillary job creation that strategic metals mining will produce for the state, once permitted to begin operations.

Why this Coalition?

Minnesota is on the verge of becoming one of the most significant producers of strategic metals in the world. Right now, the United States has no domestic source of nickel, a key element in many products used for our national security. If those seeking permits in Minnesota are able to proceed, Minnesota will become the 2nd largest producer of nickel globally. This is critically important.

For my members, a recent University of Minnesota Duluth study shows that strategic metals projects could mean the potential for 1,300 jobs in Minnesota. A job surge of this magnitude in Minnesota's Iron Range would have a significant, lasting impact on our State's, and the region's economy. By moving forward to safely extract these minerals from one of the world's largest known, untapped deposits in what is known as Minnesota's "Duluth Complex" means jobs for generations for hard working Minnesotans.

The Minnesota Department of Natural Resources is charged with issuing the permits to mine. Just 2 years ago, labor and business, our Democratic governor and Republican legislature stood together to pass landmark permit efficiency legislation, much like that which you are considering here at a Federal level. There was no discussion of who was going to get a political win. It was about getting Minnesotans back to work; together—and doing it in an environmentally sensitive way.

In fact, during the last Legislature, streamlining permits in Minnesota was House File 1. And Governor Dayton, early in that session, issued similar executive orders while the legislature passed this landmark legislation which he then signed into law.

Both branches of government are actively working together again this legislative session to shorten the permitting time. In fact it was a key policy point made by Governor Dayton's Chief of Staff at the Minnesota Chamber of Commerce's legislative banquet earlier this year.

My point here is that an efficient permitting process can be something that policy-makers of all political stripes can and should stand together to support. I am enclosing for the record the recent February 2013 report by the Minnesota Pollution Control Agency which outlines the successes of efficient environmental permitting in Minnesota today, due to the laws we passed.

What you are working on here is a natural extension of what we did, working together in Minnesota. On behalf of the 50,000 men and women I represent through the Building and Construction Trades Council, and the growing coalition I am leading with my State chamber counterpart, I'd ask that you too stand together for jobs and pass significant permitting efficiency legislation here in Washington.

I am happy to answer any questions you may have.

**Note:** The report entitled, “Environmental Permitting: MPCA’s Semiannual Permitting Efficiency Report” Minnesota Pollution Control Agency, (February 1, 2013) (<http://www.pca.state.mn.us/index.php/view-document.html?gid=18982>) has been retained in the Committee’s official files. Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4194. This report is available in alternative formats upon request, and online at [www.pca.state.mn.us](http://www.pca.state.mn.us). Document number: Irp–gen–10sy13.

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## JOBS FOR MINNESOTANS

### MINNESOTA—PERMITTING EFFICIENCY LAW

During the 2011–2012 biennium, Democratic Governor Mark Dayton and the Republican-controlled Legislature worked on a bi-partisan basis to enact the permitting efficiency law. The bills were in response to concerns expressed about the overall length and uncertainty associated with regulatory processes, including both environmental review and permitting.

Minnesota House File 1/Senate File 42 (2011)  
Minnesota House File 2095/Senate File 1567 (2012)

- Established a 150-day goal for the Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Natural Resources (DNR) to issue permits and requires a report on applications not meeting that goal.
- Allows a project proposer the option to prepare the draft Environmental Impact Statement (EIS), rather than a regulated government unit such as a State agency or local government.
- Requires that final decisions on permits be made within 30 days—rather than 90 days—of the final approval of an EIS.
- Eliminated district court review of environmental review decisions and sends all appeals directly to the Court of Appeals.
- Requires that when the MPCA adopts standards that exceed federal standards, the MPCA must document that federal standards are not protective enough.
- Allows a permit applicant to begin new construction or an extension before a national pollutant discharge elimination system (NPDES) or State disposal system (SDS) permit is issued by the MPCA, unless Federal law prohibits the action.
- Established a permits coordinator required to assist permit applicants.
- Allowed DNR permit holders who have a permit or have applied for a permit to continue to operate during a suspension of government services as long as they abide by all rules and regulations in the permit.

On February 1, 2013 the MPCA released its semiannual report to the Legislature. In its findings, the MPCA acknowledged that full implementation would take additional time but that they are pleased with the overall results. Most notably the MPCA continues issuing more than 90 percent of priority (construction) permits within the 150-day goal while ensuring the protection of human health and the environment.

Since the enactment of the Permitting Efficiency Law, the MPCA has initiated a number of improvement endeavors:

- Improving communication around permitting metrics through the Agency electronic dashboard.
- Standardizing permitting processes across media and programs to minimize business and technology system duplication and establish a unified agency-approach, where possible, to permit delivery.
- Developing new technology tools to improve data integration and utilization of data, and system efficiency.

\* The MPCA Report can be accessed here: <http://www.pca.state.mn.us/index.php/view-document.html?gid=18982>.

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Mr. LAMBORN. Thank you for your testimony.  
We will now hear from Ms. Krill.

**STATEMENT OF JENNIFER KRILL, EXECUTIVE DIRECTOR,  
EARTHWORKS**

Ms. KRILL. Thank you. Mr. Chairman, Ranking Member Holt, and members of the Subcommittee, for giving me the opportunity to testify here today. My name is Jennifer Krill, and I am the Executive Director of Earthworks. We are a nonprofit organization dedicated to protecting communities and the environment from the destructive impacts of mineral and energy development.

Earthworks opposes H.R. 761, the National Strategic and Critical Minerals Production Act of 2013. The authors and advocates of this legislation, the mining industry lobby and its champions, would have you believe that mining companies in the United States are stifled by the current regulatory system. The truth is the mining lobby's vision of a mining-hostile United States is, in our view, pure fantasy. Our stable democracy, our courts that enforce contracts, and an orderly and reliable process for public input in permitting decisions make this country one of the best places for mining investment.

Hard-rock mining companies in the United States also enjoy a myriad of subsidies and loopholes that create an extremely friendly regulatory environment.

First, they have the 1872 Mining Law, which was mentioned earlier today, a law that allows mining companies, foreign and domestic, to take gold, copper, silver, uranium, and any other mineral from public lands for free. The Forest Service has repeatedly said that because of this antiquated law, they cannot deny mine proposals on our National Forests. While operating under this 140-year-old law, mining companies are also given free reign to pollute our water, thanks to two Clean Water Act loopholes that allow mining waste to be dumped directly into streams, rivers, lakes, and wetlands. The metals mining industry is the single largest source of toxic pollution in this country.

An extremely favorable tax code rounds out the fantastic regulatory environment for hard-rock mining. The percentage depletion allowance allows a company to deduct a fixed percentage from their gross income, which costs taxpayers over \$500 million per year.

In the case of minerals mined on public lands, mining companies, because of the percentage depletion allowance, sometimes get paid by the government to mine minerals that the public gave them for free.

According to the Frasier Institute, a center-right Canadian think tank which annually surveys mining companies around the world, three U.S. States, Nevada, Utah, and Wyoming, are ranked in the top 10 highest jurisdiction for investment, according to the opinions of mining company managers and executives from around the world.

Environmental review does not discourage mining investment in the United States. We know this because the Frasier survey asked that question of these global companies, and the answer was no.

This is not an issue of too many lawyers or regulators. It is an economics issue. Mining occurs where minerals are, and where the target mineral price makes the process economically viable. H.R. 761 is a bill written for a problem that does not exist. This legislation would negatively impact the environment and our public lands

and the communities surrounding them, while doing little to give mining companies the social license to operate that they often claim that they desire.

By seriously impairing the public's ability to review and provide input on the uses of its lands, this legislation simply adds another special favor to an overly blessed industry. What we believe is really needed is a concerted mining industry effort to work with communities to build more responsible mines, to reform outdated policies, and to play by the rules with which other industries already profitably comply.

I would like to take my last minute and turn to H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013. This is a bill that is also opposed by Earthworks. A foreign-owned mining company is planning a massive mine in southeast Arizona. Because the area is partially protected and would be destroyed by the mining process, this company would like to privatize 2,600 acres of public lands.

As you will hear from the Chairman of the San Carlos Apache Tribe later today, the Oak Flat Campground, which has been protected since 1955 under the Eisenhower Administration, is a sacred area to Tribes and is used often for religious purposes. In addition to the destruction of this sacred site, this land exchange would end public access to some of the most spectacular outdoor recreation and wildlife viewing areas in Arizona.

This bill would sacrifice the interests of Arizonans and all Americans in order to enrich foreign shareholders. We strongly urge you to protect these public lands for future use. Thank you.

[The prepared statement of Ms. Krill follows:]

PREPARED STATEMENT OF JENNIFER KRILL, EXECUTIVE DIRECTOR,  
EARTHWORKS

**H.R. 761—“National Strategic and Critical Minerals Production Act of 2013”**

Thank you Mr. Chairman for the opportunity to testify before your Committee in opposition to H.R. 761, the National Strategic and Critical Minerals Production Act of 2013. My name is Jennifer Krill, and I am the Executive Director of Earthworks. We are a non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral and energy development. We work closely with a broad coalition of local governments, Native Americans, citizen groups and other conservation organizations to improve the policies governing hardrock mining and oil and gas development.

The authors and advocates of H.R. 761—the mining industry lobby and its champions—would have you believe that mining companies in the United States are stifled by the current regulatory system. They describe a country where mineral development is stymied by Federal rules that divert companies to spend their mineral investment dollars elsewhere. But the mining lobby's vision of a mining-hostile United States is pure fantasy.

In reality, hardrock mining companies in the United States enjoy subsidies and loopholes that create an extremely friendly regulatory environment for them.

It starts with the 1872 Mining Law—a law that allows mining companies, foreign and domestic, to take gold, copper, silver, uranium and any critical or strategic minerals from public lands for free, without paying a royalty to the taxpayer. Years of case law define hardrock mining as the highest and best use of public lands; Federal land managers now give hardrock mineral extraction precedence over hunting, fishing, sacred sites and all other uses of public lands. The Forest Service has repeatedly said that because of this antiquated law, they cannot deny mine proposals on our national forests.

In addition to royalty-free mining, the 1872 Mining Law collects no reclamation fee from the industry. The EPA estimates that the clean up cost of these hardrock abandoned mine sites is \$50 billion—all of which is currently being paid for by the taxpayer.

While operating under this 140-year-old law, mining companies are also given free rein to pollute our waters thanks to two Clean Water Act loopholes that allow mining waste to be dumped directly into streams, rivers, lakes and wetlands. The metals mining industry is the single largest source of toxic waste and one of the most environmentally destructive industries in the country. In fact, the Environmental Protection Agency estimates hardrock mining pollutes 40 percent of the headwaters of watersheds in the western United States.

An extremely favorable tax code rounds out the regulatory fantasy for hardrock mining companies in the United States. The Percentage Depletion Allowance (PDA) permits a company to deduct a fixed percentage from their gross income according to the mineral extracted, ranging from 22 percent for uranium to 15 percent for silver and other hardrock minerals. In some cases this deduction actually exceeds costs. The result is a situation where mining companies not only pay virtually nothing for the deposit royalty for the public's minerals, but also get paid by the government to mine public minerals they were freely given under the PDA. This subsidy costs taxpayers over \$500 million every year.

This trifecta of an outdated mining law, the ability to dump mine waste directly into fresh water and enormous tax breaks for the industry makes hardrock mining unique in this country, and renders H.R. 761 unnecessary and absurd.

The United States of America is one of the world's best places for mining investment. We have stable Democratic institutions, courts that enforce contracts, favorable tax and environmental policy, and an orderly and reliable process for public input in permitting decisions.

Just ask the mining companies. According to the Fraser Institute—a center-right Canadian think tank who annually survey approximately 700 mining, exploration, development companies around the world—Nevada, Utah, and Wyoming, rank in the top 10 most attractive jurisdictions for mineral exploration investment, according to mining company managers and executives surveyed.

#### THE NEVADA EXAMPLE

According to the University of Nevada Reno, more than 80 percent of Nevada's surface area is public land managed by the Federal Government in trust for all Americans by the Bureau of Land Management and the U.S. Forest Service. Consequently, Federal law—and NEPA in particular—applies to the vast majority of Nevada.

As a result, if permitting delays imposed on public lands were so burdensome, one would expect that Nevada would be unattractive relative to other potential mineral investment destinations.

The opposite is true.

Consider again the Fraser Institute survey and its most important criteria included in the composition its "Policy Potential Index" (i.e. policy attractiveness):

"The Policy Potential Index is a composite index that measures the effects on exploration of government policies including uncertainty concerning the administration, interpretation, and enforcement of existing regulations; environmental regulations; regulatory duplication and inconsistencies; taxation; uncertainty concerning native land claims and protected areas; infrastructure; socioeconomic agreements; political stability; labor issues; geological database; and security."

Note what is absent from that ranking: mineral potential. The ranking is based on policies, and things that result from policies, alone.

In the most recent survey (2012–2013 edition), Nevada—in terms of the aggregate effect of the various policies that apply to mining within the State—is the 7th most attractive mineral investment destination in the world. Wyoming, another State known for its abundance of public lands, ranks 5th. Utah, another public lands State, follows close behind.

The aforementioned Policy Potential Index includes areas in which Nevada would score well but is conceivably not directly attributable to regulation (e.g. infrastructure). Do environmental regulation and permitting drag down mineral investment in Nevada and the rest of public lands in the United States?

The answer is "no". In fact, the Fraser Survey also includes a ranking of the relative attractiveness of regions' "current mineral potential with no regulations in place and assuming [only] industry best practices".

If the claim that existing regulations actually restrict mineral investment in Nevada and Federal public lands around the nation were true—then one would expect

survey participants to find the absence of regulations to increase Nevada's mineral investment appeal.

Instead, the opposite is true. According to the Fraser Survey, when mining industry insiders were asked to assume no government regulations in a jurisdiction, Nevada's mineral investment attractiveness ranking in the 2012–13 survey remains unchanged. In past years, it actually dropped.

Furthermore, the 2012–13 Fraser Survey directly asks survey respondents whether a jurisdiction's environmental regulations deter investment, encourage investment, or have no effect. 69 percent of respondents said environmental rules in Nevada—80 percent of whose area is subject to Federal oversight—either encourage mineral investment or do not deter it.

Taken as a whole, the Fraser Survey is a direct refutation for the need for this bill. In fact, the only evidence found in the survey suggest that existing oversight—including Federal policies like NEPA—is a relative competitive advantage, not disadvantage.

#### DEFINITION OF STRATEGIC MINERALS

The bill broadly defines critical and strategic minerals as those that “support domestic manufacturing, agriculture, housing, telecommunications, healthcare, and transportation infrastructure.” In other words, all minerals including gold, the most valuable mineral mined in Nevada.

Gold is particularly inappropriate for designation as a critical or strategic mineral for the simple reason that the majority of it in the United States—54 percent in 2011 according to the USGS—is used in jewelry fabrication. 54 percent is actually quite low in terms of jewelry's historic percentage of U.S. gold demand. As recently as 2008, it was 84 percent.

Since jewelry fabrication is neither a critical nor strategic use for gold, then no critical or strategic purpose is served by exempting its mining from our most basic environmental protections like NEPA review.

#### THE IMPORTANCE OF PUBLIC PARTICIPATION, PUBLIC LANDS, AND ENVIRONMENTAL PROTECTION

When the National Environmental Policy Act (NEPA) was enacted in 1969 by an overwhelming bi-partisan majority and signed by President Richard Nixon, the goal of the legislation was to create a process by which the environmental impacts of large industrial projects could be explored, weighed and eventually mitigated.

NEPA makes sure that in addition to government and industry input, everyday citizens can take part in the development and oversight of projects that affect our social, economic, and environmental health. The NEPA process provides citizens an opportunity to learn about proposed Federal actions and offers agencies an opportunity to receive valuable input from the public.

The average time it takes BLM to permit a large mine is 4 years—not 10, not even 7. When a particular permit takes longer, the reason either has to do with State processes or, more likely, delays created by the mining company themselves—sometime for perfectly legitimate reasons like changes in market conditions.

Under current law, agencies must fully evaluate the environmental impacts of actions that may significantly affect the environment. Though, it is important to point out that the law does not require that the decision-making agency choose the most environmentally-friendly option, it only requires that they weigh all the options.

Furthermore, the NEPA process is the public's window on how a mining operator plans to comply with environmental law. Without NEPA, the public is forced to rely on the mining company, and the permitting agency, to verify that mining operator's plan of operations can realistically do so.

While such faith is touching, the facts indicate it is sadly unfounded.

In a unprecedented 2008 research paper commissioned by Earthworks, conducted by a member of the National Academies of Science Earth Science Board, and reviewed by regulators and industry, mining industry promises of environmental compliance for “major” mines undergoing full NEPA review were compared against what actually happened at the mines. The most disappointing finding: 100 percent of mines in the study predicted environmental compliance; 75 percent of them did not.

The only reason we know of industry (and permitting agencies') failure to adequately govern mining operations: NEPA review. If not for NEPA, citizens would not know how badly the mining industry performs, nor be able to use this information to pressure permitting agencies to improve its behavior.

This legislation would run roughshod over the values of transparency and public participation that are at the heart of NEPA—essentially taking public review out of potential uses of our public lands.

While mining on public lands helps stimulate economic activity, protection of those lands is also vital to the western economy. Last year, over 100 economists including 3 Nobel laureates, sent a letter to President Obama stressing the importance of the protection of our public lands to our national economy. They said:

“The rivers, lakes, canyons, and mountains found on public lands serve as a unique and compelling backdrop that has helped to transform the western economy from a dependence on resource extractive industries to growth from in-migration, tourism, and modern economy sectors such as finance, engineering, software development, insurance, and health care.”

They also note, “increasingly, entrepreneurs are basing their business location decisions on the quality of life in an area. Businesses are recruiting talented employees by promoting access to beautiful, nearby public lands . . . Together with investment in education and access to markets, studies have repeatedly shown that protected public lands are significant contributors to economic growth.”

Section 103 reprioritizes the entire field of public land and environmental law regarding mineral operations, making “development of the mineral resource” the “priority of the lead agency.”

Under current law, the Federal land agencies are subject to a variety of congressional mandates that attempt to balance mineral production with the protection of human health, water and air quality, wildlife, etc. For example, if a mining project may adversely affect a threatened or endangered species, then as the Supreme Court has held pursuant to the Endangered Species Act, “Congress intended endangered species to be afforded the highest of priorities.” *TVA v. Hill*, 437 U.S. 153 (1978). If the ESA is not applicable, then other congressional policies apply, such as the prevention of “unnecessary or undue degradation” to public land under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1732(b). See *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 33 (D.D.C. 2003) (discussing competing congressional mandates for mining operations on Interior Department lands).

H.R. 761 essentially eliminates these long-standing congressional mandates, and subjects the BLM and Forest Service to a new “maximize mineral development” standard. Although Section 103 states that the agency must “mitigate environmental impacts,” that vague language does little to protect environmental values in light of the new overarching development standard. For example, under current environmental law, “mitigation” can mean simply “minimizing impacts” or “reducing the impact over time.” 40 CFR 1508.20. Coupled with the “maximize development” priority, as well as the requirement that the agencies ensure that “more of the mineral resource can be brought to the market place,” an agency’s “mitigation” authority is thus severely curtailed.

#### EQUAL ACCESS TO JUSTICE ACT

H.R. 761 also allows regulators to exempt mining projects from the Equal Access to Justice Act (EAJA). In many cases, affected communities cannot afford to hire a lawyer, much less the litany of scientific and technical experts needed to mount a serious challenge to a major multinational mining corporation. The practical effect of this provision would leave many communities unable to sue for the contamination of their lands and waters.

#### CONCLUSION

In sum, environmental reviews and legal challenges do not substantially affect mining investment, employment, or the reserves of certain critical minerals. The market has long ago priced in these costs and the result is that many of our Western States are among the best places for mineral investment and have substantially lower unemployment rates than surrounding communities. This is not an issue of too many lawyers or regulators; it’s an economics issue. Mining occurs where the target mineral price makes the process economically viable.

NEPA has been in place for more than 40 years. Federal Government agencies and the mining companies they regulate understand the process well and value the market certainty NEPA creates and investors crave. Dismantling this well-established process could undermine the purported purpose of this bill of encouraging investment and securing more critical mineral resources.

The consequences of H.R. 761 would negatively impact the environment of publicly owned lands within mining States, and the communities surrounding them, while doing little to give mining companies the social license to operate that they

often claim they desire. By seriously impairing the public's ability to review and provide input on the uses of its lands, this legislation simply adds another special favor to an already overly blessed industry.

H.R. 761 is a bill in search of a problem that does not exist. What is really needed is a concerted mining industry effort to work with communities to build more responsible mines, to reform the outdated policies that haunt them, and to play by the rules with which other industries profitably, comply.

**H.R. 687—“Southeast Arizona Land Exchange and Conservation Act of 2013”**

On behalf of Earthworks and the thousands of members we represent in Arizona and nationwide, we also urge you to oppose H.R. 687 the Southeastern Arizona Land Exchange and Conservation Act of 2013 (the “land exchange bill”) that would, in part, revoke a mining prohibition on 760 acres of public lands in the Tonto National Forest in the area of the Oak Flat Campground 60 miles east of Phoenix.

Resolution Copper Company (RCC), a foreign-owned mining company, is planning a massive block-cave mine and seeks to acquire Oak Flat Campground and the surrounding public lands 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, forever off limits to many 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. And massive surface subsidence will leave a permanent scar on the landscape, eliminating the possibility of a diversified economy for the region.

The Eisenhower Administration recognized the Oak Flat Campground as an important recreational resource in 1955, specifically placing it off limits to future mining activity. Oak Flat should remain under Federal jurisdiction for its continued protection. With tens-of-thousands of visitors each year, Oak Flat contains a world-class natural resource for birding, bouldering, camping, hiking, hunting, picnicking, rock climbing and other recreational uses. On the eastern border lies Gaan Canyon, one of the crown jewels of Arizona's State trust lands with some of the finest remaining riparian habitat in the State.

Oak Flat Campground and the surrounding area has long been an important cultural site for Western Apaches. The Tonto National Forest recognized at least a dozen archeological sites in and around Oak Flat and traditional Apache continue to use the Campground area for performing religious and cultural rites. Privatizing Oak Flat and destroying its surface would forever eliminate Apache traditional practices in the area, since they would be unable to access the site.

Transfer of part of our national forests to a multinational copper mining company will almost certainly deplete and contaminate water resources and nearby watersheds. Surface water, tributary water, and aquifers are located where the copper ore body resides. Excavating this ore risks contamination. Many billions of gallons of water are necessary to carry migrating slurry to and from the ore body over the decades long life of the mine. Altering the surface and subsurface geological structure of this area via the impending subsidence will forever change the natural state of aquifers and drainage of watersheds through out the region.

Section 4(j) of H.R. 687 provides sham compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). This is because the environmental impact statement (EIS) occurs only after privatizing the land. By that point, the Government loses the opportunity to act on reasonable alternatives, and the mine becomes a forgone conclusion regardless of the potential impacts the EIS finds.

In addition, as soon as this bill becomes law, the land becomes available for mining activities. Section 4(h) mandates that only laws pertaining to mining on private land will apply. The Secretary will also issue a special use permit for exploration of Oak Flat within 30 days of Resolution Copper's request (Section 4(f)). Only after Resolution Copper has built mine shafts, adits, tunnels, and tailings deposition areas will the Secretary then receive a mine plan of operations.

Finally, 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 enrich foreign shareholders. It would destroy sacred sites for short terms gains. Thirty years from now—when the mining jobs once again leave—the region will be much worse off because the landscape will be ruined. 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.

**H.R. 957—American Soda Ash Competitiveness Act**

Earthworks also respectfully opposes H.R. 957, The American Soda Ash Competitiveness Act. The experience gained from the last time Congress lowered the royalty on soda ash and related sodium minerals teaches us that this industry remains competitive regardless of the royalty rate. The U.S. Department of Interior's Report to Congress on the Soda Ash Royalty Reduction Act of 2006 makes this clear.

Despite cutting the royalty from a weighted average of 5.6 percent to 2 percent, the soda ash industry experienced almost no change in the volume of production, leases, or sales. Overall capital investment since FY 2006 has fallen. Domestic employment in the soda ash industry has similarly dropped since FY 2006. While industry revenues increased significantly, the Department of the Interior attributes this to a spike in prices coupled with a sharp decline in production costs—due to historically low prices of the natural gas used to power these operations.

Instead, this bill amounts to an unnecessary extension of a taxpayer giveaway first granted in 2006. Without the royalty reduction, DOI estimates States alone would have received \$62.1 million more from FY 2007–2010. They estimate total lost royalty revenues between FY 2007–2011 at more than \$150 million. Additionally, BLM regulation (43 CFR 3513) provides an administrative process through which Federal sodium lessees may individually seek royalty rate reductions. Creating an industry wide reduction only encourages a trend toward shifting soda ash extraction from State and private lands to Federal lands just to take advantage of the lower royalty. The end result is simply lower government revenues, without the benefits of more jobs or greater global competitiveness.

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Mr. LAMBORN. Thank you. And thank you all for being here and providing testimony. We will now have a round of questions for the witnesses from the members of the Committee. And I will start by asking a question of Mr. Iwanicki.

Later today on another panel we are going to hear from BLM and others that requiring agencies, including the EPA, to better coordinate on NEPA documents and mine permits is unnecessary and will somehow hinder their ability to follow their multiple-use mandate. How would you respond to that?

Mr. IWANICKI. I am not quite sure of that question. I know for us, with our project with County Road 595, we had all private funds that were being used to build this county road. And, therefore, we did not have to go through the Federal process. And we did follow a lot of those guidelines in doing our permit process with our Department of Environmental Quality and with the EPA, but we did not follow all the rules of the NEPA process through our project.

Mr. LAMBORN. OK, thank you. And I am going to ask a question now of Ms. Batulis and Mr. Melander. What advice do you have for us in Washington to try and streamline the permitting and NEPA processes so it doesn't take 7 to 10 years, or even more, to permit a project?

Mr. MELANDER. Want to go? Me?

Ms. BATULIS. You go.

Mr. MELANDER. Chair, Committee members, a response to that question is that I think looking at what the State of Minnesota, as indicated in my comments, what we call "The Minnesota Model" is something to look at. We have a State that is beautiful, other than being cold, as Ruthe had indicated, and we love our State. But we have opportunities here that we need to take advantage of in a safe way. But using the model that Minnesota has developed, I think, is a good start.

Mr. LAMBORN. Ms. Batulis?

Ms. BATULIS. I would agree with Harry. What really happened in Minnesota was both sides of the aisle worked together to find a common ground that would work for everyone. And it was about streamlining the process so that we can create jobs. It is all about jobs now. And we really saw some extraordinary work done across the aisle that we are all very proud of. So that would be our suggestion.

Mr. LAMBORN. OK. Thank you. And I would like to note at this time that both Michigan and Minnesota—Michigan is represented very well by Representative Benishek, who is here on the Committee—are home to, in the case of Minnesota, the 3rd largest producer of non-fuel minerals, and Michigan, the 10th largest producer of non-fuel minerals in the country. So, there are significant deposits of strategic and critical minerals.

Ms. Krill, I would like to ask you a question real quick here. Is there any new proposed mine in the United States that your organization does approve of?

Ms. KRILL. Our organization approves of mines—I am sorry, am I on? Yes.

Mr. LAMBORN. I can hear you.

Ms. KRILL. Our organization would approve of mining that has attained the free, prior, and informed consent of indigenous communities, that does not pollute waterways or allow the dumping of tailings or mine waste into waterways, rivers, lakes, streams, and wetlands, that enjoy the community support of the local community, that do not impact areas of high biodiversity, and follow international labor organizational standards for labor organizing.

At this time, there are some mines that follow some of these principles, and others that we would support. We haven't found a mine in the United States that follows all of these principles that we would support. And we encourage industry and are working actively with industry in dialog to identify a way that we can move forward.

Mr. LAMBORN. Well, it sounds to me that if there is no new mine in this country that you support, that you could be accused of opposing for the sake of opposing, that you will always find some reason to oppose.

Ms. KRILL. We don't oppose mines, either. In fact, many mines we don't take a position on. There are some areas where we feel like mining is not an appropriate activity. And in those instances we do take a position of opposition.

Mr. LAMBORN. OK. At this point I am going to turn to Representative Holt for his questions.

Dr. HOLT. Thank you. Let me begin with just a comment following from that last exchange. I would say that the standards that Ms. Krill, that you laid out are attainable and desirable. And I would hope that all operations, mining and otherwise, would work to achieve those.

Ms. Krill, the Interior Department has stated that H.R. 761 is, "drafted in such," and this is a quotation, "drafted in such a manner as to cover virtually all hard-rock mining on Federal lands." Do you believe that a bill that is intended to deal with strategic minerals should also be broad enough to cover clay, coal, crushed stone, sand, gravel, scrap iron?

Ms. KRILL. No, we do not. We oppose H.R. 761 because, in large part, because of how broad it really is. As I said earlier, mining companies mine where minerals are. The economics of mining in the United States favor the ability of mining companies to mine in the United States.

Dr. HOLT. Ms. Batulis, simple question. Could you define for us a critical and strategic mineral?

Ms. BATULIS. Copper, nickel.

Dr. HOLT. OK.

Ms. BATULIS. And I think the——

Dr. HOLT. And would you include crushed stone, granite, gravel, clay?

Ms. BATULIS. Mr. Chair, Committee members, no.

Dr. HOLT. No? Yes. Mr. Melander?

Mr. MELANDER. The same question, sir?

Dr. HOLT. Yes, please.

Mr. MELANDER. As indicated by Ruthe, those precious metals. And regarding sand and gravel, I would not consider those precious metals.

Dr. HOLT. Yes. I think we might have some redrafting to do, or some amending here, then.

Do you include gold and silver in that?

Mr. MELANDER. Gold, correct.

Dr. HOLT. OK. Ms. Krill, in a later panel, we will hear testimony that the United States is putting itself at a competitive disadvantage with other countries, because of permitting time. And yet, in your testimony you say that the United States is one of the best places in the world for mining investment. Which is it?

Ms. KRILL. Well, if Mr. Holt, if you listen——

Dr. HOLT. Would you care to elaborate on the statement that you made in your testimony?

Ms. KRILL. Absolutely. If you listen to the opinions of mining managers from a global perspective, they do indeed favor the United States as a place for mining investment. The BLM says that the average time for permitting in the United States is 4 years. With various other regulatory conditions, the United States is, indeed, considered a favorable place by mining investment, worldwide, to mine.

Dr. HOLT. Ms. Krill, in light of the conditions under which the Mining Act of 1872 was passed—we were trying to build a Nation and expand to fill the western territories—would you say that this bill is up to date? In particular, do you think at a time that there is so much talk about reducing the deficit we should be asking mining companies to pay a royalty rate for extracting these minerals?

Ms. KRILL. I——

Dr. HOLT. And should it be comparable to what is done for, say, oil and gas?

Ms. KRILL. I absolutely agree that mining companies should be paying a royalty rate. Mining companies shouldn't be granted access to public lands and public minerals for free. And if there is an interest in reforming how mining is done in this country, I would suggest we start with reforming the Mining Law of 1872.

Dr. HOLT. Yes. The name itself suggests some dated characteristic of it.

[Laughter.]

Dr. HOLT. Just in the few seconds that remain, Ms. Krill, do you know whether Western States charge a royalty rate for extraction of minerals, different from the Mining Act of 1872, different from the Federal—

Ms. KRILL. There are Western States that charge a royalty rate for mining, federally, on a national level, we do not.

Dr. HOLT. Well, I think my time has expired. I thank the witnesses and I thank the Chair.

Mr. LAMBORN. Thank you. And I would point out to the Ranking Member that the Mining Law of 1872 has been amended many times over the years. So let's keep up on the amendments.

And, Ms. Krill, I would like to point out to you that when you say that minerals are extracted for free, you are neglecting State severance taxes, you are neglecting the taxes that are paid by mining companies on a corporate income, taxes paid by their employees on personal income, sales tax, property tax, and on and on and on.

OK. We are going to go to our next witness—excuse me, next Committee member. I would like to point out that we are missing Representative Amodei. Unfortunately, his mother passed away earlier this week, so our thoughts and prayers are with him. But we will go instead next to Representative Gosar.

Dr. GOSAR. Thank you. I want the record very, very clear. Ms. Krill, have you ever endorsed or supported—careful wording here—any mining operation in the United States, your organization?

Ms. KRILL. Have we ever endorsed—

Dr. GOSAR. Or supported a mining operation in the United States.

Ms. KRILL. A single operation.

Dr. GOSAR. Absolutely.

Ms. KRILL. No. We have endorsed and supported principles for—

Dr. GOSAR. I am getting at that point. It seems like, I am going back with the Chairman's connotation, that no is an answer. No is not an answer any more in America. It is how do we accomplish this under the protocols.

Let me ask you the next question. In regards to the United States, isn't it a lot about our mineral composition, that we are rich with minerals in the United States that so many foreign and national mining companies really would like to work here, because it is a concentration and plethora of minerals that we actually have here? Is that not true, compared to about any other continent?

Ms. KRILL. Mining companies do mine where the minerals are.

Dr. GOSAR. So we are very rich, and that is why. So I mean we want to make sure we are careful about how we look at those things.

Chairman, for the record, what I would also like to do is, put in the record a letter from the Nature Conservancy and this is an op ed from the Arizona Republic, as well as a climbing recreational group from Queen Creek for the record that support this mine.

Mr. LAMBORN. Seeing no objection, so ordered.

[The information that Dr. Gosar submitted for the record has been retained in the Committee's official files:]

Dr. GOSAR. Let me ask you one more question, Ms. Krill. You know, has your organization ever been out to the mine?

Ms. KRILL. I am sorry, which mine?

Dr. GOSAR. Resolution Copper in Southeast Arizona.

Ms. KRILL. Yes.

Dr. GOSAR. You have actually toured the mine?

Ms. KRILL. I have not personally, no.

Dr. GOSAR. No, I don't think anybody has toured the mine, frankly. I just checked with the company. You have not toured the mine, as far as I can understand.

Let me ask you another question.

Ms. KRILL. I thought you were referring to Oak Flat Campground.

Dr. GOSAR. That is the campgrounds.

Ms. KRILL. The site.

Dr. GOSAR. I am looking at the mining site.

Ms. KRILL. OK.

Dr. GOSAR. You know, hands-on are a lot of different things. There is being able to see, to dialog about the facts. You know, facts are kind of an interesting thing. It is hard to argue around facts, because the facts set you free. I know that there was an invitation, was there not, from the company to come out and review the mine?

Ms. KRILL. I have not received a invitation, but I would be happy—

Dr. GOSAR. I think you need to go back in your records to do your due diligence to find out that they actually extended that, and they were turned away. So I would hope that you would go back into your records.

And I would invite you, like I would invite the Member from Arizona who has not been in his tenure, out to the mine. Because I think those are the things that answer questions. You know, facts set you free. And I think Arizona has been stalwart in that aspect in regards to doing this, with all the magical features that we have been able to do and to build Arizona.

And I think that I would leave my questions at that. Thank you. I yield back, Mr.—

Mr. LAMBORN. All right, thank you. We will now go to Representative Grijalva.

Mr. GRIJALVA. Thank you very much. Ms. Krill, a couple of quick questions. In reference to the first part of your testimony, there was a time prior to President Nixon signing the NEPA Act where there was no NEPA, that we can talk—it is not about “what if,” there was none.

Consequences of that lack of oversight, transparency, public participation, what drove that Congress, that President to enact the NEPA Act? What was the situation in terms of not just the environment, but communities as well?

Ms. KRILL. That is a very good question, Representative Grijalva. I think that the critical thing that NEPA provides to communities and to the public is an opportunity to participate in a clear and transparent and consistent process. The minerals, for example, in mining, which we are discussing, the minerals are minerals that belong to the public. And it is very important, in our democratic

society, that the public has this opportunity to comment on and to participate in a process about what we do with public minerals.

Mr. GRIJALVA. And you mentioned the H.R. 687. H.R. 761 is kind of the same process as H.R. 687, only taken to steroid quality, in the sense that we would do away with all regulatory controls, to do it after the fact, when there is nothing to bind, an action or a remedy. Fair or unfair comparison between the two bills?

Ms. KRILL. I think that is a fair comparison.

Mr. GRIJALVA. I was going to ask Mr. Melander, on all these issues, and I think my friend from Arizona has mentioned that this is about how you say yes, not just no. And I couldn't agree more. But the point is that everything, and you said it is about the jobs and it is about creating that kind of a sustainability in Minnesota, and everybody is at the table at that effort.

Verification of the job numbers, do you verify them yourself? Or, let's say, for instance, we are working off in Resolution Copper, the job analysis by the company, themselves, and it is a movable target. And so, how do you validate that you are making a commitment, whether it is regulatory, whether it is government assistance, based on a sole source, proprietary source of analysis by the company on job production, or do you seek an independent source to verify that that is indeed what is going to be there at the end of the day, in terms of number of jobs?

Mr. MELANDER. Chair, Representative—and that, too, is a good question. And one can get in trouble indicating the amount of jobs.

The first part of your question, when we make reference to our specific State in regards to the opportunity in generational employment, it is done working with our partners in trying to get a realistic expectation.

What we like to do, and we do this consistently, is we talk about work hours that will be generated. I mean it is really hard to describe, I mean, to really be clear. But when we, whether it is, and this has nothing to do with it, but whether we are building stadiums or projects, we base it off of work hours, because it is a better way to describe the opportunities for individuals, at least within our industry.

Mr. GRIJALVA. OK. As you generate precious metals, copper, gold, and I think, I don't know who stated that those are for use and for the industries as they grow here in that country, what is a ratio of export versus keeping the product domestic? What is the emphasis? For instance, the other legislation, the CEO, that said the Resolution Copper mine will help meet this need, and the need is that China will build three more cities larger than Sydney every year until 2030, and that the major stockholder in Rio Tinto, the parent company, is, indeed, China.

And so, we take out our domestic taxpayer resource and ship it overseas, no royalties, no payback, no infrastructure, no sustainability in that community. Is there a ratio that you think is appropriate? Anybody can answer it.

Mr. MELANDER. Chair, Representative, by no means were we prepared to start to give a statistical or analytical information in regards to export and import of these precious metals, strategic metals.

Mr. GRIJALVA. I appreciate—

Mr. MELANDER. We were here today to talk about the opportunities that we believe are—

Mr. GRIJALVA. You are absolutely right, and it is probably an unfair question. If Resolution or Rio Tinto were sitting in your seat, they might have an answer. Thank you.

Dr. GOSAR [presiding]. Thank you very much. I would like to yield to the gentleman from Michigan, Dr. Benishek.

Dr. BENISHEK. Thank you, Mr. Chairman. I want to thank the Chairman for holding this important hearing today, and I want to also thank Mr. Jim Iwanicki from my district in Northern Michigan for coming to Washington to tell us about the tremendous obstacles he had in simply building a county road through a working forest in the Upper Peninsula, and the difficulties he has had with the EPA.

Mr. Iwanicki, can you tell me some of the most frustrating part of dealing with the EPA? And I heard in your testimony about the changing goal post, how to deal with them, and they seem to change the rules halfway through the process. Can you elaborate on that a little bit more?

Mr. IWANICKI. Well, the EPA was kind of cold to the idea of building a county road in this working woods area from the start. And it took great effort on our part locally and with your help and the help of our Democratic Senators to at least get them to listen and evaluate the permit, which we thought was a huge deal. And any time we seemed to come to a conclusion and thought we had solved their issue, they would come back and say, "Well, that is not really what we meant, we were looking for something more like this," and that was very evident when you took a look at the wetland mitigation process and the process that went through the wetland mitigation.

We first proposed doing some creation of forested wetlands, and the EPA said, "No, we don't like the creation aspect; we would like more preservation." We then turned around and came up with a preservation plan for them, and then they started with the issues of, "Well, we don't like who the land stewards are going to be, we don't like the way you have the mineral rights in protecting that preservation area and the lack of mineral rights for it." So again, it was very frustrating.

Dr. BENISHEK. Let me ask you a question. How many acres of wetlands would need to be mitigated by the construction of the road?

Mr. IWANICKI. It was 25 acres of wetland that needed to be mitigated, and we proposed giving them 2.5 square miles of land. The wetland being protected was about 25-to-1, I believe, in that 2.5 square miles, and that was next to a National Forest. And again, so it was very frustrating that they wouldn't—

Dr. BENISHEK. Now, as I understand it, not only did you have to give—was it 2.5 square miles for the 25 acres?

Mr. IWANICKI. Correct.

Dr. BENISHEK. But you also had to have an environmental steward of that land in perpetuity. Is that correct?

Mr. IWANICKI. That is correct. And again, none of the local agencies were considered a viable steward for that land.

Dr. BENISHEK. This is the Michigan Department of Environmental Quality, is that correct?

Mr. IWANICKI. Well, again, we worked with the Michigan Department of Environmental Quality and the State DNR. And the State DNR in December agreed that they would be the stewards of the land. And when we said that to the EPA, the EPA was not sure that the State DNR was an acceptable agency to be the steward of this land, and the State DNR addresses all the public lands and takes care of all the public lands the State owns in the State.

Dr. BENISHEK. They are the stewards of all the public lands within the State.

Mr. IWANICKI. Right.

Dr. BENISHEK. The State-owned public lands, is that correct?

Mr. IWANICKI. Correct.

Dr. BENISHEK. And they have been doing that for hundreds of years, is that right?

Let me ask you another question about this road, because this is dear to me. In other words, now I know that this road is a 22-mile road which will take the place of a 66-mile road going through downtown Marquette that the ore trucks will now have to drive through. Can you explain to me, how is that better for our local environment, going through the 66 miles?

Mr. IWANICKI. Again, it isn't. And again, the EPA put the animals and the environment in front of all the concerns of public safety and safety of our community, in front of all those. So, again, it was very frustrating. And you can see from all of our public support that we had on the political end of things that it was something that the people wanted and something that we wanted, as a community.

Dr. BENISHEK. Do you think there has ever been the kind of requirements of any other county road in the country that you are aware of to deal with the requirements this road needed?

Mr. IWANICKI. I am unaware of any. And again, if these requirements are out there for all new road projects, it is a good thing our grandfathers and great-grandfathers built a lot of the infrastructure here in the United States.

Dr. BENISHEK. I think my time has expired. Thank you very much, sir.

Dr. GOSAR. I thank the gentleman. Now I would like to go to Mr. Lowenthal from California.

Dr. LOWENTHAL. Pass.

Dr. GOSAR. You are going to pass? That would be, then, Ms. Hanabusa from Hawaii.

Ms. HANABUSA. Thank you very much, Mr. Chair. My questions are directed to Ms. Krill. Ms. Krill, I am talking here about H.R. 687. And I just want to know if you are reading the bill very similarly to the way I am.

My first question is really beginning on page 12, and that is the environmental compliance section, which if you just read it sort of quickly, it seems like NEPA applies. However, if you read it, I think carefully, it doesn't kick in until after the transfer is made to Resolution Copper. And it is prior to the commencing of any production in commercial quantities of any valuable minerals. And

then it gives 3 years for the Secretary to then actually complete a review under Section 102 of NEPA. Am I reading that correctly?

Ms. KRILL. I believe you are reading that correctly.

Ms. HANABUSA. So, as opposed to a situation where before the Secretary would even consider doing this transfer, which clearly has a lot of environmental implications, and what I am concerned about are the cultural aspects of it, as well, the EIS is not, and there is no requirement for any review. That is correct.

Ms. KRILL. That is my understanding, yes.

Ms. HANABUSA. OK. Now, the other part of this that I am concerned about in reading is the references, of course, to the Oak Flat withdrawal area, and Apache Leap. Apache Leap, as I understand it, is not directly covered by this potential transfer.

Notwithstanding, the Secretary is told in this bill that they can give special use permits to Resolution Copper to actually tunnel under the surface of Apache Leap. It says you are not supposed to mine under Apache Leap, but you have the right to tunnel under Apache Leap. But Apache Leap is outside of the area of the transfer. Is that correct?

Ms. KRILL. I believe so, although I would defer to the gentleman who will be testifying later from the San Carlos Apache Tribe.

Ms. HANABUSA. I understand that. I just want to know if you are reading this bill very similarly to how I am.

I am also curious about—and the same thing applies, by the way, to the Oak Flat area, which is supposed to be withdrawn, but you can still tunnel under it, or you can give a permit for tunneling under that.

You do reference in here in your testimony the fact that there is a way of the extraction. And I think it is some kind of a—let's see, block cave mine.

Ms. KRILL. Yes.

Ms. HANABUSA. Are you familiar with this methodology enough to explain it to me? What does it mean to be a block cave mining whatever? Massive block cave mine is what you are saying they are intending to do. Can you explain to me what you mean by block cave mine, and how you developed that understanding that Resolution Copper is going to do this?

Ms. KRILL. I will do my best to explain it in layman's terms. I am not a mining engineer, and I have never performed block cave mining. What block cave mining is, in my understanding, is creating a very large, open space, a cave, to extract the ore body with some supports, and then letting the supports go, so you have significant surface subsidence into the area. It is essentially creating an open pit, and turning the surface area into rubble above it.

Ms. HANABUSA. So it is like extracting whatever minerals or whatever that they want underneath, and then, after that, letting nature take its course. In other words, you don't fill it back up. Is that what you are saying?

Ms. KRILL. Yes.

Ms. HANABUSA. And evidence of this used in other areas have resulted with the ground settling and leaving pits in various locations?

Ms. KRILL. Yes. The technique causes severe impacts on the surface. It also causes severe impacts to the water table below the

mine. And this is a area where we are very concerned about water, as well.

Ms. HANABUSA. So though they do not permit this block cave mining, it appears, under Apache Leap, which has very major cultural significance, as well as Oak Flat, what they are permitting, however, is for Resolution Copper to get a permit to tunnel under that. We have no idea what it means to tunnel under those specific areas.

Ms. KRILL. That is correct. And we are very concerned for that reason about the impacts on those areas.

Ms. HANABUSA. Thank you. I yield back, Mr. Chair.

Mr. LAMBORN [presiding]. OK, thank you. We will now have questions from Representative Daines.

Mr. DAINES. Thank you, Mr. Chairman. I am going to yield my time to the gentleman from Arizona.

Dr. GOSAR. Thank you very, very much. First of all, I would like to address Ms. Hanabusa, just to make sure we understand this. In this language, that is why my bill will protect Apache Leap beyond the current land management situation. It places nearly 100 acres of Apache Leap currently owned by the mining company into Federal stewardship. Additionally, as a condition of the land exchange, Resolution Copper will surrender its right to commercially extract any minerals under Apache Leap.

Finally, I would like to point out that the company will have over a billion dollars of infrastructure located between the underground mine and Apache Leap. And, in other words, the company would have to destroy a billion—with a B—dollars before Apache Leap's structural integrity could be jeopardized. Without a doubt, Apache Leap would be protected, more so than the current situation, if this legislation is signed into law. So, I wanted to make sure we are clear on that.

Ms. Krill, what size of parcel of land would be too small to have a NEPA done? What kind of acreage would we have to do a NEPA on?

Ms. KRILL. I am not sure of the answer to that question, but I can get back to you.

Dr. GOSAR. Let me ask you a question, then. Let me ask you a question. So you are a homeowner, and what you do is you go buy a piece of property. Would that homeowner have to have a pre-NEPA?

Ms. KRILL. No.

Dr. GOSAR. Why not?

Ms. KRILL. Because I know that is too small.

Dr. GOSAR. Oh. Interesting. So, I mean, it is part of a plan.

Let me ask you the next question. In regards to the mining operation, is anything—let me rephrase that—is anything in the NEPA process short-cuttet with this process?

Ms. KRILL. I am sorry, which process?

Dr. GOSAR. In the process I outline in this bill. They cannot go forward, they cannot do anything, without a full NEPA going through. Is that true?

Ms. KRILL. My understanding is that is after the land transfers.

Dr. GOSAR. Well, I am making a correlation here, yes. But the NEPA, I mean, they can't do anything to the land. They are just

getting a transfer. So they can't do anything on the land until the NEPA process goes through. Is that true? There are no shortcuts?

Ms. KRILL. [No response.]

Dr. GOSAR. Let me answer it for you. There are no shortcuts. There are absolutely no shortcuts. And our next witness will validate that, as well.

This comes back to the facts. We have to deal in facts, because the facts set you free. Not scaring people, not fear-mongering. We have to deal in the facts.

Let me ask you another question. You know how Arizona was founded? Do you know the five areas in which Arizona was founded? Its principle—what made Arizona special? It is called the five C's: cattle, citrus, climate, cotton, and what would be the fifth one?

Ms. KRILL. I believe that would be copper.

Dr. GOSAR. I thank you very, very much. It is called gold-leaf copper, or leaf copper here. It forms naturally.

You also made another comment in regards to that mining has been the source of the largest pollution in this country. I would like to see your facts on that. Because I would like to show you a case in point of Rio Tinto and stewardship. This is in Wisconsin, very close to Congressman Obey's congressional district. This is an open pit mine. I just want to make sure we get this straight, too. This is an open pit mine, where we actually open a big, large top—OK? It is much more conventional in copper. And this is exactly how it was mitigated, OK?

In block mining, what we do is we have a small opening where we go down. OK? So you are going deep in the ground. And that is where robotics come in, where we hear this problem with robotics. Because we want miners' safe, do we not? I would really be concerned about mining safety. And so, the robots actually go down into the ground and mines this ore and brings it back up. Right? Am I right so far?

Ms. KRILL. I am not familiar with that particular mine.

Dr. GOSAR. Well, cave mining, you made a comment here, cave mining and open pit mining, very different. And once again, you need to make sure you are solidly on the facts, OK? But this shows mitigation. And it is wonderful. I mean this is an extraction. I think Congressman Obey would tell you this is incredible. This is a great company, OK?

And are you familiar with all their investments and good stewardship in Superior?

Ms. KRILL. Am I familiar with Rio Tinto's investments?

Dr. GOSAR. Yes.

Ms. KRILL. No, but I would like to answer your earlier—

Dr. GOSAR. No? Would you also like to know that what they did is they actually came in and helped mitigate problems from previous mining claims? Now they have been a very good steward with us, the City of Superior. They have helped out all over.

And so, I think, and this is getting back to what the Ranking Member and I were talking about back there, that is why I asked you the question, "Have you ever supported a mine claim," because it is not good enough just to say we take no action, it is that you have to start rewarding good behavior and proper behavior that you illicitly want to see done.

Ms. KRILL. The source for the statistic about the toxic releases of the mining industry is the Toxic Release Inventory, which is released annually. The mining industry tops the list of industries, as far as toxic releases in the United States.

Dr. GOSAR. I would challenge that, in regards to the waste that comes out of urban areas. And so I think what we ought to do is go back to the facts and look carefully at what that is in mitigation. So I would like to see that answer.

So, without further ado, I am out of time.

Mr. LAMBORN. OK, thank you. Representative Lowenthal.

Dr. LOWENTHAL. Thank you, Mr. Chair. I would like to yield my time to Mr. Grijalva.

Mr. GRIJALVA. Thank you. Mr. Chairman. One of the things that Rio Tinto touts, Ms. Krill, part of the panel was about employment, so I won't go back and ask any questions there, they tout the fact that they are an automated mine. They are the mine of the future. And you get mixed messages.

You get the message where we did our job and we are going to have 1,500 people, and they are going to get paid from \$40,000 to \$100,000, and it will be the greatest boon that ever happened to Arizona. But in other statements that the executives and CEOs of Rio Tinto make talking about Resolution Copper, that it is the mine of the future, and that they will be able to reduce employment because of automation, and there will be a central place where there will be a minimum amount of maintenance work required there. So it kind of runs counter to the proposal that this is all about jobs.

I preface that because I think there is an important point. I understand that we have to deal in facts, and I wouldn't like anything better than for us to be able to factually deal with this question of Resolution Copper. But since all we have is the legislation to go by as fact, while I am a trusting person, I also like to verify. And part of the verification process has to be some independent look at what this mine is going to be.

Let me ask you one question. Ms. Krill, the Forest Service in its testimony said that, "An environmental review document after the exchange would" and this is talking about Resolution "would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public and local and tribal governments with opportunities to comment on the proposal." As a result, wouldn't the bill, as drafted, prevent the Forest Service from properly identifying or considering any mitigation measures that may be necessary, including the tunnels under Apache Leap and Oak Flat?

Ms. KRILL. Yes, it would. Once the land is in private hands, then the Forest Service would not have the ability to develop alternatives, as they would if it continued to be on public lands.

Mr. GRIJALVA. Thank you. And as my State that I love very much evolves, I try to add an additional C to the five C's, conscientious compassion. I hope we get compassion as one of the C's down the road.

Anyway, I yield back, Mr. Chair.

Mr. LAMBORN. OK, thank you. That concludes our questions for this panel. I know that those of you from Michigan and Minnesota

didn't know as much about Arizona issues, but I appreciate the testimony that you gave today, all four of you, so thank you for your testimony.

Mr. MELANDER. Thank you.

Mr. IWANICKI. Thank you.

Ms. BATULIS. Thank you.

Ms. KRILL. Thank you.

Mr. LAMBORN. We will now go to our third panel, and I would like to invite forward Ms. Jamie Connell, BLM Acting Deputy Director in the U.S. Department of the Interior, accompanied by Larry Meinert, Mineral Resources Program Coordinator for the U.S. Geological Survey; and Ms. Mary Wagner, Associate Chief of the U.S. Forest Service within the Department of Agriculture.

Like all of our witnesses, your written testimony will appear in full in the hearing record, so I ask that you keep your oral statements to 5 minutes, as outlined in our invitation letter.

You have to press the button on the microphone to be heard in this room. The timing lights, as I said earlier, start at 5 minutes, runs down to turn yellow at one minute, and then runs out and turns red at 5 minutes.

Thank you all for being here. And Deputy Director Connell, you may begin.

**STATEMENT OF JAMIE E. CONNELL, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR**

Ms. CONNELL. Mr. Chairman, Members of the Subcommittee—

Mr. LAMBORN. Pull it a little closer, please. Thank you.

Ms. CONNELL. Is that better?

Mr. LAMBORN. Yes.

Ms. CONNELL. Mr. Chairman, members of the Subcommittee, thank you for the opportunity to present testimony today on a number of bills on behalf of the Bureau of Land Management. My permanent job is as the BLM's Montana-Dakota State Director, but I am currently acting in the position of Deputy Director for the BLM here in Washington.

I am accompanied today by Larry Meinert with the USGS. He is a Mineral Resource Program Coordinator. He is available to answer questions on H.R. 981, the Resource Assessment of Rare Earths Act, and USGS-related questions on H.R. 1063, the National Strategic and Critical Minerals Policy Act.

I have submitted testimony for the record on each of the bills being presented. I will briefly summarize the Administration's position on each of these, and ask that my entire statements be made a part of the official record.

The Administration has several concerns with the complex land exchange proposed in H.R. 687, the Southeastern Arizona Land Exchange and Conservation Act. Two of the Administration's principal concerns with the legislation pertain to the timing of NEPA analysis and tribal consultation. In general, the Department of the Interior defers to the Forest Service on H.R. 687, as it relates primarily to Forest Service-managed lands and associated valuation issues.

H.R. 697, the Three Kids Mine Remediation and Reclamation Act, provides legislative solutions to the issues surrounding the abandoned Three Kids Mine in Henderson, Nevada, and clears the way for the area's development. The BLM supports innovative proposals to address the clean-up of the Three Kids Mine, and we support this proposal to transfer 948 acres of public land to the Henderson Redevelopment Agency at fair market value, subject to valid existing rights.

The Department shares the Committee's interest in developing rare earth elements and other critical mineral resources on our Nation's public lands, consistent with environmental protection and public involvement in agency decisionmaking. H.R. 761 expedites critical mineral exploration and mine permitting on public lands managed by the Departments of the Interior and Agriculture. The bill would limit public involvement in review of mining proposals and the formulation of alternatives, which are vital components of the BLM's multiple-use management of the Nation's public lands. As such, the Department opposes H.R. 761.

H.R. 767 expands the scope of the Federal permit streamlining project to include all of the field offices within the jurisdiction of BLM's Montana-Dakota State office. The BLM supports the goal of the bill to better conform the pilot office authority to current permitting demands. This flexibility would be especially useful for the BLM's North Dakota field office in Dickinson, North Dakota, where permitting demand has increased substantially in recent years.

In addition, the BLM would like to work with the sponsor and the Committee in clarifying amendments as well as language that would provide additional flexibilities nationwide. There are many BLM field offices that are not part of the Pilot Project, but are receiving hundreds of drilling applications per year.

H.R. 957, the American Soda Ash Competitiveness Act, would reinstate for 5 years the royalty rate reduction provided under the Soda Ash Royalty Rate Reduction Act of 2006, which expired in October of 2011. Because the bill would waive the fair market value requirements of the Federal Land Policy and Management Act, and the terms of any applicable leases, and for the reasons outlined in the Department's 2011 report to Congress, the BLM cannot support H.R. 957.

H.R. 1063 requires the Secretary of the Interior, through the BLM and the USGS, to assess the capability of the United States to meet the demands for minerals essential to manufacturing and competitiveness and economic and national security. The Department supports the goals of H.R. 1063. We would like to work with the Committee and other affected departments to further these goals, while taking into account time and resource considerations.

Finally, H.R. 981 directs the Secretary of the Interior, acting through the Director of the USGS, to conduct a global assessment of rare earth elements. The Department supports the goals of this bill, although we note that the activities called for in H.R. 981 are within the scope of the existing Department of the Interior authorities.

Mr. Chairman, thank you for the opportunity to testify today, and I would be happy to take any questions.

[The prepared statement of Ms. Connell follows:]

PREPARED STATEMENT OF JAMIE E. CONNELL, ACTING DEPUTY DIRECTOR, BUREAU OF  
LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

H.R. 761—NATIONAL STRATEGIC AND CRITICAL MINERALS PRODUCTION ACT AND  
H.R. 1063—NATIONAL STRATEGIC AND CRITICAL MINERALS POLICY ACT

### **Introduction**

Thank you for the opportunity to testify for the Department of the Interior on two bills pertaining to the development of strategic and critical mineral resources on our Nation's public lands: H.R. 761, the National Strategic and Critical Minerals Production Act, and H.R. 1063, National Strategic and Critical Minerals Policy Act. These bills seek to expedite the development of strategic, critical and rare earth minerals on public lands managed by the Departments of the Interior and of Agriculture. This statement addresses the provisions relevant to the Department of the Interior.

The Department shares the Committee's interest in identifying opportunities for increasing efficiencies in the development of rare earth elements and other critical mineral resources on our Nation's public lands consistent with environmental protection and public involvement in agency decision-making. We also encourage finding ways to make permitting less complex, costly, and time-consuming. The Bureau of Land Management (BLM) would like to work with the Committee to further these shared goals.

The Department has concerns with these two bills. Public involvement in review of mining proposals and the formulation of alternatives—critical components of BLM's multiple-use management of public lands—would be constrained under H.R. 761, and therefore, the Department opposes H.R. 761. While the Department supports the goals of H.R. 1063, we have concerns and would like to work with the Committee to address them. The Department looks forward to continuing a dialogue with the Congress on these important matters.

### **Background**

The BLM administers over 245 million surface acres of public land located in the 12 Western States, including Alaska, as well as 700 million acres of sub-surface mineral estate throughout the Nation. The public lands not only produce commodities, but also offer hunting, angling, and other recreational opportunities that help provide economic stability and growth for local and regional communities. Under its multiple-use mandate, BLM is working with local communities, tribes, State regulators, industry, and other Federal agencies to promote environmentally responsible development of mineral resources on Federal and Indian lands with a fair return to the American people.

The BLM manages mineral development under a number of different authorities, including the Federal Land Policy and Management Act, the Mineral Leasing Act of 1920, the Materials Act of 1947, and the Mining Law of 1872. Each of these authorities, along with BLM regulations and guidance, provides a legal framework for the development of minerals.

Global manufacturing demand for critical mineral commodities, including rare earth elements (REE), is on the rise, with increasing applications in consumer products such as renewable energy technology, computers, automobiles, aircraft, and other advanced technology products. While no REE are being mined on public lands at this time, some portions of the Federal mineral estate hold potential for REE development and deposits are being evaluated in three areas: the Bear Lodge Project in northeast Wyoming; the Bokan Mountain/Dotson Zone in southeastern Alaska; and potential expansion onto public lands of Molycorp's Mountain Pass exploration operations in California.

### **H.R. 761—National Strategic and Critical Minerals Production Act**

The stated purpose of H.R. 761, the National Strategic and Critical Minerals Production Act of 2013, is to increase the flow of critical and strategic minerals to the U.S. manufacturing sector by expediting the critical mineral exploration and mine permitting process on public lands managed by the Departments of the Interior and Agriculture. However, H.R. 761 is drafted in such a manner as to cover virtually all hard rock mining on Federal lands. H.R. 761 includes numerous provisions that circumvent sound Federal decision-making and existing law calling for the multiple uses of public lands, including public involvement, the application of the National Environmental Policy Act (NEPA), the management of permit applications, the review of *Federal Register* notices for such projects, and the handling by the courts of civil actions arising from disputes over mine proposals. The bill's provisions also could apply retroactively to an application for a mineral exploration or mine permit that is pending at the time of the bill's enactment, upon the request of the applicant

to the lead agency. The legislation defines critical and strategic mineral mines as “infrastructure projects” so that they will fall under the March 22, 2012, Executive order “Improving Performance of Federal Permitting and Review of Infrastructure Projects.”

While the Department strongly supports the development of rare earth elements and other critical minerals, it strongly opposes H.R. 761. This legislation would remove many of the environmental safeguards for almost all types of hardrock mines on public lands, bypass evaluation of potential impacts under NEPA, and limit public involvement in agency decision-making.

Additionally, H.R. 761 lacks clarity on a number of issues, including how the rights of surface owners in split estate situations might be affected in an expedited review process. It is also unclear how Section 103, which requires maximizing recoverable resources while mitigating environmental impacts, would affect the Department’s authority under the Federal Land Policy and Management Act to prevent “undue and unnecessary degradation of the public lands.” H.R. 761 also does not discuss the consequences of missing the 30-month deadline on permitting decisions and how State permitting authorities relate to this timeline. The provision allowing for retroactive application of the bill to permit applications could have the effect of requiring the BLM or another agency to abandon in-progress environmental reviews of proposed actions.

Some of the bill’s provisions also duplicate actions the BLM has already implemented, including the formulation of memoranda of understanding among agencies and proponents, the concurrent gathering and review of data, and the appointment of project leads who are assigned to a project through completion.

Finally, the Department of the Interior defers to the Department of Justice regarding the provisions of H.R. 761 (Title II) pertaining to judicial review procedures.

#### **H.R. 1063—National Strategic and Critical Minerals Policy Act**

H.R. 1063 requires the Secretary of the Interior—through the BLM and the U.S. Geological Survey—to assess the capability of the United States to meet the demands for minerals essential to manufacturing competitiveness and economic and national security. It requires the Secretary, in consultation with the Secretary of Agriculture, to produce a report to Congress within 180 days of enactment that includes an inventory of the non-fossil-fuel mineral potential of lands under the jurisdiction of the BLM and the U.S. Forest Service. The report must identify anticipated mineral requirements for the U.S. manufacturing sector, current sources of these minerals, implications of shortages, timelines for mineral development projects on public lands, and the cost of litigation. In addition, the report must include an assessment of the Federal workforce and its ability to meet the challenges of the critical minerals issue. The report must also include an inventory of rare earth element potential on Federal lands, impediments and restrictions to exploration or development, and recommendations to reduce such impediments. Finally, the bill directs the USGS to conduct national and global assessments of critical mineral resources.

H.R. 1063 requires far-reaching analysis of vast amounts of data spanning the jurisdictions of the Departments of the Interior, Agriculture, Defense, Commerce, and Justice, as well as the Office of Personnel Management. While we share the goals of H.R. 1063, it would entail much more than producing a report, likely requiring the development and implementation of data tracking systems and an ongoing commitment of staff resources to gather, input, analyze, and update the data. The administrative time and cost of this work would exceed the 180 days and \$1 million authorized by the legislation. Regarding the national and global assessments of critical minerals, we note that these activities are already authorized by existing USGS authorities. These studies would require substantial resources and, absent authorized appropriations, would significantly impact other program mission activities.

We would like to work with the Committee and the other affected Departments to further the goals of the bill taking into account time and resource considerations. We would also like to work with the Committee to provide clarification on some provisions of the bills, such as the minerals under consideration and the designation of impediments and restrictions.

Thank you for the opportunity to testify on H.R. 761 and H.R. 1063. I will be glad to respond to questions.

#### **H.R. 687—SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT**

Thank you for the opportunity to present testimony on H.R. 687, the Southeast Arizona Land Exchange and Conservation Act. The legislation provides for the exchange of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the U.S. Forest Service (FS) and the Bureau of Land Management (BLM).

Three of the private parcels are identified for transfer to the Secretary of the Interior.

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

#### **Conveyance of Parcels to the Bureau of Land Management**

H.R. 687 provides for the conveyance of three parcels to the Secretary of the Interior to be managed by the BLM. The parcels identified are located in Gila, Pinal, and Santa Cruz Counties and include:

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

We would note that the maps for these three parcels are inaccurately described in the legislation and we would like to work with the sponsor and the Committee to correct those descriptions.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance key migratory bird habitat along the San Pedro River. H.R. 687 provides for the lower San Pedro parcel to be managed as part of the BLM's existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the NCA, but it is at least 60 miles downstream (north) of the existing NCA and has substantially different resource issues and needs. If this parcel is conveyed to the Secretary of the Interior and incorporated into the NCA, the Department recommends that the existing 80 acres of adjacent BLM-managed public land likewise be included within the NCA to facilitate the efficient and effective management of this important riparian corridor.

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

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

#### **General Concerns**

The Administration has several concerns with the Southeast Arizona Land Exchange and Conservation Act and cannot support H.R. 687 as written. Two of the Administration's principal concerns with the legislation pertain to the timing of NEPA analysis and tribal consultation.

H.R. 687 requires the Forest Service to prepare an environmental review document under the National Environmental Policy Act (NEPA) *after* the land exchange is completed rather than in advance of the exchange. It is this Administration's policy that NEPA be fully complied with to address all Federal agency actions and decisions, including those necessary to implement congressional direction.

In addition, increasing and improving tribal consultation with Indian tribes by all Federal agencies is a key accomplishment of this Administration, and concerns have been raised by Indian tribes nationwide that the legislation is contrary to laws and policies and Executive orders that direct Federal land management agencies to engage in meaningful government-to-government consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans. This consultation framework includes, including the recent Memorandum of Understanding among the Departments of Defense, Interior, Agriculture, Energy and the Advisory Council of Historic Preservation Regarding Interagency Coordination and Collabora-

tion for the Protection of Indian Sacred Sites, which was signed on December 4, 2012.

Many of the lands to be exchanged in this legislation hold significant cultural value to Indian tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. For the San Carlos Apaches, and the Yavapai, this area is a place of ancient settlements and burial sites. Tribal members still go to these areas to pray, conduct ceremonies, and gather medicines and ceremonial items.

The Administration is concerned that any consultations under H.R. 687 would not be meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," because the legislation limits the Secretary of Agriculture's discretion regarding the land exchange. Engaging in government-to-government consultation prior to the Secretary of Agriculture's public interest determination would better allow for meaningful consultation and coordination with interested tribes.

Section 4(i) of H.R. 687 expresses the intent of Congress that the exchange be completed within 1 year. Based on our experience with exchanges, we believe the amount of time provided in H.R. 687 is insufficient to review and finalize the necessary environmental documents, mineral report, and appraisals, as well as to conduct the final verification and prepare title documents. We are also concerned that 1 year may not be sufficient to complete analysis of any historic and sacred sites in the exchange area as required by the Native American Graves Protection Act and the National Historic Preservation Act.

Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides important information about the Federal mineral deposit. The bill does not address access to confidential exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure a timely and accurate appraisal. Such information is essential for the mineral report, particularly in the context of this exchange, because of the size of the proposed mining operation and the proposed mining technique.

Section 6 of H.R. 687 provides for an annual value adjustment payment to the United States if the cumulative production of locatable minerals exceeds the projected production used in the appraisal required by section 4. This provision recognizes that an accurate projection of future production as part of the appraisal process will be difficult to develop, and provides a mechanism for additional payments to the United States if the actual production exceeds the projected production. The Department generally defers to the FS on the specific provisions of section 6 of the bill. However, we note that this section creates a new fund in the U.S. Treasury for the deposit of these value adjustment payments. The Department believes that these funds should be dedicated to Federal land acquisition in the same manner as the initial land equalization payments provided for in section 4(e)(2)(C) of the bill. Because these funds are to compensate for a possible initial inadvertent under-appraisal of land values, it is appropriate that the value when captured be used in the same manner as if it had been included in the initial appraisal.

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

### **Conclusion**

Thank you for the opportunity to testify. The exchange proposed in H.R. 687 is complex. The Departments of Agriculture and of the Interior seek to assure that the Federal Government's interest is appropriately protected in any final legislation and tribal interests are considered.

#### H.R. 697—THREE KIDS MINE REMEDIATION AND RECLAMATION ACT

### **Introduction**

Thank you for the opportunity to testify on H.R. 697, the Three Kids Mine Remediation and Reclamation Act. During the past 5 years, the Bureau of Land Management (BLM) has worked with Nevada governmental entities in search of administrative remedies to the problems posed by the abandoned Three Kids Mine, in Henderson, Nevada. The BLM supports H.R. 697, which provides legislative solutions to the issues surrounding the Three Kids Mine area and clears the way for its eventual development.

### **Background**

The Three Kids Mine is an abandoned manganese mine and mill site located along the south side of Lake Mead Drive, across the highway from Lake Las Vegas,

in Henderson, Nevada. The mine and mill operated from 1917 through 1961 on 314 acres of private land, in part providing steel-strengthening manganese to the defense industry and contributing to the United States' efforts in World War I and II. Federal manganese reserves were stored in the area from the late 1950s through 2003.

H.R. 697 would direct that 948 acres of the public lands adjacent to the private site be conveyed to the Henderson Redevelopment Agency, bringing the total size of the project area to 1,262 acres. Of the 948 acres of public lands, 146 acres are contaminated and will require mine reclamation and environmental remediation. The most severe contamination appears to be on the 314 private acres where the mine and mill were located. No viable former operator or responsible party has been identified to remediate and reclaim the abandoned mine and mill site. Today, the site's deep open pits, large volumes of mine overburden and tailings, mill facility ruins, and solid waste disposal areas pose significant risks to public health, safety and the environment. The Nevada Division of Environmental Protection (NDEP) identified the Three Kids Mine site as a high priority for the implementation of a comprehensive environmental investigation, remediation, and reclamation program.

Representatives of the BLM, the Bureau of Reclamation, and the Department of the Interior Solicitor's Office have worked with the City of Henderson and representatives of developer Lakemoor Canyon, LLC, to find solutions to the complex challenges this site presents. Discussions have focused on overlapping Federal agency jurisdictions, land management designations and other resource issues, Resource Management Plan amendments, future liability, and an important utility corridor that traverses the site.

#### **H.R. 697**

H.R. 697 would designate the combined 314 acres of private land and 948 acres of public land as the 1,262-acre "Three Kids Mine Project Site" and provide for the conveyance of the public lands to the Henderson Redevelopment Agency. The legislation also provides that fair market value for the Federal lands to be conveyed should be determined through standard appraisal practices, and that, subsequent to that determination, the Secretary should determine the "reasonable approximate estimation of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site." That cost would then be deducted from the fair market value of the public land to be conveyed. The Henderson Redevelopment Agency would pay the adjusted fair market value of the conveyed land, if any, and the Federal Government would be released from "any and all liabilities or claims of any kind arising from the presence, release, or threat of release of any hazardous substance, pollutant, contaminant, petroleum product (or derivative of a petroleum product of any kind), solid waste, mine materials or mining related features" at the site in existence on or before the date of the conveyance.

While the BLM has not established a range for the cost of cleanup, a proponent of the transaction, Lakemoor Canyon, LLC, estimates the cost of remediating the public and private lands at between \$300 million and \$1.3 billion. While it is possible that the cost of remediating and reclaiming the entire project area might exceed the fair market value of the Federal land to be conveyed, the cost of the transaction will only be known after the Secretary completes the appraisal and remediation cost estimate process as outlined in the legislation.

The BLM supports innovative proposals to address the cleanup of the Three Kids Mine, and we support this proposal to transfer the entire 948 acres of public land to the Henderson Redevelopment Agency at fair market value, subject to valid existing rights. However, the BLM recognizes that the transfer would include a small portion of the River Mountains ACEC, and we would like to discuss with the committee opportunities to mitigate that loss.

#### **Conclusion**

Thank you for inviting the Administration to testify on H.R. 697. The Three Kids Mine problem needs to be resolved, and we look forward to working toward a solution that protects the environment and serves the public interest. I would be happy to answer your questions.

H.R. 767—OIL AND GAS PILOT PROJECT OFFICES

#### **Introduction**

Thank you for the opportunity to testify on H.R. 767, which would amend the Energy Policy Act of 2005 to modify the Federal Permit Streamlining Pilot Project. The bill would expand the Federal Permit Streamlining Pilot Project to include all of the field offices within the jurisdiction of the BLM's Montana/Dakotas State Office. The BLM supports the goal of H.R. 767 to better conform the pilot office authority to

current permitting demands. However, the BLM would like to work with the sponsor and the Committee on clarifying amendments as well as language that would provide additional flexibilities nationwide to utilize the pilot office authority to respond as permitting demands shift over time.

### **Background**

Section 365 of the Energy Policy Act of 2005 established the Federal Permit Streamlining Pilot Project with the intent to improve the efficiency of processing oil and gas use authorizations and environmental stewardship on Federal lands. It designated seven pilot project offices: Miles City, Montana; Buffalo and Rawlins, Wyoming; Vernal, Utah; Grand Junction/Glenwood Springs, Colorado; and Farmington and Carlsbad, New Mexico.

Section 365 also established the Permit Processing Improvement Fund, an account of approximately \$18 million annually, to support the pilot project for 10 years. Specifically, it directed 50 percent of the income derived from Federal onshore oil and gas lease rental payments outside of Alaska to the Fund. For FY 2006 through FY 2015, the section made the Fund available to the Secretary of the Interior for expenditure without further appropriation to enhance coordination and processing of oil and gas use authorizations on Federal land under the jurisdiction of the designated pilot project offices.

In addition to the BLM, Section 365 authorized the Secretary to transfer monies from the Permit Processing Improvement Fund as necessary to the Fish and Wildlife Service, the Bureau of Indian Affairs, the Forest Service, the Environmental Protection Agency, the Army Corps of Engineers, and the States of Wyoming, Montana, Colorado, Utah, and New Mexico. It also prohibited the BLM from establishing cost recovery fees for processing applications for oil and gas permits to drill. The President's 2013 budget proposed to repeal this fee prohibition. In lieu of the budget proposal, we note that the Congress has implemented permit fees through appropriations language for the last several years.

The agencies involved in the pilot project have made significant progress in a number of areas. Additional resources, such as personnel devoted to processing oil and gas use authorizations, have enabled the various bureaus and agencies to increase the pace of permitting and completing environmental reviews, particularly given the complex resource issues we face. The time taken for interagency consultations has been reduced due to improved communication and through programmatic streamlining efforts, which have been used in multiple projects and permits.

Also, the BLM has increased inspection and enforcement capability as a result of the hiring of additional skilled specialists in the pilot project offices. The increase in inspections has led to better compliance by the industry and a reduction in major violations due to the increased number of inspectors in the field. Increasing the number of inspectors has allowed the BLM to identify issues early; intervene in nascent violation situations; and improve interim reclamation work on lands disturbed by oil and gas operations. The pilot project offices are also better staffed to help new industry permitting specialists understand the BLM's requirements for obtaining an oil and gas use authorization.

### **H.R. 767**

H.R. 767 would substitute the BLM's Montana/Dakotas State Office for the current pilot project office in Miles City, Montana, with the goal of broadening the geographic scope of the pilot project authority. This broadened geographic scope would allow BLM to better allocate some resources based on current permitting demands and new exploration and development of oil and gas fields and plays. For example, this flexibility would be especially useful for processing permits received in the North Dakota Field Office in Dickinson, North Dakota, which received 701 applications for permits to drill (APDs) in FY 2012, compared to 147 APDs received in FY 2009.

In addition, the BLM would like to work with the sponsor and the Committee on language that would allow greater flexibilities nationwide to adjust permitting resources based on demand. There are many BLM field offices that are not part of the pilot project, but are receiving hundreds of APDs per year. Of the 10 field offices that received the most APDs during FY 2012, only 5 are currently designated as pilot project offices. For example, in FY 2012, the Pinedale Field Office in Pinedale, Wyoming, received 325 APDs; the Bakersfield Field Office in Bakersfield, California, received 286 APDs; and the Oklahoma Field Office in Tulsa, Oklahoma, received 157 APDs. Although these offices have received high volumes of APDs, none are currently designated as pilot project offices, and none would be designated as such under the bill. At the same time, some of the currently designated pilot project of-

ices have received relatively few APDs in recent years; for example, the Grand Junction Field Office received only 47 APDs in FY 2012.

### **Conclusion**

Thank you for the opportunity to provide testimony on H.R. 767. I would be happy to answer any questions you may have.

H.R. 957—AMERICAN SODA ASH COMPETITIVENESS ACT

### **Introduction**

Thank you for the opportunity to testify on H.R. 957, the American Soda Ash Competitiveness Act. This bill would reinstate for five years the royalty rate reduction provided for under the Soda Ash Royalty Rate Reduction Act of 2006, which expired in October 2011. The BLM cannot support H.R. 957.

### **Background**

Soda ash is one of several products derived from sodium minerals mined on public lands and is used in many common products, including glass, pulp, detergents, and baking soda. The mineral trona is a naturally occurring mixture of sodium carbonate, sodium bicarbonate, and water. Soda ash may be either natural or synthetic. It can be extracted from mined natural trona deposits, or it can be manufactured synthetically. Synthetic soda ash production began in this country in the 1880s and increased as the demand for soda ash increased. In the early 1950s, the modern natural soda ash industry began in the Green River Basin of Wyoming, home of the world's largest known natural deposit of trona, where soda ash, or "sodium carbonate," is refined from trona mined at depths of between 800 and 1,600 feet below the surface.

In 2012, the U.S. soda ash industry consisted of five companies that mine and mill soda ash, four of which operate five plants in Wyoming. One company in California produces soda ash from sodium-carbonate rich brines. At the end of FY 2012, there were 86 Federal sodium leases covering 111,185 acres in Wyoming, California, Colorado, Arizona, and New Mexico. Sixty-three of these Federal sodium leases were located in Wyoming. The soda ash industry is a substantial contributor to the gross domestic product of the United States, with the total value of domestic soda ash produced in 2012 being about \$1.6 billion and the industry supplying over 2,200 direct jobs. Soda ash is also a key ingredient in many diversified products, including flat glass used by the automobile and construction industries.

### **Soda Ash Royalty Rate Reduction Act**

In 2006, Congress passed the Soda Ash Royalty Rate Reduction Act (2006 Act), which reduced the Federal royalty rate for soda ash to 2 percent. Before the 2006 Act went into effect, the BLM was charging royalty rates of 6 and 8 percent. The BLM established these rates based on a 1996 study to examine the fair market value in the sodium industry in Wyoming. The study reviewed many comparable State and private leases and found that fair market value in Wyoming appeared to be somewhat higher than the 5 percent being charged by the BLM previously. As a result of the study, the BLM determined that the royalty rate for all then-existing leases would be increased from 5 to 6 percent at the lease renewal date. The BLM, based on the study, also determined that the royalty rate on all new leases would be 8 percent. In the Green River Basin at that time, the royalty rate on most private land was 8 percent and 5 percent on State lands.

### **Report to Congress**

As mandated by the 2006 Act, the BLM reported to Congress in the fall of 2011 on the impact of the reduction over the previous 5 years, in the "U.S. Department of the Interior Report to Congress: The Soda Ash Royalty Reduction Act of 2006." The report found that the 2006 Act resulted in a substantial loss of royalty revenues to the Federal Government and the States which exceeded congressional estimates at the time of enactment. It also stated that the royalty rate reduction did not appear to have contributed in a significant way to the creation of new jobs within the industry, to increased exports, or to a notable increase in capital expenditures to enhance production. Furthermore, the report found that the royalty rate reduction appeared to have influenced a shift of production away from State leases and private lands and onto Federal leases, and that, with regard to global competitiveness, U.S. production remained stable.

### **H.R. 957**

H.R. 957 would reinstate for 5 years the 2 percent royalty rate for soda ash which expired in October 2011. Specifically, the bill would apply an across-the-board reduc-

tion in the royalty rate on soda ash leases from an average of 5.6 percent to 2 percent. In FY 2012, the soda ash industry paid over \$47 million in royalty for production from Federal lands. If the royalty rate had been reduced to 2 percent during FY 2012, the royalty revenue for that year would have been approximately \$17 million, a reduction of about \$30 million. Furthermore, the bill could be subject to the Statutory Pay-As-You-Go Act of 2010.

H.R. 957 would waive the requirements of section 102(a)(9) of the Federal Land Policy Management Act of 1976 (FLPMA) and the terms of any applicable leases. Section 102(a)(9) of FLPMA states that it is the policy of the United States to receive fair market value for the use of public lands and their resources unless otherwise provided by statute. For these reasons and for the reasons outlined in the Department's 2011 report, the BLM cannot support H.R. 957.

### Conclusion

Thank you for the opportunity to provide testimony on H.R. 957. I would be happy to answer any questions you may have.

### H.R. 981—RESOURCE ASSESSMENT OF RARE EARTHS ACT OF 2013

Thank you for the opportunity to present the Department of the Interior's views on H.R. 981, directing the Secretary of the Interior, acting through the Director of the U.S. Geological Survey (USGS), to conduct a global assessment of rare earth element resources. The Department supports the goals of this bill, although we note that the activities called for in H.R. 981 are within the scope of existing Department of the Interior authorities.

The USGS is responsible for conducting research and collecting data on a wide variety of fuel and nonfuel mineral resources, including rare earth elements (REE). For nonfuel minerals, research is conducted to understand the geologic processes of concentrated known mineral resources at specific localities in the Earth's crust and to estimate (or assess) quantities, qualities, and areas of undiscovered mineral resources, or potential future supply. USGS scientists also conduct research on the interactions of mineral resources with the environment, both natural and as a result of resource extraction, to better predict the degree of impact that resource development may have on human and ecosystem health. USGS mineral commodity specialists collect, analyze, and disseminate data and information that document current production and consumption for about 100 mineral commodities, both domestically and internationally for 180 countries. This full spectrum of mineral resource science allows for a comprehensive understanding of the complete life cycle of mineral resources and materials—resource formation, discovery, production, consumption, use, recycling, and reuse—and allows for an understanding of environmental issues of concern throughout the life cycle.

Global demand for critical mineral commodities is on the rise with increasing applications in consumer products, computers, automobiles, aircraft, and other advanced technology products. Much of this demand growth is driven by new technologies that increase energy efficiency and decrease reliance on fossil fuels. In 2010, the USGS completed an inventory of known domestic rare-earth reserves and resources (Long and others, 2010). The report documents 28 deposits and includes information on the location, exploration status, past production, and estimated resources. The report also includes an overview of known global rare-earth resources and discusses the reliability of alternative foreign sources of rare earths. Known U.S. deposits of REE comprise about 13 percent of the global reserve of REE and are located on a mix of public (BLM and USFS) and private lands in 14 States. The primary U.S. source for REE is the Mountain Pass mine in California, operated by Molycorp Minerals, a Colorado-based company. Advanced exploration projects for new REE deposits are underway at Bokan Mountain, AK and Bear Lodge, WY. In 2011, USGS released two additional REE reports, "China's Rare-Earth Industry" (Tse, 2011) and "Rare Earth Elements—End Use and Recyclability" (Goonan, 2011).

The logical next steps are to (1) update a global inventory of rare earth resources published by the USGS in 2002 (Orris and Grauch, 2002), (2) review principal REE deposits outside of China and evaluate their geologic, economic, and development potential, and (3) conduct a comprehensive assessment of undiscovered REE resources. H.R. 981, the RARE Act of 2013, outlines a reasonable approach to properly assess the global endowment of REE resources, to identify potential future supplies of REE resources, and to better understand future potential sources of REE needed for United States industry.

The USGS maintains a workforce of geoscientists (geologists, geochemist, geophysicists, and resource specialists) with expertise in critical minerals and materials, including REE. The USGS continuously collects, analyzes, and disseminates data and information on domestic and global REE reserves and resources, produc-

tion, consumption, and use. This information is published annually in the USGS Mineral Commodity Summaries (USGS, 2013) and includes a description of current events, trends, and issues related to REE supply and demand.

The USGS stands ready to fulfill its role as the sole Federal provider of unbiased mineral resource research on known REE resources, assessment of undiscovered REE resources, and information on domestic and global production and consumption of REE resources for use in global REE supply chain analysis. We note, however, that the activities called for in H.R. 981 are already authorized by existing authorities. Any study conducted to fulfill the objectives of the bill will require substantial resources that, without additional support, would significantly impact other program mission activities.

Thank you for the opportunity to present the views of the Department on H.R. 981.

#### References Cited

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Tse, Pui-Kwan. (2011) *China's Rare-Earth Industry*. U.S. Geological Survey Open-File Report 2011–2042.

USGS, 2013, Mineral Commodity Summaries 2013, p. 128–129

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#### QUESTIONS SUBMITTED FOR THE RECORD TO JAMIE E. CONNELL

##### QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE GRACE F. NAPOLITANO

*Question.* Can you clarify how many acre-feet of water will be utilized in the mining process to cool the drill? It is my understanding it would be about 40,000 acre-feet. of water. My concern is the current drought condition of the City of Superior and surrounding area.

*Answer.* The Department of the Interior does not have this information.

*Question.* Are there current environmental studies in process or have any been completed on the examination of the land prior to the exchange into private ownership?

*Answer.* The Department of the Interior defers to the Forest Service on issues directly related to the transfer of Forest Service-managed lands and associated valuation issues.

*Question.* Wouldn't the normal process of requesting an environmental study be the first step? H.R. 687 waives compliance with NEPA prior to the exchange, meaning that the Forest Service or the public will *never* have access to information documenting the potential environmental impacts of a large copper mining operation in the area.

*Answer.* It is the Administration's policy that NEPA be fully complied with to address all Federal actions and decisions prior to the exchange.

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#### QUESTION SUBMITTED FOR THE RECORD BY THE HONORABLE KEVIN CRAMER, A REPRESENTATIVE IN CONGRESS FOR THE STATE OF NORTH DAKOTA

*Question.* Ms. Connell, on page 2, 2nd paragraph of your March 21, 2013, pre-filed testimony, you stated:

"The agencies involved in the pilot project have made significant progress in a number of areas. Additional resources, such as personnel devoted to processing oil and gas use authorizations, have enabled the various bureaus and agencies to increase the pace of permitting and completing environmental reviews, particularly given the complex resource issues we face. The time taken for interagency consultations has been reduced due to improved communication and through programmatic streamlining efforts, which have been used in multiple projects and permits."

Do you have specific results to show that this Pilot Project has improved the Federal permit process? (i.e. A backlog of X amount of Applications for Permit to Drill (APDs) has been reduced to X amount, reduced average time to process an APD from X to X, X amount of inspections before compared to X amount of inspections now.)

Answer. The pilot office authority has allowed the BLM and other pilot office agencies to better coordinate permitting and related environmental reviews, which along with additional funding has allowed us to increase the pace of permitting. The pilot project offices approved approximately 54 percent of all APDs received from FY 2006 to FY 2012. From FY 2006 to FY 2012, the amount of time it took for all BLM field offices to process and approve complete APDs fell from 127 to 77 days. The number of complete APDs pending more than 90 days (the "backlog") at all BLM offices declined from 1,486 to 551 from FY 2006 to FY 2012. (Note: only after an applicant has submitted all the required components of an APD package is the BLM able to complete its review and make a decision on an APD.) The number of inspections completed by all BLM offices rose 73 percent from FY 2006 to FY 2012, from 19,974 to 34,571.

Mr. LAMBORN. OK, thank you for being here and for your testimony.

We will now hear from Ms. Wagner.

**STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S.  
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE**

Ms. WAGNER. Good morning, Mr. Chairman and members of the Committee. Thanks for the opportunity to provide the Department of Agriculture's views on H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013.

We have had the opportunity to share our perspective on previous versions of this bill, and we have not changed our position since our last testimony. I know you have had an opportunity to review the detailed written testimony. I am going to focus on a few key points in my oral remarks.

We support environmentally sound mineral development. We also recognize the benefit of copper mine development to economic and employment conditions in the State of Arizona and the Nation. We acknowledge the environmental benefits and qualities of the non-Federal land parcels considered in this exchange, and we appreciate the efforts to resolve land use issues for the Town of Superior. Last, we appreciate the recognition and protection of important values of Apache Leap.

While the Department understands and appreciates the potential economic benefits and value of the lands to be acquired by the American public, the Department cannot support the bill as written, but is looking forward to working with sponsors and the Committee to resolve concerns. The two principal concerns with the bill are that it would require the Agency to prepare an environmental review document under NEPA after the land exchange is completed, and the land exchange and subsequent mining activities have the potential to impact a landscape considered sacred to a number of federally recognized Tribes, without environmental review or consultation with the Tribes.

The Department believes that adhering to the Federal Land Policy Management Act and other laws that guide administrative land exchanges ensures a sound process for determining the public interest and disclosing environmental impacts. It requires that before making a discretionary decision, the Federal agency considers the

environmental impacts of a proposed major Federal action, and alternatives of such an action.

It is this Administration's policy that NEPA be fully complied with to address all Federal actions and decisions, including those necessary to implement congressional direction. NEPA conducted in advance of the exchange would create an opportunity for meaningful tribal consultation, as envisioned by numerous laws that acknowledge that consultation with tribal governments is legally mandated and integral to the Federal Government's trust responsibility to Tribes. Consultation becomes the vehicle where tribal concerns and interests are identified, addressed, and potentially mitigated.

We have a number of technical concerns with the bill, including the timeframe to complete the land exchange, appraisal provisions, value adjustment provisions, and the purpose of funds from value adjustment payments. And we would like to work with the Committee to resolve those issues.

This concludes my statement. I am happy to answer any questions you might have.

[The prepared statement of Ms. Wagner follows:]

PREPARED STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S. FOREST SERVICE,  
U.S. DEPARTMENT OF AGRICULTURE, ON H.R. 687

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on H.R. 687, the "Southeast Arizona Land Exchange and Conservation Act of 2013". I am Mary Wagner, Associate Chief of the U.S. Forest Service. H.R. 687 would direct the Secretary of Agriculture to convey Federal land for use as an underground copper mine in exchange for environmentally sensitive non-Federal land in Arizona. We defer to the Department of the Interior on provisions relating to lands to be managed by the Bureau of Land Management (BLM).

H.R. 687 would direct the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), a 2,422 acre parcel of land on the Tonto National Forest. The Federal land to be conveyed, known as Oak Flat, contains a potentially sizeable copper ore body and adjoins an existing copper mine on private land owned by Resolution Copper. In exchange, Resolution Copper would convey five parcels of land to the Forest Service and three parcels of land to BLM. The total non-Federal acreage that would be conveyed by Resolution Copper is 5,344 acres, all of which are in Arizona.

The Bill calls for an equal value exchange in section 4(e). If the value of the Federal land (including the ore body) to be conveyed exceeds the value of the parcels to be acquired, the Bill would allow for a cash equalization payment by Resolution Copper in excess of 25 percent. Under current law, cash equalization payments may not exceed 25 percent (section 206(b) of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b))). A cash equalization payment resulting from the exchange would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land for addition to the National Forest System within the State of Arizona.

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

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

H.R. 687 would require Resolution Copper to pay all costs associated with the exchange, including any environmental review document. The Bill provides that it is the intent of Congress that the exchange be completed not later than 1 year after the date of enactment.

At the request of Resolution Copper, the Bill would require the Secretary, within 30 days of such request, to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area, from existing drill pads located outside the area, if such activities would not disturb the surface of the Area. At the request of Resolution Copper, within 90 days, the Bill would require the Secretary to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), if the activities are conducted from a single exploratory drill pad which is located to reasonably minimize visual and noise impacts to the Campground.

H.R. 687 would require the Secretary of Agriculture to complete an environmental review document after the exchange, and after the above-noted activities were permitted to take place, but before Resolution Copper's commencement of commercial mineral production on the land it would acquire in the exchange. Specifically, once the land exchange is consummated, and these lands are in the private ownership of Resolution Copper, Resolution Copper is authorized to submit a mine plan of operation to the Secretary. Thereafter, the Secretary must complete an environmental review document within 3 years that is limited to section 102(2) of the National Environmental Policy Act of 1969 (NEPA). The environmental document would be used as the basis for any Federal action or authorization related to the proposed mine and mine plan of operations of Resolution Copper, including the construction of associated power, water, transportation, processing, tailings, waste dump, and other ancillary facilities. After the exchange, Resolution Copper may need to use the adjoining National Forest System land for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads.

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

While the Department understands and appreciates the potential economic benefits and the value of the lands to be acquired by the American public, the Department cannot support the Bill as written but is looking forward to working with the Sponsor and the Committee. The principal concern is that the Bill would require the agency to prepare an environmental review document under NEPA *after* the land exchange is completed. Also of concern is the fact the Bill would immediately authorize mining exploration activities under an area that is considered sacred to a number of federally recognized Indian tribes (the Western Apache, including the San Carlos Tribe and of the Fort McDowell Yavapai Nation, and certain other tribes in Arizona and New Mexico) without a review or study or consultation with Tribes.

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

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

The Bill should be amended to require the preparation of an environmental analysis *before* the land exchange is completed. The purpose of preparing an environmental analysis before consummating the land exchange would be to analyze the effects of the transfer of the Federal land to Resolution Copper, any activities that

are reasonably foreseeable to occur on the transferred land (including mineral development), and the acquisition of the non-Federal land resulting from the exchange. The agency would use the environmental analysis to make a decision on whether and how to proceed with the exchange and what mitigation conditions would be required to mitigate the identified impacts.

The legislation states that it is Congressional intent that the exchange be completed within 1 year. Based on our experience with complex land exchanges, this is clearly an insufficient amount of time to complete the exchange. Given the requirement of mineral reports, appraisals, title documents, environmental analysis and government to government consultation with local Indian Tribes, a 2 to 3-year timeframe is much more realistic.

The agency also understands that a number of federally recognized Indian tribes and regional and national tribal organizations are concerned that the H.R. 687 circumvents various laws, policies, and Executive order that directs the Federal land managing agencies to engage in formal consultation with the interested Indian tribes. Indian tribes have also raised important concerns that the Bill is contrary to various policies and Executive Orders that Federal land managing agencies protect and preserve sites that are sacred to Native Americans. The Forest Service understands that the land is considered sacred by the tribe and holds significant traditional and historic value. Because of these expressed concerns and because this specific site has been the focus of historic Government protection it is important that this Bill provide for the process of formal tribal consultation to ensure both tribal participation in cultural impact analysis and protection of this site.

We hold in public trust a great diversity landscapes and sites held sacred by Indian tribes. Last year, the Department and the Forest Service issued the "Indian Sacred Sites Policy Review and Recommendations". The Report acknowledges that consultation "with Tribal governments is legally mandated and integral to the agency's trust responsibility to tribes. Among the laws that specifically require consultation are the Archeological Resources Protection Act (ARPA), Native American Graves Protection and Repatriation Act (NAGPRA), and the National Historic Preservation Act (NHPA)." On December 5, 2012, the Departments of Defense, Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation entered into a Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites to improve the protection of and tribal access to Indian sacred sites through enhanced and improved inter-departmental coordination and collaboration. The MOU is based on the requirements of Executive Order 13007, Indian Sacred Sites, and provisions of the National Historic Preservation Act.

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

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

There is no doubt that the lands that would be acquired and managed by the U.S. Forest Service under H.R. 687 have important resource values that should be protected. It is also clear that the economic benefits from the production of copper could be significant in creating family wage jobs in tough economic times. However, it is important to more fully understand the scope of the project before proceeding and address potentially significant environmental concerns and sites of high importance to local Tribes. In addition to the concerns expressed in testimony, the Department would like to work with the Committee on a number of significant technical concerns.

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

Mr. LAMBORN. OK, thank you for your testimony and all three of you for being here. We will now have questions from the Committee. And I will start, and I will ask the first one to Ms. Connell.

Can you tell me how many acres are currently being explored, developed, or mined on BLM lands under a notice of intent or plan of operation?

Ms. CONNELL. We have plans of operations on more than 260,000 acres of public lands in the United States.

Mr. LAMBORN. OK. Thank you. That is exactly what I have. In fact, I have, when you combine those two categories together, approximately 260,000 acres. So our numbers correlate exactly.

Now, out of the 247 million acres of land that BLM manages, 260,000 is about  $\frac{1}{10}$  of 1 percent, when you do the math. So,  $\frac{1}{10}$  of 1 percent of the lands you actually manage are authorized for disturbance and it is not all disturbed today, it is just theoretically could go up to that amount for mineral exploration, development, or mining. I don't see a problem, when the mission of BLM is to allow for multiple uses of public lands, recreation, hunting, fishing, hiking, et cetera, et cetera, why  $\frac{1}{10}$  of 1 percent for mining is overdoing it in any way, and is a cause for huge concern. Could you respond to that?

Ms. CONNELL. Certainly the Department of the Interior, the Bureau of Land Management has a multiple-use mission that includes mining. And we very much support mining development on public lands in the United States, subject to the public involvement requirements, the environmental protection requirements. It is definitely a part of our mission, and we look forward to working with the Committee on any issues related to that.

Mr. LAMBORN. So, what objection is there, for instance, in working more with other agencies, State and Federal agencies, as some of these bills call for?

Ms. CONNELL. We work very—

Mr. LAMBORN. And is your microphone on?

Ms. CONNELL. It is. You want me to—I will try and speak up.

Mr. LAMBORN. Sure, thank you.

Ms. CONNELL. We do not have a concern with working closely with other agencies. In fact, I have been a field manager in the BLM for more than 20 years before I became a State director. And some of our most successful efforts have occurred in working at the local level with local managers from other agencies. And I have seen that at the regional level, as well.

And so, the concerns that we have are not with the requirements for our organizations to work closely together.

Mr. LAMBORN. OK, thank you. I have a question now for Ms. Wagner. And Mr. Meinert, if you want to chime in at any point, feel free to do so.

Do you believe that understanding the mineral resource needs of the Nation and knowing where they are located should have an equal priority to things that are already in the budget for BLM for things like figuring out what surface changes might occur if climate gets warmer or colder?

Ms. WAGNER. I will defer to the Department of the Interior for that.

Mr. LAMBORN. Excuse me?

Ms. WAGNER. I would like to defer to the—excuse me. I would like to defer to the Department of the Interior for that question.

Mr. LAMBORN. Oh, I am sorry. I should have redirected that. Thank you for the clarification. Yes.

Ms. CONNELL. The question is regarding whether or not we should place priority on identifying where our particular minerals are. And certainly the Department of the Interior is interested very much in understanding the resources that we hold in trust for the American public. And I think that any way that we can gain better information to make better decisions is a good thing.

I would ask if my colleague from the USGS has comments on the ability to collect that information and the cost that might be associated.

Mr. MEINERT. The gist of your question is really a policy question about relative priorities, which, for the United States Geological Survey, I can't really get into, because we are a science agency.

But for the part of the question concerning the knowledge about mineral resources, that is a central part of our mission. It goes all the way back to the founding Organic Act that says that it is part of our job description to understand about the mineral resources of the United States. And we have a very high level of scientific expertise to bring to bear on those subjects, and that is something that we do on a continuing basis.

Mr. LAMBORN. Well, thank you. I like that answer, because this does get back to the original mission. And unfortunately, my figures show that zero dollars are being spent now in locating rare earth and critical mineral and strategic mineral resources, and what the obstacles are to using those, that is getting zero dollars. And yet there is \$25 million going to climate change centers.

So, even though you say there is the mission to know where our resources are located, as two of these bills call for, you are allocating zero dollars to do that. Yet there is \$25 million going for climate change centers. So I think that that first category, knowing where our resources are, is just as important. So I think—

Mr. MEINERT. I couldn't agree more.

Mr. LAMBORN [continuing]. We shouldn't have—excuse me?

Mr. MEINERT. About the importance of mineral resources. And we have many ongoing programs looking exactly at that question. So I don't think it would be true to say that there are zero resources being allocated to this. We, in fact, have many ongoing programs looking at mineral resources.

Mr. LAMBORN. Well, I am glad to hear that. But I am perplexed by the opposition to the legislation.

OK. I am at this point going to recognize Representative Holt for questions.

Dr. HOLT. Thank you, Mr. Chairman. I thank the witnesses. It is good to see you here. I appreciate your good work.

Ms. Connell, you indicated that public involvement in the review of mining proposals would be constrained under H.R. 761. You also testified that “public lands not only produce commodities, but also offer hunting, angling, and other recreational opportunities.”

I am trying to understand. Do you think that H.R. 761 would adversely affect other uses of public lands, such as hunting, fishing, recreational shooting, and so forth?

Ms. CONNELL. Based on our review of the language of this bill, our concerns lie more with the language in the bill. Our concerns lie with our ability to conduct a timely version of the environmental review and public involvement. And so, we certainly support the development of rare earth elements and any critical minerals that exist on the public lands in the United States—

Dr. HOLT. Yes, we are talking—I am sorry, we are talking about H.R. 761.

Ms. CONNELL. H.R. 761, which is the Critical Minerals Production Act.

Dr. HOLT. Yes.

Ms. CONNELL. Right.

Dr. HOLT. OK, OK, I am sorry.

Ms. CONNELL. So that is what I was answering.

Dr. HOLT. I beg your pardon. OK.

Ms. CONNELL. OK.

Dr. HOLT. Please go ahead, then. Thank you.

Ms. CONNELL. But that is a concern that we have with this bill, is the way that the language isn't clear to us that it provides as much of an opportunity for public involvement as we would have liked to have seen.

Dr. HOLT. OK. Now, further on H.R. 761, do you agree that this bill has little to do with critical and strategic minerals, and would cover lots of other things? Perhaps even coal mining?

Ms. CONNELL. The language, when we reviewed it, it was unclear as to the definition of what "strategic" or "critical minerals" might be, and it could actually incorporate a large number of the mineral activities.

Dr. HOLT. OK.

Ms. CONNELL. And it was uncertain to us as to whether that was the intent of the bill or not.

Dr. HOLT. And probably would include gold and silver, as written?

Ms. CONNELL. All of the basic—

Dr. HOLT. OK.

Ms. CONNELL [continuing]. Basic minerals that were mined under the 1872 Mining Law, as amended.

Dr. HOLT. Let me turn to H.R. 957, Ms. Connell. The 2011 report by the Department said that royalty reduction for soda ash mining meant a loss of some hundreds of millions of dollars of revenue to the Government, which is five times the amount anticipated by Congress. The industry, those who use the soda ash, disputes these findings and the conclusion of the report.

So, I wanted to ask if you have met with the industry on this, if the Bureau or the Department has met with the industry, and if you can help me understand what the disagreement is, and how that would be resolved.

Ms. CONNELL. Well, certainly—

Dr. HOLT. Do you still stand by the report, for example?

Ms. CONNELL. The report that you are speaking of is the 2011 Report to Congress—

Dr. HOLT. Yes.

Ms. CONNELL [continuing]. That BLM was required to submit. Correct?

Dr. HOLT. Yes.

Ms. CONNELL. And that is accurate, that the numbers that were concluded in that report by the Department of the Interior and its partners were basically the data, when we compared that data with the information that came out from the industry's report, the data was very, very similar. It was the conclusions or the interpretations of that data where we found differences.

And, I apologize, I am not familiar with any meetings that have occurred between the BLM and industry, but we could certainly get that information to you on the record, if you would like us to do that.

Dr. HOLT. I would appreciate it if you would provide that to us.

And, well, in the three-quarters of a minute remaining, let me ask what might be a quick question, Ms. Wagner, on H.R. 687. What can you say in general terms about the impact on water for local communities in the area from these activities that would take place there?

Ms. WAGNER. For the mining operation, the question is still a bit outstanding. The company has not submitted a mine plan of operations, and with this proposed bill would not be required to do so until 3 years after the land exchange was codified. The lands would be in private ownership at that point in time, and be governed by the State of Arizona's provisions for private land—

Dr. HOLT. So we would not know in advance of voting on this bill, and maybe we should, do you think?

Ms. WAGNER. The absence of a provision for NEPA to explore the issues surrounding the land exchange, some of which might be impacts to the highest and best use of that land, in this case, perhaps mineral development, would not be known prior to the land exchange.

Dr. HOLT. Thank you.

Mr. LAMBORN. OK, thank you. Representative Gosar?

Dr. GOSAR. Thank you. Thank you, Ms. Wagner, and thank you for being so quick with your comments. That is a long day. I have a quick question for you, not just on the Administration, but a question came up in testimony last year that I want you to clarify.

When the United States Forest Service does an appraisal, they use what they call the DOJ Yellow Book, or the DOJ's guidelines for appraisals, is that not correct?

Ms. WAGNER. We use the uniform appraisals standard guidebook.

Dr. GOSAR. So more specifically, the appraisal must comply with Section 254.9 of Title 36, Code of Federal Regulations and Nationally Recognized Appraisal Standards, which include the uniform appraisal standards for the Federal land acquisitions and the uniform standards of professional appraisal practice. Right?

Ms. WAGNER. Correct.

Dr. GOSAR. OK. Now, the Department of Justice guidelines for appraisals has been very carefully drafted, revised, and updated over many decades. It requires the appraiser to look at the actual facts that apply to a particular property, including associated mineral values.

Last year, some in the minority tried to make the case that my legislation requires some unusual appraisal process. I would like to point out that Section 4 of H.R. 687 specifically requires the same

appraisal standards that the agencies are required to use to determine fair market value. There is nothing unusual about it; it is a standard procedure.

When Resolution files its Mine Plan of Operation, then it will go through the NEPA process, and the public will have ample opportunity to provide comments, as guaranteed under the law. Is that not true?

Ms. WAGNER. The Mine Plan of Operations, as I understand the bill, Mr. Gosar, would be looking at the ancillary activities to the plan of operations outside of the private land. So, if the mine needed utility corridors, power corridors, roads, tailing, waste dump, ancillary facilities, that would be what the question on the Federal lands would be about.

Dr. GOSAR. I think that what you have is a full NEPA disclosure. There would be no shortcuts for the NEPA process in regards to the way this language is written.

Ms. WAGNER. On the private land, would they not be governed by the laws of Arizona for private land mineral development?

Dr. GOSAR. I mean, in fact, in some cases, Arizona is more stringent than the U.S. Code. Is it not?

Ms. WAGNER. So, to your point, what would govern the private land, should the land exchange go forward, would be the laws governing private lands in the State of Arizona.

Dr. GOSAR. And the full NEPA process is not subjugated or shortchanged.

Ms. WAGNER. If that is what is required in the State of Arizona.

Dr. GOSAR. That is exactly what is required here. So I wanted to make sure, because we had a witness prior that could not answer that question appropriately.

Ms. Connell, in your testimony you mention my bill doesn't touch on the disclosure of mineral reports. In Section 4(d)1 on page 6, language was inserted to ensure that the appraisal must comply with the requirements of Section 254.9 of Title 36, Code of Federal Regulations. Section 254.9 of Title 36, Code of Federal Regulations states, "Appraisals prepared for exchange purposes must contain the following minimum information: 11, copies of relevant written reports, studies, or summaries, conclusions prepared by others in association with the appraisal assignment, which were relied upon by the appraisal to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber crews, as prepared for qualified specialists."

Can you clarify why you don't believe we don't touch on mineral reports? Because our intention is full disclosure, and I believe the code we cite in the bill requires our full disclosure.

Ms. WAGNER. I am not an expert appraiser, obviously, but my understanding of the concern was that some of the information that might be needed to develop an appraisal would be not accessible to the Federal Government unless it were made available by a private entity.

Dr. GOSAR. And what part would that be?

Ms. WAGNER. The mineral quantities from the samples—

Dr. GOSAR. Now let me ask you a question. Isn't that part of the State jurisdiction and oversight? You don't trust the State?

Ms. WAGNER. I can't answer that question for you.

Dr. GOSAR. I mean we have kind of a funny thing about facts here, is that the State is very, very articulate about this. And once again, some of the State laws are much more onerous than the Federal laws.

What about Section 6 that specifies the Resolution Copper must report annually to the Federal Government and the State of Arizona if the total mine production ever exceeds appraisal production, estimates Resolution Copper must make an annual royalty-like adjustment payment to the United States on all excess productions? Would that also require mineral reports? Correct?

Ms. WAGNER. That is correct.

Dr. GOSAR. Yes. That is what I thought. So I have further questions, but we will start that under somebody else. Thank you.

Mr. LAMBORN. OK, thank you. We will now hear questions from Representative Grijalva.

Is your microphone on?

Mr. GRIJALVA. Sorry. The public interest requires a complete and full informed appraisal, equalization of values be performed prior to a congressional passage of this bill, not after. Do you see that as a public interest requirement or a requirement in the appraisal process as you see it, that the appraisal process be done prior to, rather than after the passage of the bill?

Ms. WAGNER. Is that question to me, Mr. Grijalva?

Mr. GRIJALVA. Yes.

Ms. WAGNER. The public interest determination that is usually done when a land exchange is considered is actually pre-NEPA. It actually looks at the qualities of the non-Federal parcels, the issues of the Federal parcels. It is not predicated on a appraisal of the lands, a complete appraisal of the lands. An estimate of values is done to determine a public interest.

Mr. GRIJALVA. And that is for both witnesses. Throughout his Administration, President Obama has been committed to enhancing the partnership with Native Nations and the Federal Government, very vocal about his support for a real consultation process, and a government-to-government relationship that has formality and process.

If this bill were to become law, will the Federal Government be able to meet its commitment, whether it is a memorandum of understanding your agency might have, or the initiative of the President, would you be able to meet that commitment to a meaningful consultation with Native Nations affected by this legislation?

Ms. WAGNER. The Department of Agriculture doesn't believe that meaningful consultation can occur without the NEPA process preceding the land exchange decision.

Mr. GRIJALVA. Resolution Copper's mining operation is going to require 20,000 acre-feet per year. That is their number. Apparently, the company says that it has been banking water, and has indicated it will use excess CAP water to support its mine operations.

Just so that I am clear, has Resolution Copper provided any analysis about any potential impact or any mitigation plan in place to protect the resource? The resource being ground water in the area, the resource being acid mine drainage into the ground water. And an analysis, is this 20,000 feet per year enough to support the

mining activities for the life of the mine? Have any of those been provided to you, the agency, or any that you know of?

Ms. WAGNER. The NEPA that has been conducted with the Forest Service and Resolution Copper has been on pre-feasibility exploration by the company on parcels adjacent—

Mr. GRIJALVA. NEPA question. And correct me. I just want to be clear, we keep going over this. NEPA is triggered if a Federal action is likely to have significant impact on human development. While numerical values of proposed action are relevant, the number of acres or megawatts, or whatever, there is no numerical cap or limit on NEPA application. The point is to determine environmental impacts and things like the number of acres involved cannot always answer the question.

This bill, I think, plainly waives NEPA with regard to the land exchange. The decision to trade Federal land, forest land, particularly land that was set aside during the Eisenhower Administration, and withdraw it from mining—to a mining company, a foreign-owned mining company, is likely to impact the human environment. NEPA would be required prior to the exchange, if this bill did not specifically waive that application. Right or wrong?

Ms. WAGNER. That is correct.

Mr. GRIJALVA. And just, I think, for the record, because we were talking about  $\frac{1}{10}$  of 1 percent, Mr. Chairman, I am happy to announce that the Federal judge in Arizona threw out the case, the withdrawal of the 1 million acres around the Grand Canyon. And we can rest assured for a little while that beautiful icon will continue to be a beautiful icon. I yield back.

Mr. LAMBORN. We will now hear from Representative Cramer.

Mr. CRAMER. Thank you, Mr. Chairman and Ranking Member, and thank you to the witnesses. My, of course, interest is on my bill, H.R. 767, and all my questions will be for answering by Ms. Connell.

And, first of all, let me say, publicly thank you for your service and for being here. Having been an energy and environmental regulator for nearly 10 years in North Dakota, I always found the relationship between the State and your agency to be very professional and productive, and I appreciate that, which is why I think this makes so much sense, what we are talking about today.

You know, H.R. 676 simply just adds the word “Dakota,” basically, to the Montana-Dakota State office, since that is our State office, and it wasn’t originally part of the original bill in 2005, the Act in 2005. But this Pilot Project probably, in 2005, wasn’t even envisioned to be as active as it is today. And so we want to include North Dakota as part of the streamlining Pilot Project.

Could you in the first few seconds or minute, describe what that Pilot Project is, exactly? What specifically helps streamline the permitting process? And is there any environmental compromising as a result of it?

Ms. CONNELL. The Energy Policy Act of 2005 identified 7 offices managed by the Bureau of Land Management that would receive funding which is acquired from rentals for public land leases across the Nation. And, as a result of that additional source of income, we were able to establish some teams that would be set aside in each of those various offices to focus on developing the oil and gas re-

sources in that area. At the time, the price of natural gas was very high, and so many of those offices are areas where we have natural gas activity.

North Dakota has boomed, the Bakken play there is a world-class, amazing oil resource for this country. And the Dickenson field office for the BLM has very much been trying to keep up with the activity. Should the Dickenson office be made a part of this pilot effort, we would be able to take advantage of utilizing extra resources from across the county in our ability to bring the oil reserves from the Bakken from the Federal lands and from Indian Trust estate to the surface and make it part of the oil resources available to the American public.

Mr. CRAMER. Exactly how does that happen? In other words, how is the streamlining—how does that happen? What do you do to streamline, if you—

Ms. CONNELL. Well, we streamline in some ways by bringing everyone close together: representatives who work for the Bureau of Indian Affairs, for the BLM, for the Fish and Wildlife Service. We are located very close together, and we have streamlined some of the processes at the local level, depending on what the issues are. We have actually been able to streamline some of the work that is done out in the field.

The number of environmental inspections has more than doubled, as well as the drilling and production inspections. And we also in the pilot office have been able to process more drilling permits with an equal amount of environmental oversight that we were before the implementation of the law.

Mr. CRAMER. Thank you. Now I want to get to your testimony where you have some suggestions for us. And I have been sort of thinking about it all morning. Realizing that this pilot project is due to expire at the end of 2015, so we are about 7.5 years into it, as I understand, and your suggestion is that perhaps we could, by giving BLM more flexibility, utilize the resources in places other than those original 7-plus North Dakota offices.

Do you have any concern that would dilute the intent of the pilot, or would we be better off, and I am really asking, I really don't know, or would we be better off sticking sort of to this mission, seeing how it goes, realizing you now have a world-class play right in the middle, surrounded by public and State activity, that we could do a real experiment, if you will, and gather real information, and then perhaps look at doing something larger down the road? And I am just honestly asking.

Ms. CONNELL. I think that broadening the effort across the Nation would help in a few other places that are having similar struggles to the Bakken area. I think you would still continue to see the focus of the pilot efforts in the highest density of drilling areas, North Dakota would and Eastern Montana would likely remain in the eye of that development activity for the foreseeable future.

Mr. CRAMER. All right. Thanks for the clarity. And again, thanks for the great job you do in protecting our resources. And I just look forward to continuing that same level of protection, while also providing opportunity for economic growth.

Thank you, Mr. Chairman.

Mr. LAMBORN. You are welcome. We will now hear questions from Representative DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Mr. Chairman, I do have questions about H.R. 687 that I hope to get to. But I do, given the opportunity of having Deputy Chief Wagner here, there is something of immediate concern, which is I disagree strongly with the Office of Management and Budget that the safe and secure county rural schools funds are subject to sequestration, particularly since these were funds for Fiscal Year 2012, when sequestration did not exist.

We seem somehow to have lost that battle. We have been sequestered on the BLM funds. And now we are being told you are going to sequester the funds from the Forest Service. So my question is, since the money has been dispersed to the States and spent or programmed for education and public works roads purposes, where are you going to get that money? How are we going to do it? The only thing I can see that you might be able to do is to cut out Title 2 funds. And Title 2, of course, actually benefits the Forest Service, in terms of projects on Forest Lands, and employs people.

So, is that where we are headed? We are about to do this sequestration to the detriment of activities on the Forest Service lands and loss of jobs? Is that where we are headed?

Ms. WAGNER. We had the secure rural schools funding distributed as quickly as we could because it works for schools, for roads—

Mr. DEFAZIO. Right, right.

Ms. WAGNER [continuing]. For emergency protection and services. And last, Title 2 funds are investments in conservation projects.

It is unfortunate, but we find ourselves in a situation of having to have notified the States of the impacts of sequester, and that we are going to have to ask for a return of 5.5 percent of those funds back to Treasury. We have done that, and the only option as we see right now, because, as you said, those funds have been programmed to important investments at the county level, would be to consider using the Title 2 as offsets to return the 5.5 percent to treasury.

Mr. DEFAZIO. But what happens, not everybody gets a Title 2.

Ms. WAGNER. Exactly.

Mr. DEFAZIO. So you are going to take sort of doubly out of the States where they get Title 2 money, will be penalized more?

Ms. WAGNER. It is unfortunate we have to ask for that money back, but that is where we find ourselves.

Mr. DEFAZIO. This is extraordinary, and I just find this very, very hard to believe.

Back to a more general question about H.R. 687, for many years I have been involved in the fight over mining reform, and I did the royalty amendment back in 1994, when we passed a bill on mining reform. This seems to me a very unusual process by which we would, the taxpayers would, realize value from this unbelievably valuable asset. And I don't understand why we wouldn't just want to assess a straight-up royalty, which would be predictable both to the producer, and it would be predictable to or more predictable, to the government and benefit the taxpayers.

Have you reviewed this proposal on how we would get future revenues from the production of this asset, either—yes, OK.

Ms. WAGNER. Yes, Mr. DeFazio. The company would be, should the estimate of mineral value or quantity differ from what was assumed in the appraisal process, if the company actually produced more than what was estimated, there is a provision in this bill for an income capitalization approach to the taxpayers receiving some—

Mr. DEFAZIO. Is this something routinely used, income capitalization for this sort of an asset?

Ms. WAGNER. I am not aware of other—

Mr. DEFAZIO. So this would be a first impression. They get to deduct—

Ms. WAGNER. I am not aware of other—

Mr. DEFAZIO [continuing]. All of their estimated construction, operating, maintenance costs on an annual basis, from their production, and then that would come up with this theoretical appraised or annual value.

Ms. WAGNER. The appraisal actually would be done by somebody who has expertise in appraising properties that have mineral value. And they would use a cost sale comparison methodology. They might use the income capitalization approach. It is a multifaceted approach to get—

Mr. DEFAZIO. Right. But why would we create a new and novel process for such an incredibly valuable asset? Why wouldn't we just say we want a royalty?

Ms. WAGNER. My understanding is that it is the vehicle to protect the interests of the public if the appraisal estimate of material removed from the mine didn't match up with the actual production of the mine.

Mr. DEFAZIO. Yes, but if we are doing a royalty on growth, that is very predictable, and there is no way to harm the public there.

Ms. WAGNER. We would be happy to work with the Committee on language that would work to achieve the public interest that I think that provision was intended to achieve.

Mr. DEFAZIO. I am not following that at all. Thank you, Mr. Chairman.

Mr. LAMBORN. OK, thank you. Representative Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I am going to concentrate my time on the soda ash bill. I appreciate Ms. Connell's remarks about how the data was very similar between the BLM and the industry, and the fact that it is how you interpret it that makes the difference.

And there is a reason that the interpretations that were drawn by the employer and employee groups that support this bill convinced both the gentleman from New Jersey and the gentleman from Oregon here present to support this bill in the last Congress. And the reason is that both the employer and employee organizations, industry and labor unions, are supporting this bill because they recognize what China is doing.

Soda ash is a natural product. And it is produced in the United States and shipped overseas, a large part of it. It is used to make glass and soda, baking soda, and laundry detergent, and things like that. It is a hard rock. China produces synthetic soda ash in great

quantities, and subsidizes it to the tune of \$30 million annually. So, if we increase the royalty, which we have now allowed to occur on naturally occurring soda ash in the United States, we are charging \$25 million more annually for soda ash, while the Chinese are subsidizing theirs to the tune of \$30 million. And that just creates a lopsided competitive disadvantage for U.S. soda ash that costs jobs and costs production, costs our competitive edge around the globe. So, that is why this bill enjoys the support of both labor unions and industry.

Congress set a 2 percent royalty rate back in 2006. And during those following 5 years of the 2-percent royalty rate, U.S. soda ash manufacturers increased employment, increased production and exports, and increased the royalties paid to the Federal and State coffers, as compared to the previous 5 years. Now, that royalty rate of 2 percent was allowed to expire. It has gone up to 6 percent. And that is why labor unions and industry have joined forces on this bill to allow for more royalty dollars to be paid to the U.S. Government and the taxpayers of this country, by allowing our product to remain competitive globally against this Chinese synthetic product that is subsidized.

So, Mr. Chairman, I want to point that out and maybe conclude with this question for Ms. Connell. Isn't it true that during the years 2006 to 2011 the United States suffered a recession and unemployment levels were at double digits? But at the same time, when we had a lower royalty rate on soda ash, its employment base increased, the production increased, exports increased, and we actually collected more than the previous 5 years under a 6 percent royalty?

Ms. CONNELL. During the year that you are asking about would have been during the 5 years while the royalty rate was lower. Correct?

Mrs. LUMMIS. While the royalty rate was at 2 percent we enjoyed an increase in production and an increase in employment in the soda ash industry because our product was more competitive overseas, as compared to the Chinese synthetic product.

Ms. CONNELL. Certainly the soda ash industry in the United States has remained very competitive, worldwide. And from the information that I have been provided, it has remained competitive through 2012, despite the fact that we have had economic difficulties, as well as the increase in the royalty rate.

Mrs. LUMMIS. Well, it is not easy, once employment and contracts have been established globally under a 2-percent royalty rate, to immediately change those contracts. And isn't that the case? I mean some contracts to provide soda ash would run beyond the expiration of the 2-percent royalty rate, simply because the contract term runs beyond the expiration of the 2-percent royalty rate. Isn't that possible?

Ms. CONNELL. That could definitely be true.

Mrs. LUMMIS. Thank you, Mr. Chairman. My time is up and I yield back.

Mr. LAMBORN. Thank you. I want to thank the panel for being here today. Let me ask a couple of clarifications.

Mr. Meinert, you referred earlier to the fact that USGS was working on some projects to both search for and list critical and strategic minerals today. Could you supply me with that list?

Mr. MEINERT. To clarify, I stated that we have many projects researching mineral resources, including strategic minerals. And we would be happy, for the record, to provide you with further information about those projects.

Mr. LAMBORN. Please do so. Thank you for that offer. And to clarify something you said, Ms. Wagner, during your testimony, is it your position that NEPA should be complied with before land exchanges and conveyances take place?

Ms. WAGNER. That is the position of the Administration, yes.

Mr. LAMBORN. OK. I thought you would be interested to know that we passed a bill yesterday in this Committee, Full Committee, and it also passed the last Congress by unanimous consent. It is a bill by Representative Grijalva, H.R. 507, to convey land into a trust involving a golf course without NEPA being complied with.

Ms. WAGNER. It is certainly true that Congress has the authority to waive provisions of NEPA.

Mr. LAMBORN. OK. Thank you for that clarification, and thank you for being here. Members of the Committee may have questions for you to follow up, and we would ask that you respond to those questions, if they are submitted to you in writing. Thank you.

We will now go to our fourth and final panel. And I would like to invite forward the witnesses for this panel: Mr. Stephen Miller, Chairman of the Board of Supervisors of Pinal County District 3; Mr. Hal Quinn, President and CEO of the National Mining Association; Mr. Dan McGroarty, Principal and Director of American Resources Policy Network; Mr. Mike Hohn, General Manager of the Soda Ash Business of OCI Chemical Corporation; Mr. Terry Rambler, Chairman of San Carlos Apache Tribe; Mr. Pierre Neatby, Vice President of Sales and Marketing for Avalon Rare Metals; and Ms. Soyla Peralta, Council Member of the Superior Town Council.

Like all of our witnesses, your written testimony will appear in full in the hearing record, so I would ask that you keep your oral statements to 5 minutes. You have to turn on the microphone to be heard. The countdown begins at 5 minutes with a green light, turns to yellow after 4 minutes, and then turns red after 5 minutes.

Thank you all for being here. We look forward to your testimony, and we will start with Mr. Miller. Thank you for being here.

**STATEMENT OF STEPHEN Q. MILLER, CHAIRMAN OF THE  
BOARD OF SUPERVISORS, PINAL COUNTY DISTRICT 3**

Mr. MILLER. Mr. Chairman and members of the Subcommittee, my name is Steve Miller, I serve as Chairman of the Pinal County Board of Supervisors. I appreciate the opportunity to testify before you—

Mr. LAMBORN. Are you speaking into the microphone?

Mr. MILLER. I believe I am. Is that better?

Mr. LAMBORN. OK. Make it a little closer. Yes, thank you.

Mr. MILLER. OK. I appreciate the opportunity to testify before you today and would like to personally thank Congressman Paul Gosar and Congresswoman Ann Kirkpatrick for working together

in a bipartisan manner to advance legislation which is important to the people of Arizona.

I must acknowledge my colleagues in the Pinal County Board of Supervisors, and especially Supervisor Pete Rios, who hoped to testify here today, but was not able to make it. I know that my complete testimony will appear in the record, so let me be brief and summarize my remarks. Then I will be pleased to answer any questions.

First, support for this bill is bipartisan and very strong. Support for this bill from a bipartisan Board of Supervisors is unanimous, and the vast majority of residents of Pinal County and all Arizona supports this land exchange and this mine.

Nowhere is the support stronger than the citizens of Superior. Fourth generation resident Mila Besich Lira spoke at the Board of Supervisors meeting and said, "Resolution Copper has been very generous and transparent with the people of Superior and the entire mining triangle." She credited Resolution for the exponential rise in the elementary school math scores and the success of the local schools in the competition with the schools throughout the Southwest.

Second, the bill and the proposed mine will be a net positive environment. The mine's operation being proposed by the Resolution Copper looks very different than the standard open pit mine. Based upon the county's long-standing working relationship with Resolution Copper, we believe this project is going to be one of the most environmentally-sensitive mines in the Nation, even the world. They have taken it upon themselves to reclaim an old mine in Superior decades before they were required to do so at the cost of \$50 million.

One parcel in Pinal County that the Federal Government will receive is the 7B Ranch, 3,050 acres of ranch land, covers 7 miles of both sides of the San Pedro River. Resolution Copper has already put it under the management of Nature Conservancy. And in addition, stepped up to the plate, and at their own expense, have addressed the huge problem of illegal dumping on an otherwise pristine piece of property. Actions speak louder than words.

Third, this mine is just the kind of economic stimulus our county, our State and our Nation needs. The citizens of Pinal County need more high-quality paying jobs. Our unemployment rate is about 8 percent. The unemployment rate on the Indian Reservation is more than triple that number. The Resolution Copper project will put over 1,400 people in excellent jobs, direct jobs, as a result of passage of this legislation. It will create thousands more indirect jobs, combine these jobs, have the potential of creating more than \$60 billion of economic benefit over the life of the mine.

This project also benefits the public sector beyond the lands the U.S. Government will receive. The mine will yield more than \$16 billion in new revenues to the Federal Government. Last I checked, you could use a few billion here.

Back in Arizona, in the State, county, and local governments, they will receive another \$2 billion in revenue. Every day that passes without this legislation, we lose out on all these economic benefits. As an elected official, my responsibility is to improve the quality of life for the constituents. I came here today to urge you

to join me and the citizens of Pinal County to support the land exchange. I ask that you pass H.R. 687 immediately. The residents of Pinal County and the State of Arizona are looking to you for action.

Mr. Chairman, thank you for the honor of appearing here today, and I look forward to answering any questions.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF CHAIRMAN STEPHEN Q. MILLER, PINAL COUNTY  
BOARD OF SUPERVISORS, DISTRICT 3, ON H.R. 687

Mr. Chairman and Members of the Subcommittee:

My name is Steve Miller. I serve as the Chairman of the Pinal County Board of Supervisors. I appreciate the opportunity to testify before you today, and would like to personally thank Congressman Paul Gosar for inviting me to testify. I would also like to thank Congresswoman Ann Kirkpatrick for her leadership on the issue before us today.

I was born in Arizona and have lived in Pinal County for almost 42 years. During that time, I've been through a lot of ups and downs in our community. As a husband, father, and grandfather, economic and community issues drove me to get involved in public and community service. Sure, I had my livelihood as a builder and truss manufacturer to consider, but I have always known people are what matter and few issues today are as important to the people of this County as this legislation and the jobs that will be created by the development of the Resolution Copper Mine.

I am fortunate to serve with some great leaders and I must acknowledge my colleagues on the Pinal County Board of Supervisors, especially Supervisor Pete Rios. Pete also hoped to testify here today, but could not be here. He has been an ardent supporter of the Resolution Copper Mining project from the days when he served in the Arizona State Senate to now.

The Pinal County Board of Supervisors, made up of Republicans and Democrats, just unanimously passed a resolution supporting H.R. 687. The vast majority of residents of Pinal County support this land exchange and this mine. Nowhere is support stronger than with the citizens of Superior, Arizona where polling shows support of the mine exceeds 80 percent. Strong words of support were spoken at our Board meeting by Superiorites like fourth generation resident Mila Besich Lira who stated that Resolution Copper has been very generous and transparent with people in Superior and the entire mining triangle. She credited Resolution's support of local schools for the exponential rise in elementary school math scores and the success local Superior schools have had in competitions with schools throughout the Southwest.

Let me tell you a little about Pinal County. We are right in the middle of the State between Arizona's two largest counties—Maricopa to the north and Pima to the south. Like many of the counties in Arizona, we have a large geographic footprint—just a little larger than Connecticut. Our population has exploded from 60,000 in 1965 to more than 375,000. We need high quality, good paying jobs for our citizens today and into the future. Passage of this bill will help create those jobs.

Pinal County is not only large, but also diverse. The western part of the County, which I represent, is mostly low desert where irrigated farming has dominated over the years. The eastern part of the County is mountainous with elevations as high as 6,000 feet. It is home to what we've called the "copper triangle"—an area known for its long history as a copper mining region.

While I may be new to the Board of Supervisors, I'm not new to Pinal County and I'm very familiar with this legislation and the proposed mine. Mr. Chairman and Members, you need to understand the mining operation being proposed by Resolution Copper looks very different than the standard open pit mine. Based upon the County's long-standing working relationship with Resolution Copper, we believe this project is going to be one of the most environmentally-sensitive mines in the Nation . . . even the world. On behalf of our citizens, the Board will hold Resolution to the highest standard of environmental stewardship; and based on their actions so far, it is clear to me they intend to hold themselves to the same standard.

Let me explain what I see as evidence of Resolution Copper's commitment to the environment. First, the legislation being considered today is the result of extensive consultation between Resolution Copper, Federal agencies, and various non-governmental organizations like The Nature Conservancy and the Audubon Society to find

the best lands to exchange for the Oak Flat Campground. The Federal Government is the overwhelming beneficiary of this lands package. For example, one parcel in Pinal County the Federal Government would receive through passage of this bill is known as the 7B Ranch—3,050 acres of ranch land that covers 7 miles on both sides of the San Pedro River. Resolution Copper has already put it under the management of the Nature Conservancy, and has additionally stepped up to the plate and, at its own expense, addressed the huge problem of illegal dumping on this otherwise pristine piece of property. Actions speak louder than words. Resolution Copper set a high standard for others to follow.

Resolution Copper's actions also speak loudly in Superior, Arizona. It took over the nearly century-old Magma Mine site in Superior, which required an extensive environmental cleanup. Resolution Copper was not obligated to complete cleanup for decades, but decided to begin the \$50 million reclamation. Today, that cleanup is over 70 percent complete. These actions will ensure a safer, cleaner and healthier environment for the residents of Superior. Resolution Copper knows what it takes to be a good corporate citizen and a good community partner. They are helping improve Superior schools, send high school graduates to college, make it possible for younger kids to play little league on a field with grass, provide funding for community programs such as Superior's signature event, Apache Leap Mining Festival, and provide much needed support for the fire and police departments. They understand that Superior is their home and the home to many of their current and future employees.

Let me say something more about economic growth. The citizens of Pinal County need more high-quality, good paying jobs. Our unemployment rate is about 8 percent. The unemployment rate on our Indian reservations is more than triple that number. The Resolution Copper project will put over 1,400 people into excellent jobs—direct jobs as a result of the passage of this legislation. It will create thousands more indirect jobs. Combined, these jobs have the potential to create more than \$60 billion in economic benefit over the life of the mine.

This project also benefits the public sector beyond the lands the U.S. Government will receive. The mine will yield more than \$16 billion in new revenue to the Federal Government. Last I checked, you could use a few billion dollars. Back in Arizona, the State, county and local governments stand to receive another \$2 billion in revenues. It has been said by many others, far better than I can say it, but this bill is a true stimulus bill that doesn't cost taxpayers one dime. By the way, dimes are currently made with 91 percent copper.

As an elected official, my responsibility is to improve the quality of life for my constituents. I came here today to urge you to join me, and the citizens of Pinal County, in support of this land exchange. I ask you to pass H.R. 687 immediately. The residents of Pinal County and the State of Arizona are looking to you for action.

Mr. Chairman, thank you for the honor of appearing before your subcommittee. I look forward to answering any questions the Subcommittee may have.

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QUESTION SUBMITTED FOR THE RECORD TO STEPHEN Q. MILLER

QUESTION SUBMITTED FOR THE RECORD BY THE HONORABLE. GRACE F. NAPOLITANO

*Question.* Is it the normal process for the county to give the mining business to companies outside the United States, in this case to the UK and Australia? Why not seek U.S. owned companies to build U.S. investments in our companies?

*Answer.* Pinal County is a firm believer in the free-enterprise system, a system that today thrives within a global economy. As such, the county does not dictate company ownership or where a mining company may choose to stake claims and invest its capital to develop a mine. The practice of isolationism in this country in the past was not found to be practical or profitable for the nation.

Pinal County did not choose the mining company and direct them to make an investment here. Resolution Copper, a subsidiary of Rio Tinto, explored this site and has determined that the ore body in Superior, Arizona is one of the *10 largest ore bodies in the world*. The company has made multimillion dollar investments in exploring high-tech ways to extract the ore that sends the fewest number of miners underground. The company will be able to mine this ore through the extensive use of robotics and skilled workers.

The jobs created at the mine will be American jobs, pulling a global commodity from American soil to make the sorts of products that power this Nation—from motors to cell phones, to the piping that runs through our homes.

Pinal County seeks to provide opportunity for any company that wants to make investments in our county which will generate wealth and provide economic growth

and opportunity for our citizens. Pinal County enjoys the presence of a number of foreign companies which have created a tremendous number of jobs.

Some of those companies are:

Hexcel Composites	Abbott Nutrition	Phoenix Mart
ACO Polymers	ASARCO Group	Bright International

It strikes me that this project presents the single biggest opportunity for Congress to show America that it is serious about creating jobs, spurring a healthy economy, producing a commodity that is in global demand and reducing our dependence on foreign sources of raw materials.

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Dr. GOSAR [presiding]. Thank you, Mr. Miller.  
Now I would like to have Mr. Quinn for 5 minutes.

**STATEMENT OF HAL QUINN, PRESIDENT AND CEO, NATIONAL MINING ASSOCIATION**

Mr. QUINN. Thank you, Mr. Chairman, members of the Committee. I appreciate the invitation to testify today on H.R. 761. And I also want to thank you all for your continued efforts in trying to find and advance enabling public policies that will positively affect our mineral supply chain here in the United States.

Let me begin maybe with a little global context to frame out not only H.R. 761, but also a number of the other pieces of legislation on minerals that you are considering today. Today about three-quarters of all the economic growth globally comes from emerging economies. And some estimate at this rate, by 2050, 80 percent of the entire global GDP will be allocated to what is today the emerging nations and economies.

Now, these trends are often compared to the Industrial Revolution, but their pace and scope today are simply unprecedented. Consider that in the space of 25 years the GDP of China grew by a factor of 10, took the better part of 70 years for Britain's GDP to grow by a factor of 4 after 1830. And while the Industrial Revolution was a story of about perhaps 100 million people, the story unfolding before us today that we are witnessing really involves billions of people and for the foreseeable future.

And I say the foreseeable future, because the developing nations have per capita consumption rates of energy and commodities that are still just a fraction of the developed world.

So resource competition will be fierce over the next 20 years. Demand for minerals will soar, and stable and reliable supplies will become increasingly difficult to sustain. Here in the United States, our share of global exploration investments is less than half the levels attracted 20 years ago. At the same time, our dependence upon foreign sources of key minerals has doubled. Today domestic minerals supply less than half the needs of all U.S. manufacturing.

Now, these trends are not due to the lack of mineral resources. In fact, in the United States we are blessed with a world-class mineral resource base. Unfortunately, we are cursed with a third-world permitting system, one that is cumbersome, duplicative, and unpredictable. Now, finding minerals in developing mines requires substantial investments, hundreds of millions and even billions of dollars. As a consequence, regulatory certainty is a highly valued commodity. Lengthy delays and permit reviews compromise the commercial viability of projects by increasing costs, reducing the net

present value of those projects, and impairing financing arrangements.

So, the efficiency and predictability of the permitting process matters in decisions where to invest. The choice can be very stark. Invest in countries that provide a predictable pathway for receiving permits within 2 to 3 years, or here in the United States, where it may take three to five times longer.

Now, let me be clear. Valid concerns about environmental protection should be fully considered and addressed. At the same time, they should not serve as an excuse to trap mining projects in a limbo of duplicative, unpredictable, and endless review without a decision point. We should not confuse the length of the process with the rigor of the review. Countries like Canada and Australia, which share our same core principles of responsible resource development, have demonstrated that permit views and decisions can be both thorough and timely. They understand that we are in a global competition for mining investment, and that an effective and efficient permitting process provides a competitive advantage.

H.R. 761 provides a big step for the United States to catch up in this race for investments in minerals. The bill reflects best practices for coordination among State and Federal agencies, clarifies responsibilities, minimizes duplication, sets goals and timeframes, and, frankly, brings just more accountability to the process.

H.R. 761 provides the opportunity to establish a permitting system that prepares us for the challenges of the new global reality, one that will allow our manufacturing, technology, and other industries to compete with the world's fastest-growing economies.

Thank you very much for the opportunity to testify today.  
[The prepared statement of Mr. Quinn follows:]

PREPARED STATEMENT OF HAL QUINN, PRESIDENT AND CEO, NATIONAL MINING ASSOCIATION, ON H.R. 761

Good morning. I am Hal Quinn, President and Chief Executive Officer of the National Mining Association (NMA). NMA is the national trade association representing the producers of most of the Nation's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering and consulting firms, financial institutions and other firms serving U.S. mining.

Today I am testifying in support of H.R. 761, the National Strategic and Critical Minerals Production Act of 2013. I want to thank Representative Amodei for reintroducing this very important legislation. It enjoys bi-partisan support and addresses a key issue for the country's future economic growth and manufacturing revival: the painfully slow permitting process for the mines that supply metals and minerals essential for our basic industries, our national defense and the consumer products we use. I also want to thank the subcommittee, especially Congressman Lamborn, for the leadership and persistence in raising the visibility of a growing problem—the availability and security of mineral supplies critical to innovation, manufacturing, national security and our economic growth.

**U.S. Mining's Contribution to Society**

Mining's contributions to our economy and society are significant. The value added by major industries that consume the \$77 billion of minerals produced in the United States was an estimated \$2.4 trillion in 2012, or 15 percent of our GDP. Mining's direct and indirect economic contribution includes nearly 2 million jobs with wage and benefits well above the State average for the industrial sector. In addition, domestic mining generated \$50 billion in tax payments to Federal, State and local governments.

In addition to these economic contributions, U.S. metals mining's commitment to employee safety and health has led to continuing improvements in our performance and includes the introduction of our CORESafety® initiative last year, which relies

on a systems approach to eliminate fatalities and reduce the injury rate at U.S. mines by 50 percent within 5 years. We also developed last year a systems approach to environmental management at hardrock mines with a special emphasis on practices to assist smaller operations with improvements in environmental outcomes.

### **U.S. Mining's Potential**

Mining's potential is even greater than its current performance. The United States has an immense and enviable mineral endowment waiting to be tapped. For example, Resolution Copper's world class copper deposit represents one of the largest undeveloped copper resources in the world and is anticipated to have a 50 year mine life that will support over 3,700 jobs annually.

Overall, when viewed through the lens of resource potential, the United States is underperforming, a fact that will have increasing consequences as global demand for minerals becomes more competitive due to the demands of developing economies, where millions are being propelled into a rising global middle class. Last week, the United Nations Development Program released a report that examines the profound shift in global dynamics driven by the fast-rising new powers of the developing world.

The report, *The Rise of the South: Human Progress in a Diverse World*, includes in its classification of "the South" nations in the Southern Hemisphere as well as China and India. The report emphasizes the shift is occurring not just in large middle-income developing nations such as Brazil, Argentina, India and China, but also in more than 40 other up-and-coming countries that in recent decades have made astonishing gains in what's called human development. As one of the report's authors noted, "The Industrial Revolution was a story of perhaps a hundred million people, but this is a story about billions of people."

Clearly demand for minerals will continue to grow, fueled by these fast growing economies. Growing demand presents opportunities and challenges for both U.S. mining and the Nation. These trends point to enormous growth and job-creation opportunities if U.S. mining is allowed to perform to its potential. If we do not and become increasingly marginalized, the consequences are severe for our Nation's global competitiveness, forcing us to become more reliant upon extended and unstable supply chains for what we can produce here.

### **Permitting Poses a Major Obstacle**

So while the United States has one of the world's greatest mineral repositories, our ability to get these minerals into the supply chain to help meet more of America's needs is threatened. A major obstacle to the U.S.' reaching its potential is the length of time consumed in obtaining permits to mine in the United States. Authorities ranging from the National Academy of Sciences to the Departments of Energy and Defense to international mining consulting firms have identified permitting delays as among the most significant risks and impediments to mining projects in the United States.<sup>1</sup>

The United States has one of the longest permitting processes in the world for mining projects. In fact, the length, complexity and uncertainty of the permitting process are the primary reasons investors give for not investing in U.S. minerals mining. In the United States, necessary government authorizations now take approximately 7 to 10 years to secure, placing the United States at a competitive disadvantage and forcing our economy to become increasingly reliant on foreign producers for minerals we can produce domestically. Our dependence on foreign minerals has doubled in the past 20 years.

Despite the Nation's rich mineral endowment, our flawed permitting system significantly impedes the ability to attract investment to our shores. In 1993, the United States attracted 20 percent of worldwide exploration investment dollars. Today, our share has eroded to just 8 percent. The percentage of global exploration spending the United States attracts is critically important since exploration spending is a leading indicator of where future development capital will be deployed.

### **The Permitting Scheme Harms U.S. Manufacturing**

More than the future of domestic mining is at risk from our cumbersome and inefficient permitting scheme. Today, less than half of the mineral needs of U.S. manufacturing are met from domestically mined minerals, a trend that has been building for nearly 30 years and will only worsen unless we reform the permitting process

<sup>1</sup>See National Resources Council, *Hardrock Mining on Federal Lands*, National Academy Press (1999); U.S. Department of Energy, *Critical Materials Strategy* (Dec. 2010); U.S. Geological Survey USGS, *the Principal Rare Earth Elements Deposits of the United States—A Summary of Domestic Deposits and a Global Perspective*, (2010); Behre Dolbear, *Where Not to Invest* (2012).

responsible for it. Our broken permitting process also slows creation of high-wage jobs supported by mineral mining.

As the recent Rand Corporation study, *Critical Materials: Present Danger to U.S. Manufacturing*, warns:

While the United States has extensive mineral resources and is a leading materials producer, a high percentage of many materials critical to U.S. manufacturing are imported, sometimes from a country that has the dominant share of a material's global production and export. In this situation, U.S. manufacturers are vulnerable to export restrictions that limit their access to these materials and that can result in two-tier pricing, under which domestic manufacturers in the producing country have access to materials at lower prices than those charged for exports, thereby hindering the international competitiveness of U.S. manufacturers and creating pressure to move manufacturing away from the United States and into the producing country. (p. ix)

The Rand Study also notes a potential ripple effect on U.S. innovation:

The U.S. science and technology base that support manufactured products was built on and depends upon the presence of U.S. manufacturers producing these products from raw and semi-finished materials. Prolonged disruption in the supply of raw and semi-finished materials required by these manufacturers could put the science and technology base in jeopardy, which would further reduce U.S. innovation capability and competitiveness in the development of new, higher-performance products. (p.1)

To ease mineral supply constraints on U.S. manufacturers, the study indicates the most effective action that can be taken would be to encourage diversified production, i.e., the operation of mines in several different countries. This diversification should include the United States and would be accomplished by encouraging domestic production of the resources needed for the manufacturing supply chain through modernization of our permitting structure.

#### **The Solution is a Modern Permitting Process**

Similar to the bill passed overwhelmingly by the U.S. House of Representatives in the 112th Congress, H.R. 761 carefully addresses the deficiencies of our outdated and underperforming permitting system. Without changing environmental and other protections afforded by current laws and regulations, it provides for efficient, timely and thorough permit reviews and incorporates best practices for coordination between State and Federal agencies.

As an example, Canada is a global mining leader that continues to take advantage of its efficient permitting system, large pool of junior explorers and exploration-focused tax incentives to attract 16 percent of all global exploration dollars in 2012. Canada maintains an expedient, approximately 2-year, permitting timeline by implementing a flexible system that seeks to minimize duplication, uncertainty and delays. Canada recognizes mining is a key economic driver. A recent Conference Board of Canada report, *The Future of Mining in Canada's North*, anticipates the country's overall metal and non-metallic mineral production will grow by 91 percent from 2011 to 2020. Canada recognizes long-term global demand for commodities is increasing and is positioning itself to take advantage of this opportunity and provide minerals for both domestic and global use.

Further, many of the approaches contained in H.R. 761 are comparable to those recently praised by the Government Accountability Office as significantly improving the permitting process for wind and solar renewable energy projects on Federal lands. The GAO report, *Renewable Energy: Agencies Have Taken Steps Aimed at Improving the Permitting Process for Development on Federal Lands*, found that wind and solar permitting times at the Bureau of Land Management were reduced from 4 years for applications filed in 2006 to 1.5 years for applications filed in 2009. Ironically, the same agency that permits these alternative energy projects cannot streamline the permitting process for mining projects that supply minerals essential for building renewable energy infrastructure and technology.

#### **Conclusion**

Using our country's minerals responsibly and efficiently must be a bi-partisan priority for strengthening our manufacturing base and the jobs it provides. NMA urges Congress to pass H.R. 761 to provide a more predictable regulatory environment, one that will attract additional investments and allow U.S. mining to build on our positive contribution to the U.S. economy and host communities. The legislation will bring the United States in line with our competitors for minerals exploration and

development investments—countries such as Australia and Canada that have already modernized their permitting regime. The permitting efficiencies set forth in H.R. 761 will allow the United States to unlock its full potential. Thank you for the opportunity to testify today.

Dr. GOSAR. Thank you, Mr. Quinn. Mr. McGroarty—hopefully I said that right.

Mr. MCGROARTY. You did, thank you. Am I being heard? All right.

**STATEMENT OF DAN MCGROARTY, PRINCIPAL AND  
DIRECTOR, AMERICAN RESOURCES POLICY NETWORK**

Mr. MCGROARTY. Thanks to the Committee for the opportunity to testify today. I am Dan McGroarty, President of American Resources Policy Network, a nonprofit think tank and experts organization dedicated to informing the public and the ongoing policy debate on the importance of developing U.S. minerals and metals resources, and reducing America's dangerous dependency on foreign sources of supply. I am also an officer and director of U.S. Rare Earths, developing rare earths properties in three States, with the aim of adding to domestic supply of these metals that are so critical to our high-tech and green-tech sectors, as well as our advanced military weapons systems.

The subject before the Subcommittee this morning is key to so many of the pressing policy issues before the Congress today, whether it is restoring America's manufacturing prowess or supporting our high-tech sector and our green-tech transition. And, of course, as the last portion of the title today suggests, securing America.

As a significant first step toward aligning our public policy with the goals of strengthening our resource sector, I want to focus on one of the bills before this Committee and this Congress, H.R. 1063, the National Strategic and Critical Minerals Policy Act of 2013, introduced by Chairman Lamborn. As the bill notes—and I quote—"The United States has vast mineral resources, but is becoming increasingly dependent on foreign sources." The bill buttresses this statement. With data on the degree to which the United States is 100 percent foreign-dependent on certain metals and minerals, 18 at present, triple the number 25 years ago.

Last year, when my organization did a risk screen for metals used in defense applications, we derived a risk pyramid with 46 metals on it, China being the single largest provider. But when we looked at known resources in the United States, we found that the U.S. is home to 40 of the 46 metals and minerals on our risk pyramid. In other words, if we are foreign-dependent for a wide range of hard rock resources, it is a dependency that is largely self-inflicted.

The Lamborn bill takes three steps that would help the United States formulate a targeted policy to reduce and, in the case of many metals, eventually eliminate our foreign dependence.

First, via Section 4, the bill strengthens our assessment capability. We can't begin to reduce our resource dependence if we lack current and comprehensive data on the depth of that dependence. Because in a world of resource nationalism, foreign dependence for

critical metals can be used as leverage, commercial, but also strategic, that can induce economic shock to the American system.

The second key section in the Lamborn legislation is eliminating needless duplication in the mine permitting process, a process that today, in the leading independent study, earns the United States the worst in the world ranking, tied for last with Papua New Guinea, with an average mine permitting process in the United States taking 7 to 10 years. And this metric is getting worse, not better.

Just 4 years ago in 2009, the same study found the U.S. process took an average of 5 to 7 years. Little wonder why. One day the DOD releases a study showing 23 metals and minerals in potential shortfall, and the DOE declares a dozen minerals critical to green-tech and clean energy transition, but at the very same time the U.S. EPA moves to stop a proposed American copper mine, a metal whose short supply DOD tells us has already caused a significant weapons system delay, before the permitting process has even begun.

With so many mixed signals coming from the Federal Government, let's ask ourselves if you were an American manufacturer, dependent on metals and minerals engineered into your products, could you risk waiting for a reliable source of American supply? Or would you build your new facility where the metals are? In China perhaps, exporting jobs and intellectual property, sacrificing GDP, and feeding a negative balance of trade as we buy back products that could have been, that should have been, made here in America? We need to recognize that Made in America often begins with Mined in America. And the Lamborn bill puts us back on that track.

The final feature in H.R. 1063 that I would like to focus on today is the call for a national mineral assessment updated at 2-year intervals. Critical metals are technology-dependent. As technology evolves over time, so too will our tool kit of critical metals. In Roman times sodium chloride, salt, was a critical mineral essential to preserving food for armies on the march. In our Moore's Law world, as technology cycles are measured in months, not years, we must constantly update our understanding of what metals and minerals deserve to be called critical.

The Lamborn bill is a solid test of our seriousness on this issue. If enacted, it would provide the fact base for a data-driven assessment of the obstacles that stand between us and a greater degree of resource independence. Thank you.

[The prepared statement of Mr. McGroarty follows:]

PREPARED STATEMENT OF DANIEL MCGROARTY, PRESIDENT, AMERICAN RESOURCES  
POLICY NETWORK, ON H.R. 1063

Chairman Lamborn, my thanks to you and your colleagues on the House Subcommittee on Energy and Mineral Resources for the opportunity to testify today. I am Daniel McGroarty, President of the American Resource Policy Network, a non-profit think tank and experts organization dedicated to informing the public—and the ongoing policy debate—on the importance of developing U.S. mineral and metals resources—and reducing America's dangerous dependency on foreign sources of supply.

I am also an officer and director of U.S. Rare Earths, a publicly-held company currently developing Rare Earths properties in three States, with the aim of adding to the domestic supply of metals critical to our high-tech and green-tech sectors, as well as the U.S. military's advanced defense systems. The subject before this subcommittee this morning—America's Mineral Resources: Creating Mining & Manu-

facturing Jobs and Securing America—is critical to so many of the pressing policy issues before the Congress today, whether it’s the restoration of American manufacturing prowess, or restoring our economy to sustainable growth, or supporting our high-tech sector and our green-tech transition—and of course, as the last portion of our title today suggests: “Securing America.”

As a significant first step toward aligning our public policy with the goal of strengthening our resource sector, I want to focus on one of the bills before this Committee and this Congress: H.R. 1063, the “National Strategic and Critical Minerals Policy Act of 2013,” introduced by Chairman Lamborn.

As the bill notes—and I quote—“the United States has vast mineral resources but is becoming increasingly dependent on foreign sources.” The bill buttresses this statement with data on the degree to which the United States is 100 percent foreign-dependent on certain metals and minerals—18 at present—up from 6—25 years ago. Last year, when my organization, American Resources, did a risk screen for metals and minerals used in defense applications, we derived a “risk pyramid,” with 46 metals on it—with China being the single largest supplier. But as we looked further at known resources located in the United States, we found that the United States is home to resources for 40 of the 46 metals and minerals on our risk pyramid.



In other words, if we are foreign-dependent for a wide range of hard rock resources, it is a dependency that is largely self-inflicted.

As I see it, the Lamborn bill takes three steps that would help the United States formulate a targeted policy to reduce—and in the case of many metals, eventually eliminate—our foreign dependence.

First—via Section 4—the bill strengthens our assessment capability. We can’t begin to systematically address our resource dependence if we lack current, comprehensive data on the depth of that dependence. And that assessment, in turn, requires solid data on the extent to which potential resources might be found on Federal lands—including lands withdrawn from mineral exploration and development—as well as the uses to which various metals are put across our economy and in our defense sector—and finally, a review of our current foreign suppliers, with an assessment of the likelihood of shortfalls or supply disruptions. Because in a world of resource nationalism, foreign dependence for critical metals can be used as leverage—commercial, but also military—that can induce economic shock to the American system.

And yet even before the U.S. Government begins collecting data, the agencies involved must begin by sorting through a half-dozen conflicting definitions of critical

and strategic metals—one so tight that it produced a single strategic metal to the exclusion of all others—and some so vague that the entire Periodic Table might be eligible for inclusion.

The second key section in the Lamborn legislation concerns eliminating needless duplication in the mine permitting process—a process that today, in the leading independent study, earns the United States worst-in-the-world ranking, tied for last with Papua New Guinea, with the average mine permitting process in the United States taking 7–10 years. And this metric is getting worse, not better: Just 4 years ago, in 2009, the same study found the U.S. process took an average of 5 to 7 years.

And little wonder why. One day, the DOD releases a study showing 23 metals and minerals in potential shortfall, while the DOE declares a dozen minerals critical to the green-tech and clean-energy transition. But at the very same time the U.S. EPA moves to stop a proposed American copper mine—a metal whose short supply, DOD tells us, has already caused “a significant weapon system production delay”—before the permitting process has even begun.

So with so many mixed signals coming from the Federal Government, let’s ask ourselves: If you were an American manufacturer, dependent on metals and minerals engineered into your products, could you risk waiting for a reliable source of American supply? Or would you build your new facility where the metals are—in China, perhaps—exporting jobs and Intellectual Property, sacrificing GDP and feeding a negative balance of trade as we buy back products that could have been, should have been, made here in America?

Mr. Chairman, we need to recognize that Made in America often begins with Mined in America. The Lamborn bill puts us back on that track.

The third feature in H.R. 1063 that I want to mention today is the requirement for a National Mineral Assessment, updated at 2-year intervals. Critical metals are technology-dependent; and as technology evolves over time, so too will our tool-kit of critical metals. In Roman times, sodium chloride—salt—was a critical mineral, essential to preserving food for armies on the move. In Adam Smith’s time, he classed gunpowder and sailcloth as critical materials, and the father of free-market theory warned Britain against being dependent on foreign sources of supply. In our Moore’s Law world, as technology cycles are measured in months, not years, we will need to constantly update our understanding of what metals and minerals deserve to be called critical.

The Lamborn bill is a solid test of our seriousness on this issue. If enacted, it would provide the fact-base for a data-driven assessment of our domestic resource potential, our vulnerability to foreign supply, and the obstacles that stand between us and a greater degree of resource independence.

I commend the Chairman for his leadership on the critical issue of critical metals, and for the Committee’s focus today on the various bills that are the focus of this hearing. America has the good fortune to be a resource-rich nation. Sound policy can help ensure that our resources will be used to support our economic strength and our national security—and reduce the dangers of resource dependence in our uncertain world.

Thank you.

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Mr. LAMBORN [presiding]. Well, thank you for your excellent, excellent testimony.

[Laughter.]

Mr. LAMBORN. I would like to now hear from Mr. Hohn, please.

**STATEMENT OF MIKE HOHN, GENERAL MANAGER, SODA ASH BUSINESS OCI CHEMICAL CORPORATION**

Mr. HOHN. Chairman Lamborn and members of the Committee, my name is Mike Hohn, and I am the General Manager of Soda Ash Business for OCI Chemical Corporation. I am here today on behalf of the U.S. Soda Ash industry, and I thank you for the opportunity to testify on this vital legislation for our industry.

The U.S. soda ash industry contributes some \$1 billion net positive to the U.S. balance of trade annually, and is the single largest inorganic chemical export from the United States. Soda ash is produced by one of two methods: the natural method used in the

United States; and through synthetic processes elsewhere in the world, and primarily in China.

The cleaner, natural method only accounts for 25 percent of the global soda ash production. The American Soda Ash Competitiveness Act will lead to the growth of jobs at U.S. soda ash facilities, the growth of jobs in the transportation sector that supports the U.S. industry, and the growth of jobs at the ports that support growing exports, including the ports in Portland, Oregon; Long Beach, California; and Port Arthur, Texas.

During the recent economic downturn, when a similar royalty reduction was in place, the U.S. soda ash facilities experienced the addition of about 100 jobs in the United States. Now, while that may not seem significant, it certainly beats the 1,000-plus jobs that the industry lost in the period from 1996 to 2006, when the royalty rate was 6 percent, which is the current Federal royalty rate.

It should be noted that these are high-paying jobs in a very rural community, with an average wage roughly six times higher than the U.S. minimum wage. We have already witnessed significant market downturn over the last year that is similar to what the industry was facing in the late 1990s, and we do not want to risk a full-blown return to those conditions.

OCI is one of 4 companies that produce about 90 percent of the world's natural soda ash in Sweetwater County, Wyoming. The remainder is produced in Trona, California. U.S. soda ash producers, on average, emit about three times less greenhouse gas emissions and three times less energy consumed than the synthetic soda ash plants in the rest of the world. Export growth is essential to job growth in the U.S. soda ash industry. One of every two jobs in the U.S. soda ash is directly attributable to exports.

Therefore, policies which help to grow exports will mean a growth in U.S. jobs. We believe the Soda Ash Competitiveness Act will accelerate this job growth. Exports increased by some 11.7 percent in the period during which the 2 percent royalty was in effect, 2006 to 2011. U.S. soda ash exports also rose by more than 1 million tons in the same period. Thus, the 2 percent rate resulted in the sort of jobs and export growth consistent with the President's national export initiative.

Now, during that period, the U.S. soda ash industry increased investment in the local community and U.S. soda ash facilities through increased capital investments, which led to increased economic activity in the communities in which we operate.

In our current environment, we believe that U.S. soda ash jobs are at risk to Chinese expansion, export, and pricing practices. Chinese soda ash production is now the largest in the world, and they are currently engaged in a price war for valuable export business in Asia, Africa, and South America. In the decade of the 1990s, China went from importing over 1 million tons of soda ash per year to becoming a 1 million-ton net exporter. By 2000, China had become the world's largest producer of soda ash, though not the most efficient. Maintaining our competitiveness is important, as we compete with state-owned Chinese producers.

Mr. Chairman, we hear a lot of discussion about how Congress can help U.S. manufacturing to restore jobs and economic growth,

i.e. to recapture our economic swagger. As an industry, we were encouraged by the President's State of the Union Address when he referenced climate change and the need to do something. He also indicated he wants to increase job growth through exports. The U.S. soda ash industry provides a unique opportunity to accomplish both of these goals. Our industry has proven that it will increase jobs by increasing exports.

And by increasing the U.S. industry's market share, we will also be reducing greenhouse gases. Because the U.S. soda ash industry uses a natural method of producing soda ash, the U.S. industry uses roughly, again, three times less energy and emits three times less greenhouse gases than our Chinese competitors relying the synthetic method for production.

Make no mistake. Throughout history, soda ash is required to produce glass, for autos, homes, and bottles, containers, as well as detergents and chemicals that are demanded by an emerging middle class. The demand for soda ash will be met in some way. This Committee has the opportunity to reduce global greenhouse gases and increase jobs by investing in the U.S. soda ash industry.

We would suggest the bill before you has already proved successful in doing so for one important sector of our economy. We believe the 2 percent rate should be reinstated.

Thank you for your consideration of our views. I would be pleased to take any questions from the Committee.

[The prepared statement of Mr. Hohn follows:]

PREPARED STATEMENT OF MIKE HOHN, GENERAL MANAGER, SODA ASH BUSINESS  
OCI CHEMICAL CORPORATION, ON H.R. 957

Chairman Lamborn and Ranking Member Holt, I would like to thank you for the opportunity to testify on H.R. 957, the "American Soda Ash Competitiveness Act." I am the General Manager, Soda Ash Business for OCI Chemical Corporation, and I am here today on behalf of the U.S. Soda Ash industry. I am pleased to report that the soda ash mined and processed on Federal lands contributes nearly \$1 billion annually to our balance of trade, \$20 million in Federal royalties, and some 3,000 direct jobs.

Up until October of 2011 when the BLM raised our royalty from 2 percent to 6 percent, our industry was experiencing job growth, and there were plans for expansion, despite the economy still suffering from the worst recession in decades. Enactment of H.R. 957 is important to insuring that we remain a strong American employer and exporter in the years ahead. It means the industry will continue to pay our fair share for the privilege of mining on Federal lands, while creating the conditions for positive economic growth that are in all of our best interests.

From the recent experience of the 2006 Soda Ash Royalty Reduction Act, we know that a 2 percent, as opposed to 6 percent Federal royalty rate, can have positive impacts:

- First, it will lead to robust export growth consistent with the President's National Export Initiative (NEI).
- Second, it will lead to expanded domestic manufacturing capacity and jobs growth; and
- Third, it will result in an increase, rather than a decrease, in Federal royalty revenues by spurring development of the resource.

Mr. Chairman, the 2006 act was enacted by Congress out of a recognition that global economic conditions, specifically the emergence of stiff Chinese competition, was eroding America's natural soda ash advantage. We need to continue the positive trajectory that Act created for this important domestic manufacturing sector by enacting H.R. 957.

Indeed, our continued competitiveness in world markets is far from certain, in fact over the last year since the royalty increase has been in effect, the industry has seen a steady decline in our total exports. This reality was well recognized by Congress in 2006, when it enacted the Soda Ash Royalty Relief Act, which reestablished

a 2 percent royalty on every ton of soda ash produced. In October 2011, the BLM saw fit to raise the rate to 6 percent. We believe this rate increase is not only counterproductive to increasing Federal revenues from soda ash production, but threatens our industry's exports and jobs growth.

Let me briefly revisit the global conditions that caused Congress to set the rate at 2 percent in 2006. In the 15 years between 1982 and 1997, our domestic soda ash industry enjoyed a steady and significant growth in exports. But after 1997, our export growth slowed dramatically. By 2003, our U.S. exports were only 4 percent above their 1997 levels. This rapid decline in export growth resulted from a sudden and dramatic change in global competition. In the brief span of the decade of the 1990s, China went from importing over 1 million tons of soda ash per year to becoming a 2 million ton net exporter. By 2000, China had become the world's largest producer of soda ash, though hardly the most efficient. A growing number of state owned Chinese producers making soda ash from a more energy intensive and more greenhouse gas generating synthetic process flooded international markets with lower priced material aided by an export VAT rebate incentive. Not only were these exports responsible for a greater carbon footprint, they were also hurting our cleaner, more efficient American natural soda ash producers in growing markets, particularly those in Asia and South America.

Faced with this state owned competition, we identified innovative ways to reduce spiraling structural costs, and the increasing prices we paid for energy and transportation. However, as our export growth slowed in the early part of the last decade we also had to reduce employment. To remain globally competitive, we regrettably shed almost 1,000 jobs as an industry. Mr. Chairman, this was not a preferred option. It was in this context that we decided to ask the Congress to consider that the royalty we pay on each ton of soda ash be assessed at 2 percent as called for originally in the underlying Minerals Leasing Act.

Mr. Chairman, in 2006, just as today, our low cost natural soda ash production process when allowed to compete fairly on a level playing field can beat any other producer in the world. In sum, then as now, if conditions are equal, we know we can compete with any other global producer. We can mine the vast underground trona ore reserves in Wyoming or in lakebeds in California, and bring this raw material to be processed into soda ash. We can then ship it by rail to Long Beach, California, Portland Oregon, or Port Arthur, Texas, and deliver it to any Asian or South American port and effectively compete for our fair share of global business against the Chinese.

Mr. Chairman, as a result of the action Congress took in 2006, our industry came out of its downward spiral and experienced sustained growth driven by our ability to again grow exports. Despite a global recession and a continuing slow recovery, the American Natural Soda Ash industry did not lose jobs during the recent recession, and in fact added almost 100 new jobs in 2010. To put this in perspective, one out of every two jobs in our U.S. soda ash industry is now the direct result of exports. U.S. soda ash exports had risen by more than 1 million tons since enactment of the soda ash royalty legislation. As Mr. Robert Abbey, former Director Bureau of Land Management, stated in his Senate testimony on August 3, 2011, exports increased by some 11.7 percent in the 5-year period during which the 2006 Act was in place. It thus puzzled us as to why the BLM saw fit to immediately reinstate the 6 percent rate when the 2006 Act expired in October.

Very simply, the 2006 Act allowed us to grow exports in large part because we could reinvest in our business at higher rates. During the 5 years this Act was in effect, we reinvested in our businesses at rates well above those before its passage. In 2005, the year before the royalty was enacted; the U.S. soda ash industry spent some \$88 million in capital improvements. In 2006, the year after passage, and with the predictability of a stable 2 percent royalty, the U.S. soda ash industry nearly doubled its rate of investment in our future, spending over \$158 million dollars to expand capacity and make needed improvements.

However, Mr. Chairman since the BLM reinstated the 6 percent royalty, the industry is headed towards a bleaker future similar to the circumstances in place in the early 2000s. Across the industry, jobs are going unfilled, planned expansions are being put on hold, and our exports have fallen off significantly. While the BLM had indicated that they would entertain individual lease-by-lease application for waivers of their 6 percent royalty, nothing in their 100-page guidance document addresses export growth. When we attempted as an industry last year to submit a streamlined application for relief that was based upon maximization of production on Federal lands, we were denied. We would be pleased to make our application available to the Committee for its review.

Thus, Mr. Chairman, we again turn to Congress to restore the 2 percent royalty rate by enacting H.R. 957. In sum, soda ash production represents hardcore U.S.

manufacturing at its best. We hear every day how American manufacturing jobs are disappearing and we have a shrinking middle class. The production of soda ash from U.S. natural resources in Wyoming and California is done by skilled workers with an average salary of about \$85,000 per year in very small, rural communities. Growing U.S. soda ash exports will increase the number of those jobs. Moreover, it will help grow revenues at Treasury. When the Congressional Budget Office (CBO) produced cost estimates for legislation implementing the 2006 royalty reduction, it concluded that the Government would lose \$15 million in direct spending and \$15 million in payments to States in which the royalties were generated. In actuality, over the 5-year period, royalties tallied over \$85 million because of the increased production the royalty reduction helped to generate.

Mr. Chairman, we hear a lot of discussion about how Congress can help U.S. manufacturing to restore jobs and economic growth; i.e., to recapture our economic swagger. As an industry, we were encouraged by the President's State of the Union address when he referenced climate change and the need to do something. He also indicated he wants to increase job growth through exports. The U.S. Soda Ash industry provides a unique opportunity to accomplish both of these goals. Our industry has proven that it will increase jobs by increasing exports, and by increasing the U.S. industry's market share we will also be reducing greenhouse gases. Because the U.S. soda ash industry uses a natural method of producing soda ash, the U.S. industry uses roughly three times less energy and emits three times less greenhouse gases than our Chinese competitors relying on the synthetic method for production. Make no mistake, throughout history; soda ash has been produced to supply the glass (glass for autos, homes and bottles) as well as detergents and chemicals that are required by emerging markets to grow. The demand for soda ash will be met in some way. This Committee has the opportunity to reduce global greenhouse gases and increase jobs by supporting the U.S. Soda Ash industry. We would suggest the bill before you has already proved successful in doing so for one important sector of our economy. We believe the 2 percent rate should be reinstated. Thank you for your consideration of our views. I would be pleased to take any questions from the Committee.

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Dr. GOSAR [presiding]. Thank you very, very much.  
Now, Mr. Neatby.

**STATEMENT OF PIERRE NEATBY, VICE PRESIDENT, SALES  
AND MARKETING, AVALON RARE METALS**

Mr. NEATBY. Thank you very much, Mr. Chairman. My name is Pierre Neatby, and I am Vice President of Sales and Marketing for Avalon Rare Metals, Inc. I will briefly describe Avalon and then provide some comments in support of bill H.R. 981.

Avalon Rare Metals is a Canadian-headquartered mineral development company publicly traded in New York and Toronto. Our flagship project is the Nechalacho Rare Earth Deposit at Thor Lake, Northwest Territories, Canada, that contains 25 percent heavy rare earths, which are the truly rare rare earths, and our project plan is to mine and do initial processing in the Northwest Territories and further refine the rare earths in Geismar, Louisiana, in the United States.

H.R. 981 proposes to fund a study of current and future rare earth deposits and an analysis of the rare earth supply chain. I believe the focus of the bill should be on the analysis of the supply chain. There are hundreds of deposits that have been identified around the world. But the biggest issue facing our industry is the processing of rare earths and the production of downstream products that can be used as inputs into final products.

Why are rare earths important? They are important for jobs and economic growth. They play a vital role in a multitude of applications, many in the clean energy sector. These includes motors for electric and hybrid vehicles, generators for wind turbines, solar

panel systems, and phosphors for energy-efficient lighting. We believe the next few years will be critical for the development of the clean energy sector.

I have highlighted clean energy applications of rare earth, but other very significant end-use applications include smart phones, oil refining catalysts, MRI machines, and various military uses that are also growing.

Rare earth demand is expected to grow at a rate of 7 to 12 percent per year to the year 2020. This demand needs a secure supply chain outside China, if the demand is going to grow outside China, and specifically to determine if the new jobs stemming from this growth are going to be here in the United States and other western countries, or in China.

So, China produces over 95 percent of the world's rare earth elements, and China has recently been implementing a range of policies to control its domestic rare earth industry: consolidation of ownership, restriction of foreign ownership, export taxes, export quotas, environmental regulations, limiting illegal mining, and price controls. The outcome of these policies has been the ability to restrict exports and increase prices outside China. China limited exports in 2010, and this caused prices to increase dramatically in 2011. China is in a better position today to restrict exports and manipulate prices outside China than it was in 2010.

The supply chain includes mining, processing, separation, metal and alloy production, and manufacturing of products sold to end users. We would like to add recycling and the human resource aspect to the supply chain. Recycling makes the supply chain more efficient and less costly to the end user. This is important for competitiveness. Human resources are the people that bring know-how to the supply chain: geologists, engineers, technicians, operators, and researchers.

Growth can't take place if there is no expertise in the processing and use of rare earths. This is where universities, colleges, and government can take a key role in our industry, possibly in conjunction with an industry association, such as the new Rare Earth Technology Alliance, right here in Washington. China has hundreds and hundreds of scientists dedicated to rare earths, and have rare earth courses in universities. If North America is going to develop its rare earth infrastructure, it needs educated people specializing in rare earths.

In conclusion, many growth industries depend on rare earths, and China will continue to be the dominant supplier, not only in mining, but also in processing and manufacturing of final products. China wants the downstream for manufacturing, because that is where the jobs are. We need action now to stem the flow of jobs going to China. Thank you very much.

[The prepared statement of Mr. Neatby follows:]

PREPARED STATEMENT OF PIERRE NEATBY, VICE PRESIDENT FOR SALES AND MARKETING, AVALON RARE METALS INC., ON H.R. 1063, H.R. 761, AND H.R. 981

Avalon Rare Metals Inc. is Canadian headquartered mineral development company, publicly traded in Toronto and New York, with a primary focus on the rare metals and minerals in North America. Americans comprise a high proportion of our current shareholders.

Our flagship project, the 100-percent-owned Nechalacho Rare Earth Element Deposit, Thor Lake, Northwest Territories, Canada is one of the largest undeveloped rare earth elements resources in the world. Its exceptional enrichment in the more valuable Heavy Rare Earth Elements (HREEs) is key to enabling advances in clean energy technologies, national defense and other growing high-tech applications. Nechalacho is one of the few potential sources of these critical elements outside of China, currently the source of over 95 percent of the world supply.

Avalon is well funded to complete its Feasibility Study (expected in Q2 2013) and has no debt. Our project includes a mine and processing facility in the Northwest Territories of Canada and plans for a refinery in Geismar, Louisiana. This project will cost over \$1.2 billion to build. It is one of very few projects outside China to be at the final Feasibility stage, the last stage before full project financing is secured and construction begins.

Avalon also explores for and owns other rare metals and minerals project in Canada and the United States, of which two are at advanced stages of development: Separation Rapids (lithium) in Ontario, and East Kemptonville, Nova Scotia, a tin-indium-gallium-germanium project where large inferred resources have been identified requiring further drilling to bring the project to the pre-feasibility stage.

Avalon is proud to be a charter member of the Rare Earths Technology Alliance (RETA), a Washington, DC-based international industry association (non-lobbyist) whose membership includes producers and users of rare earths and also includes academic institutions engaged in rare earths research and development. RETA's primary goal is to promote the development of the rare earth industry through education, market development and dealing with common issues facing the industry. It is in that spirit of education and insight into this emerging industry, in recognition of the U.S.-Canada trade relationship, and in support of clean technologies and their contribution to future growth economies that we appear before the committee today to support the RARE Act of 2013.

#### **Rare Earths—Jobs and Economic Growth**

According to the Industrial Minerals Corporation of Australia (IMCOA), an Australian-based authority on the rare earth market, rare earth demand is expected to grow at a rate of 7–12 percent per year to 2020. Rare earths are used in a multitude of applications, many in the clean energy sector. These include electric and hybrid vehicles, wind turbines, solar panels, and energy-efficient lighting. The next few years will be crucial to the clean energy sector as it develops. Rare earth magnets and phosphors are key building blocks for companies developing these technologies and they need access to a competitive and secure rare earth supply chain to prosper.

Other end use applications include smart phones, oil refining catalysts, MRI machines, other medical diagnostics and treatments, and various military applications. Demand outside China is expected to grow from 35,000 tonnes in 2012 to 55,000 tonnes in 2016. This increase in demand assumes that export quotas from China will remain around 30,000 tonnes and that no new export restrictions on rare earths are imposed so that rare earth consuming industries outside China will be allowed to grow.

#### **China's Dominance—Threat to Jobs in the U.S. and North America.**

Today, China produces over 95 percent of the world's rare earth elements, even as new sources are being developed in other countries, including the United States, Canada, and Australia. However, China has been implementing a range of policies to control its domestic rare earth industry: reducing the number of companies involved in the extraction and processing of rare earths, imposing limits on foreign ownership in the rare earth sector, imposing export taxes, export quotas, curbing illegal mining, implementing and enforcing strict environmental regulations, and attempting to set prices. The outcome of these policies is reduced availability of rare earths outside China, higher prices and potentially greater price volatility outside China and the threat of further export restrictions, which ultimately create the potential for severe supply shortages. While we currently see relatively low rare earth prices, our interest is that when they spike again, the United States and North America should not be impacted as much as we have been. Industry experts believe export restrictions, specifically on the scarce heavy rare earths, are likely in the coming years. Western companies are essentially being forced to set up manufacturing inside China, which puts at risk their intellectual property and eliminates jobs in countries like the United States. This is troublesome not only for Avalon, but other companies along the supply chain and should remain a major security concern for western governments.

### **The Importance of the Secure Supply Chain**

Avalon is pleased to see the introduction of the RARE Act of 2013 with its focus on conducting global census of the identity and availability of rare earths elements and an analysis of the supply chain. We believe that the results of this proposed undertaking will better inform industry participants and end-users on how all parties can work collaboratively to offset actions by a single monopolistic supplier (i.e., China) that can disrupt pricing, availability, and security of supply. Given the wide variety of applications of rare earths in many critical sectors such as clean energy, defense and national security, we believe this type of assessment and analysis is more important than ever before.

I believe that the U.S. Geological Service (USGS) and U.S.-based experts like Technology Metal Research (TMR), have endeavored to identify the hundreds of potential rare earth deposits outside China. (For example TMR currently tracks the development of over 440 projects in 37 countries and closely follows some 46 projects it defines as 'advanced' in 14 countries). These projects will generally only produce mixed concentrates or possibly separated rare earth oxides, with very few projects pursuing the further value-added processing of such into phosphors, metals, alloys, magnets or motors which are essentially the products that consumers need. China's strategy has been to fulfill the needs of the full downstream processing supply chain and end products, generating more profits and, more importantly, creating more high skilled labor and greater job opportunities in China.

One suggested addition to H.R. 981 is to include recycling and human resources to the discussion about fulfilling the rare earth supply chain. Recycling is the key to an efficient use of resources in the rare earth supply chain to achieve low cost manufacturing. A diverse range of people (e.g. geologists; metallurgical, chemical, process engineers and technicians; business people, operators, researchers) are required to establish, maintain and improve a supply chain outside China.

It is not enough to establish mines and processing plants outside China. End consumers want reliable, long term, price competitive supply chains. Currently, some companies are specifying inferior solutions for certain applications due to fears of high prices or fear of lack of availability of neodymium and dysprosium (e.g. substituting ferrite and other magnets where rare earth magnets increase performance). This strategy is highly detrimental to longer term business and domestic economic development. Using less efficient inputs (such as ferrite magnets rather than rare earth magnets) in certain applications could lead to loss of competitiveness and replacement by most probably foreign-based suppliers, that can build more efficient products using superior raw materials.

The supply chain analysis that H.R. 981 would provide will help government and industry determine where the most sensitive and cost effective investment should take place and highlight the importance of investment at all levels of the supply chain to be able to effectively offer a secure alternative to China.

### **Corporate Social Responsibility**

Social responsibility and environmental stewardship are corporate cornerstones for Avalon. Avalon believes that environmental, economic and social responsibility are integral to the upstream and downstream activities used to create these critical materials; from exploration and development to production. In 2010, Avalon was recognized by the Prospectors and Developers Association of Canada with its award for Environmental & Social Responsibility. Avalon is also one of only a very few junior resource companies in the world to have published a comprehensive Sustainability Report, prepared to the Global Reporting Initiative standard, in which Avalon fully discloses its policies and practices on social and environmental responsibility, including its performance against specific targets.

### **Permitting**

The permitting and environmental assessment process is different across the world, and is dependent upon the national and local jurisdictions in which the deposit and or operating facilities are to be established. Avalon's Nechalacho deposit is located in the Northwest Territories and is regulated under the Mackenzie Valley Resource Management Act. Avalon is nearing completion of the Environmental Assessment for the project, a critical step in the permitting process, and has already established strong community relationships with local Aboriginal groups where Avalon is considered an industry leader in best practice. In Geismar, Louisiana Avalon has an option on a property where permitting for a separation plant was initiated in December 2012 and is expected to be completed by the end of 2013.

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Dr. GOSAR. Thank you very much.

Our next witness is Chairman Terry Rambler.

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

Mr. RAMBLER. Can you hear me? OK. Good morning, Chairman Lamborn, Ranking Member Holt, and members of the Subcommittee. My name is Terry Rambler, I am the Chairman of the San Carlos Apache Tribe, and President of the Inter-Tribal Council of Arizona. On behalf of my Tribe and ITCA, thank you for this opportunity to testify.

Joining me today are San Carlos Apache Councilman Windsor Nosy, Sr., tribal leaders, local elected officials from communities directly impacted by this bill, and representatives from different organizations throughout the country. I would like for all of them to stand. Thank you. This group is diverse and growing. And it also includes Tribes and tribal organizations nationwide. We bring our united front in strong opposition to H.R. 687.

We strongly oppose this bill and the land transfer it mandates for three reasons: one, it will destroy our sacred areas; two, it will deplete and contaminate the region's already overdrawn water supply; and three, it is a bad deal for the American taxpayer. H.R. 687 would transfer 2,422 acres of our sacred land, known as Oak Flat in the Tonto National Forest, to Resolution Copper to develop a massive copper mine. Oak Flat is one of our holy places, where spiritual deities reside. Just as a church is a place of worship to Christians and the Vatican is a holy place to Catholics, Oak Flat is the equivalent for Apaches, Yavapais, and others. My people have always gone to Oak Flat to pray, to gather ceremonial items, to seek peace, and to conduct ceremonial dances of our ancestors, such as the sunrise dance that celebrates a young woman coming of age. You can see some of those.

I have a map here that shows the Oak Flat in relation to our Reservation. As you can see, the forest borders our Reservation, and Oak Flat is just 15 miles away. These lands are our aboriginal homelands. I have a second map here that shows Oak Flat and the forest outlined in red. The black outline shows land withdrawn from mining by President Eisenhower's public land order, which protected this area. Federal laws and policies require meaningful consultation with Tribes before Federal action. However, once Oak Flat is held in private ownership, as this bill directs, these Federal protections will disappear and the sacred area will be destroyed without our input.

Resolution Copper plans to use the block cave method to extract the copper ore body underneath Oak Flat because it is far cheaper than other methods. However, the process is also more destructive to the land. The diagram here depicts the block cave mining process. The company would dig a tunnel 7,000 feet down and then dig a horizontal tunnel to extract 1 cubic mile of ore. It will take 1,400 Cowboy Stadiums to hold 1 cubic mile of ore. The next diagram shows what happens next. The surface will eventually collapse, and the area will become an open pit about 2 miles in diameter. Like a crater, the pit will be visible from outer space.

Our second major concern is the loss of water in the region, and our water rights. One of the primary purposes for establishing the

Tonto National Forest in 1905 was to protect the watersheds and the quality of the water. H.R. 687 undermines these purposes because this project will require at least 20,000 acre-feet of water annually to keep the mine from flooding. To put that in perspective, that amounts to the annual life water supply for 180,000 Arizona citizens. According to a recent study, this massive groundwater pumping would be unsustainable, harmful to the region's water supply, and threatens surface water resources and riparian habitats.

Here is a picture of a perennial spring at Oak Flat. Mining here will contaminate and dry up this spring and other water resources at Oak Flat. Here is another picture of the Oak Flat area, an ancient oak tree that has nourished us for centuries with its acorns. It takes a century to produce the first acorn from these trees. These trees will be destroyed when the land collapses.

My final point is that at a time when all Americans are being asked to tighten our belts, this bill will result in a giveaway of American wealth to a foreign-owned mining company. The appraisal requirements included in H.R. 687 do not insure that the public will receive fair value. As a result, the American taxpayer stands to receive only a small fraction of what the Federal minerals are worth.

In closing, the Federal Government should continue to be stewards of this land to sustain the well-being of my people. Our people dance and pray at Oak Flat, just as our ancestors did. I ask for your help to ensure that our children and theirs will be able to do the same, well into the future.

Again, thank you for this opportunity. [Speaks in Apache.] What I said to you was, "May God watch over you and give you guidance." Thank you.

[The prepared statement of Mr. Rambler follows:]

PREPARED STATEMENT OF TERRY RAMBLER, CHAIRMAN, SAN CARLOS APACHE TRIBE,  
ON H.R. 687

My name is Terry Rambler. I am the Chairman of the San Carlos Apache Tribe ("Tribe"), representing 15,000 tribal members. The San Carlos Apache Reservation ("Reservation") is located within part of our aboriginal territory, and spans 1.8 million acres in southeastern Arizona. I am also President of the Inter Tribal Council of Arizona ("ITCA"), a non-profit organization representing 20 federally recognized Indian tribes. Thank you for the opportunity to testify about our views on H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013. On behalf of the San Carlos Apache Tribe and ITCA, we strongly oppose H.R. 687 and respectfully urge Members of the Subcommittee to oppose this bill for the reasons set forth below.

#### **Summary of Objections to H.R. 687**

H.R. 687 would direct the Secretary of Agriculture to convey 2,422 acres of U.S. Forest Service lands in an area called Oak Flat and the copper ore body underneath it into the private ownership of Resolution Copper Mining, LLC ("Resolution Copper" or "Resolution")—a subsidiary of foreign mining giants Rio Tinto (United Kingdom) and BHP Billiton, Ltd. (Australia) for block cave mining. The bill would require this transfer of the Oak Flat area to Resolution Copper within 1 year of enactment.

In the decade since this project has been in development, Resolution Copper has consistently refused to provide details regarding the environmental and economic impacts of the project to the local community and region. H.R. 687 would give the Oak Flat area to Resolution Copper for a bare fraction of its actual value. Once the land is privatized under H.R. 687, Federal laws and policies that currently protect the area and tribal rights would no longer apply.

As details about the impacts of H.R. 687 have emerged, public opposition has grown and is diverse. Joining us today are local officials representing the Town of Superior and the Queen Valley Homeowner's Association. In addition, the City of Globe recently tabled its support for this project. These communities located near the Oak Flat area have either expressed opposition to H.R. 687 or serious concerns about it. Further, many tribes and tribal organizations nationwide oppose the bill because it would transfer Federal land encompassing a known tribal sacred area to a mining company whose mining activities will ultimately destroy the area and circumvent government-to-government consultation requirements with Indian tribes. Tribal organizations opposing this bill include the National Congress of American Indians, the Inter Tribal Council of Nevada, the United South and Eastern Tribes, Midwest Alliance of Sovereign Tribes, the Great Plains Tribal Chairman's Association, the Affiliated Tribes of Northwest Indians, the Eight Northern Pueblos Council, the All Indian Pueblo Council, and many other tribes and tribal organizations. Other groups that oppose this bill include the Association of Retired Miners, the Arizona Mining Reform Coalition, the Sierra Club, the Audubon Society, and others.

Our opposition to H.R. 687 is based upon the following points: (1) the bill would desecrate and destroy an area of religious and sacred significance to the Apache and Yavapai people, which conflicts with Federal laws and policies governing meaningful consultation with Indian tribes and protection and preservation of sacred sites; (2) the bill mandates, in direct violation of NEPA, the transfer of the Oak Flat area to Resolution Copper without first informing the public about the adverse impacts on the quality and quantity of the region's precious water supply, the environment, and the potential health and safety risks to the public; and (3) the bill constitutes a multi-billion dollar giveaway to a foreign-owned mining company that is partnering with the country of Iran on a uranium mine in Namibia. Simply put, the American public cannot afford this deal.

#### **H.R. 687 Would Result in Desecration and Destruction of a Native American Religious and Sacred Site**

The 2,422 acres of lands to be conveyed pursuant to H.R. 687 are located in the Tonto National Forest and include the 740 acres of the Oak Flat Withdrawal where the Oak Flat Campground is located and the surrounding area (collectively referred to as the "Oak Flat area"). The San Carlos Apache Reservation is bordered on the west by the Tonto National Forest. The Oak Flat area is 15 miles from our Reservation. The Forest and the Oak Flat area are part of our and other Western Apaches' aboriginal lands and it has always played an essential role in the Apache religion, traditions, and culture. In the late 1800s, the U.S. Army forcibly removed Apaches from our lands, including the Oak Flat area, to the San Carlos Apache Reservation. We were made prisoners of war there until the early 1900s. Our people lived, prayed, and died in the Oak Flat area. At least eight Apache Clans and two Western Apache Bands document their history in the area. Since time immemorial, Apache religious ceremonies and traditional practices have been held at Oak Flat. Article 11 of the Apache Treaty of 1852, requires the United States to "so legislate and act to secure the permanent prosperity and happiness" of the Apache people. Clearly, H.R. 687 fails to live up to this promise. The Oak Flat area, as well as other nearby locations, are eligible for inclusion in, and protection under, the National Historic Preservation Act of 1966, as well as many other laws, Executive orders and policies.

Today, the Oak Flat area continues to play a vital role in Apache ceremonies, religion, tradition, and culture. In Apache, the Oak Flat area is *Chich'il Bildagoteel* (a "Flat with Acorn Trees"). The Oak Flat area is a place filled with power—a place where Apaches today go for prayer, to conduct ceremonial dances such as the sunrise dance that celebrates a young woman's coming of age, to gather medicines and ceremonial items, and to seek and obtain peace and personal cleansing. The Oak Flat area and everything in it belongs to powerful *Diyin*, or Medicine Men, and is the home of a particular kind of *Gaan*, which are mighty Mountain Spirits and Holy Beings on whom we Apaches depend for our well-being.

Apache Elders tell us that mining on the Oak Flat area will adversely impact the integrity of the area as a holy and religious place. Mining the Oak Flat area will desecrate the *Gaan's* home and would diminish the power of the place. Without the power of *Gaan*, the Apache people cannot conduct our ceremonies. We become vulnerable to a variety of illnesses and our spiritual existence is threatened. There are no human actions or steps that could make this place whole again or restore it once lost.

The unique nature of the Oak Flat area has long been recognized and not just by the Apache. The Oak Flat Withdrawal was set aside from appropriation under

the mining laws by President Eisenhower and reaffirmed by President Nixon.<sup>1</sup> U.S. Department of Agriculture (USDA) Secretary Tom Vilsack has acknowledged the Oak Flat area as a “special place” that should be protected from harm “for future generations.” Protecting the Oak Flat area as a sacred site is consistent with the articles of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the U.N. General Assembly in September of 2007, and for which President Obama announced U.S. support in December of 2012.<sup>2</sup> The Obama Administration tied its support of the Declaration to the current Federal policies of government-to-government consultations with Indian tribes and maintaining cultures and traditions of Native Peoples.<sup>3</sup>

The mining project proposed by Resolution Copper will destroy the Oak Flat area. The block cave mining technique will permanently ruin the surface of the area. As explained below, the water required for the project will forever alter the medicinal plants and trees in the area upon which our people rely for healing and prayer. The ore body that Resolution seeks lies 4,500 to 7,000 feet beneath the Oak Flat area. Resolution admits that the ore body is “technologically difficult” to mine, that it may take up to a decade to develop this technology, and that temperatures as high as 175 degrees Fahrenheit will be encountered.<sup>4</sup> It also acknowledges that the land above the ore body, the Oak Flat Campground, will subside and cave in.<sup>5</sup> The mine will destroy the nature of the land, its ecology, and its sacred powers forever. For my constituents, this reason alone is enough to oppose H.R. 687.

#### **H.R. 687 Circumvents Federal Laws and Policies Designed To Protect Native American Religious and Sacred Sites**

Indian tribes, including the San Carlos Apache Tribe, ceded and had taken from us hundreds of millions of acres of tribal homelands to help build this great Nation. The United States has acknowledged that, despite the transfer in title of these lands to the United States, it retained an obligation to accommodate access to and ceremonial use of religious and sacred sites by Native Americans. This solemn obligation is codified in a number of Federal laws, regulations, and policies.<sup>6</sup> A core aspect of each of these Federal enactments is the requirement that the United States must conduct *meaningful* government-to-government consultation with affected Indian tribes *prior* to making a decision that will impact a Native sacred area.

Executive Order 13175 on tribal consultation requires Federal agencies to conduct consultations with tribes when proposed legislation has substantial direct effects on one or more Indian tribes.<sup>7</sup> USDA Secretary Vilsack acknowledged “it is important that [the Southeast Arizona Land Exchange] engage in a process of formal tribal consultation to ensure both tribal participation and the protection of this site.”<sup>8</sup> President Obama stated in his 2009 Memorandum affirming and requiring agency implementation of E.O. 13175, that “[h]istory has shown that failure to include the voices of tribal officials in formulating policy affecting their tribal communities has all too often led to undesirable and, at times, devastating and tragic results.”<sup>9</sup>

To strengthen Federal policies pertaining to Indian tribes, the Obama Administration recently acted to improve protections of Native religions and sacred areas. In December of 2012, the USDA released a report titled, “USDA and Forest Service: Sacred Sites Policy Review and Recommendations,” which provides a framework for how and why the United States, and specifically USDA and the Forest Service, is legally obligated to protect and preserve sacred areas located on Federal lands. The Report acknowledges, “Like almost all public and private lands in the United States, all or part of every national forest is carved out of the ancestral lands of American Indian and Alaska Native people.” It affirms and lists the Administration’s Federal

<sup>1</sup> Public Land Orders 1229 (1955) and 5132 (1971).

<sup>2</sup> See <http://www.ohchr.org/english/issues/indigenous/declaration.htm>.

<sup>3</sup> Available at <http://www.state.gov/s/tribalconsultation/declaration/index.htm>.

<sup>4</sup> See S. Hrg. 110-572, p. 44 (July 9, 2008) (Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 3157 110th Cong.).

<sup>5</sup> See Resolution Copper website available at <http://www.resolutioncopper.com/sdr/2011/environment>.

<sup>6</sup> See Executive Order 13007: Indian Sacred Sites (May 24, 1996); the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.; the American Indian Religious Freedom Act, 42 U.S.C. 1996; the National Historic Preservation Act, 16 U.S.C. 470 et seq.; the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq.; and Executive Order 13175: Consultation with Indian Tribal Governments (Nov. 6, 2000).

<sup>7</sup> 59 Fed. Reg. 22951 (April 29, 1994).

<sup>8</sup> See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009).

<sup>9</sup> 74 Fed. Reg. 57881 (Nov. 5, 2009).

legal obligations to protect and provide access to Indian sacred sites and to consult with tribes on any Federal actions that will impact sacred sites.

On December 5, 2012, five Federal agencies, including USDA, the Departments of the Interior, Defense, Energy, and the Advisory Council on Historic Preservation entered into a MOU to develop guidance for the management and treatment of Native sacred areas, to develop a public outreach plan to acknowledge the importance of maintaining the integrity of Native sacred areas and to protect and preserve such sites, and to establish practices to foster the collaborative stewardship of sacred sites, among other goals. On March 5, 2013, these Federal agencies adopted an action plan to implement the MOU, which entails working to “improve the protection of and tribal access to Indian sacred sites, in accordance with Executive Order 13007 [on Indian Sacred Sites] and the MOU, through enhanced and improved interdepartmental coordination and collaboration and through consultation with Indian tribes.”

H.R. 687 will make an end run around these legal and policy obligations by transferring the Oak Flat area to Resolution Copper in private ownership. Once the lands are in private hands, the obligations to protect the Tribe’s religious and sacred areas and accommodate tribal access will have no force of law. Section 4(c) of the bill requires tribal consultation, but earlier provisions of the bill mandate that the land be transferred regardless of the outcome of that consultation, rendering the act of consultation a mere formality with no meaningful effect.

**H.R. 687 Authorizes the Project To Move Forward Without Informing the Public of the Adverse Impacts to the Region’s Water, Environment, and Health and Human Safety**

**Bill Circumvents NEPA and Public Interest Requirements**

H.R. 687 undermines the National Environmental Policy Act (NEPA), which requires an analysis of potential impacts, including providing public notice and an opportunity to comment, *before* Federal actions are taken. The bill fails to require an environmental review, including consideration of mitigation measures, of the mining project before the land exchange is completed. The bill mandates that USDA convey the lands to Resolution Copper within 1 year of enactment.<sup>10</sup> Once the lands are transferred to Resolution Copper, NEPA review will not have any real impact because the land would already be in private ownership. Because the bill is a mandatory transfer, the Secretary of Agriculture has no discretionary authority to determine under the Federal Land Policy Management Act (FLPMA) or other laws whether the exchange is a bad deal for the American taxpayer, the local residents, and the local economy, which would be the case if an administrative transfer were required.

In May 2007, the Forest Service published its “Technical Guide to Managing Groundwater Resources.” The Technical Guide examined the Forest Service’s compliance with FLPMA and NEPA.<sup>11</sup> The Guide references the Service’s experience with the Carlota Mine also located in the Tonto National Forest. It was determined through the evaluative procedures of FLPMA and NEPA that Carlota Mine’s groundwater pumping would impact the Tonto Forest’s surface waters and the Service’s appropriated water rights. The Carlota Mine was required to mitigate the impacts of its groundwater demands for the mining operation before the mine was permitted. The Carlota project illustrates the importance of NEPA review *before* this land exchange is completed. The surface waters and aquifers that were affected by the Carlota Mine are the same surface waters and aquifers that will be impacted by Resolution Copper’s mine. Under H.R. 687, Resolution Copper will be able to evade this type of analysis and can ignore mitigation conditions.

Resolution Copper has no intention of sharing any relevant information with the public prior to taking the lands in private ownership. Resolution’s Jon Cherry told the Senate Environment and Natural Resources Committee in February of 2012 that Resolution Copper “will be in a position to file our Mine Plan of Operations (MPO) which will begin the NEPA EIS process over the entire project area including the area of the subject exchange” by the “second quarter of 2012.”<sup>12</sup> To our knowledge, Resolution Copper has not fulfilled this promise.

Section 4(j)(1) of H.R. 687 requires only that Resolution Copper submit a MPO to the Secretary prior to commencing production in commercial quantities. There are

<sup>10</sup>Section 4(i) of the bill states, “the land exchange directed by this Act *shall be* consummated not later than 1 year after the date of enactment of this Act.” (Emphasis added).

<sup>11</sup>See Technical Guide to Managing Groundwater Resources, U.S. Forest Service, FS-88, pp. 20–22 (May 2007).

<sup>12</sup>See S. Hrg. 112–486, pp. 28, 29 (Feb. 9, 2012) (Hearing Before the Committee on Energy and Natural Resources, United States Senate, 112th Congress).

no requirements to guarantee that the MPO will contain a complete description of mining activities and measures Resolution Copper will take to protect environmental and cultural resources, which are normally required by law. Under Resolution Copper's proposed timeline, the MPO could take close to a decade. Regarding actual environmental review, Section 4(j)(2) of the bill requires only that the Secretary, within 3 years of receiving Resolution Copper's MPO, prepare an environmental review that must be conducted under the framework of subparagraph 4322(2) of NEPA. Again, this review will be conducted long after the lands are exchanged and in private ownership.

Section 4(h) of the bill makes clear that Federal laws will not limit Resolution Copper's activities on the land after the mandated exchange. It provides that the lands conveyed "shall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership." As a result, the Secretary will have no discretion to exercise meaningful authority over the MPO or mining activities on private land after the exchange absent a Federal nexus. There is no requirement in the bill for the Secretary to examine the direct, indirect and cumulative impacts of exploratory activities, pre-feasibility, feasibility operations, or mine facility construction that will be conducted after the exchange.

Further, upon enactment of H.R. 687, Resolution Copper will almost immediately begin activities that will harm our sacred area and the region's water supply, again without any public disclosures of information. Section 4(f) mandates that the Secretary "shall" provide Resolution with a special use permit within 30 days of enactment to engage in mineral exploration activities at Oak Flat Withdrawal and, within 90 days, the Secretary is required to allow mineral exploration. The integrity of Oak Flat could be substantially harmed by exploratory activities *before* the limited environmental review requirements in Sec. 4(j)(2) are triggered. The limited environmental review of the MPO will have little or no benefit. The Secretary lacks any authority to propose alternatives to interim activities that might be necessary to protect water resources, landscape, plants, ecosystems or the integrity of Oak Flat as a traditional cultural property and sacred site. The immediate exploration of Oak Flat contemplated by Section 4(j) constitutes an "irretrievable commitment of resources" in contravention of NEPA.

Joel Holtrop, Deputy Chief of the National Forest Service, stated that a MPO containing subsurface information is "essential in order to assess environmental impacts, including hydrological conditions, subsidence, and other related issues."<sup>13</sup> Similar concerns were expressed by the Forest Service Associate Chief Mary Wagner who noted that the Service could not support the bill given that it "limited the discretion" of the Service to develop a reasonable range of alternatives and lacked the opportunity for public comment on the proposal.<sup>14</sup> Likewise, USDA Secretary Vilsack stated:

The purpose of a requirement that the agency prepare the EIS after the exchange, when the land is in private ownership, is unclear because *the bill provides the agency with no discretion to exercise after completing the EIS.* If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency retains the discretion to apply what it learns in the EIS to its decision about the exchange. *It seems completion of the exchange prior to the EIS would negate the utility of the EIS.*<sup>15</sup>

Further, H.R. 687 does not allow for a supplemental EIS document if additional review is needed to examine the direct, indirect and cumulative impacts of mining activities by Resolution. Sec. 4(j)(2) makes clear that the Secretary may only use the *single environmental review document* prepared within 3 years of the submission of a MPO as the basis for *all* "decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations related to the proposed mine or plan of operations." (Emphasis added).

<sup>13</sup> See S. HRG. 111-65 (June 17, 2009) p. 41, Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate (S. 409 111th Cong.).

<sup>14</sup> See S. HRG. 112-486 (June 14, 2011) p. 16, Hearing before the Committee on Energy and Natural Resources, United States Senate (H.R. 1904 and S. 409 112th Cong.).

<sup>15</sup> See Letter from USDA Secretary Vilsack to Chairman of the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests (July 13, 2009) (emphasis added).

Again, the bill conflicts with the purposes of NEPA and the bill fails to vest any real discretion in the Secretary to address the many concerns presented by the mining operation proposed for Oak Flat. It simply does not make sense for this bill to limit the Secretary's discretion, undermine the NEPA process, and ignore the environmental and tribal concerns related to the mining project.

Moreover, the potential for negative economic impacts to the local economy through a loss of recreation and tourism could be substantial. In 2009, detailed direct travel impact estimated for Pinal County totaled \$421 million dollars, with over \$16 million spent by those visiting the nearby campground areas.<sup>16</sup> Many of these dollars were spent in and around the area of this proposed mine.

If enacted, H.R. 687 will result in disastrous consequences, which Resolution seeks to downplay and conceal given that the bill requires no cost-benefit analysis of the potential environmental impacts. Resolution would be able to mine copper without environmental permitting, cultural protections or financial assurances necessary for responsible stewardship. As a limited liability corporation, the Company could simply walk away from potentially billions of dollars of environmental and infrastructure damages to this sacred area.

#### **Southeast Arizona's Water Supply Cannot Sustain This Project**

Resolution Copper has not been transparent with the public or its neighbors in the Oak Flat area. In 2009, Resolution explained that it was purchasing water and reclaiming contaminated waters in order "to build the needed water supplies for mining activities that are a full decade or more away." Resolution claimed to be "managing water by taking into account the needs of both current and future users of this precious resource."<sup>17</sup> Resolution claimed that it had purchased and "banked" over 120,000 acre feet of Central Arizona Project ("CAP") water from 2006 through 2008 with Irrigation Districts near Phoenix, enough to operate the mine for 6 years at a projected use of 20,000 acre feet per year.<sup>18</sup> Resolution further reported in 2008 that it "installed several hydrology wells to assist in developing models that will determine if mining may affect the regional aquifers, and . . . what mitigation options are viable."<sup>19</sup>

H.R. 687 does not require Resolution Copper to perform or disclose its studies of the impacts on the regional water supply and hydrology. Repeated requests for an independent agency, such as the U.S. Geological Survey ("USGS"), to conduct studies have been ignored or opposed. Resolution Copper's failure to disclose critical information about the impacts on the region's water has united a diverse group that opposes H.R. 687.

Our neighbors to the West in Queen Valley have already felt Resolution's insatiable thirst for water. Since 2008, Resolution has been pumping groundwater to dewater parts of the decommissioned Magma Mine. Water levels in the Magma shaft have declined nearly 2,000 feet and water levels in the surrounding aquifer will inevitably decline as well. The Queen Valley Homeowners Association reported that since Resolution began pumping 900,000 gallons of water a day, the community's water supply fell to a historic low requiring water rationing for the community golf course. The Association passed a resolution opposing the mine.

According to USGS records, since 2008, the average streamflow in Queen Creek (downstream from the mine site) has been less than half the average streamflow for 2001–2007 before Resolution began dewatering at Magma Mine. Resolution's dewatering efforts removes far less water than the mine sought, though H.R. 687 will require (approximately 920 acre feet per year compared to the mine's eventual need for 20,000 acre feet per year). The simple act of dewatering will have negative effects on regional water supplies. If Resolution depends on even more groundwater for its mining operations, the negative impacts will grow.

In 2009, Senator Bingaman questioned the Forest Service about the impacts of the mine on the local water supplies and quality. Deputy Chief Holtrop responded:

At this time the U.S. Forest Service does not have an understanding of the impacts of the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could be obtained by the Forest Service with NEPA analysis *before* the exchange.

<sup>16</sup> See *Arizona Travel Impacts 1998–2009p, July 2010 Report, Arizona Office of Tourism, Phoenix, Arizona.*

<sup>17</sup> Previously on Resolution Copper webpage, now missing file: <http://www.resolutioncopper.com/res/environment/ddnav.css>

<sup>18</sup> *Id.*

<sup>19</sup> See Resolution Copper webpage.

A NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership. Data and analyses in the possession of Resolution Copper Mining would be of assistance to the Forest Service in evaluating the impacts of the proposed mine on local and regional water supplies and quality.<sup>20</sup>

In order to better inform the public of the potential impacts, L. Everett & Associates (LEA), an internationally recognized environmental consulting firm made up of hydrogeologists, engineers, and geologists, conducted a review recently of potential environmental impacts to the region that would be caused by H.R. 687. The following excerpts from the review clearly rebuff Resolution Copper's water claims:

"[I]t is highly speculative that CAP water will be a reliable source for Resolution over the decades-long lifetime of the mine. In fact, Resolution correctly admitted that 'excess CAP water will not always be available for purchase and other sources will be needed.' It seems apparent that Resolution will need to rely on local groundwater resources to provide a significant percentage of Resolution's water supply if it is to be a viable project.

"It is virtually impossible for Resolution to meet even a fraction of its water needs from local groundwater in a sustainable manner: the amount of water needed is just too vast for the natural processes that recharge the aquifer in this arid region of Arizona to replenish the needed withdrawals.

"Because groundwater and surface water systems are intimately inter-related, pumping too much groundwater will have a negative impact on nearby surface water resources because lowering the water table can starve the local streams of recharge from the aquifer. This is a serious issue that is very difficult if not impossible to mitigate. For example, the nearby Carlota Mine uses much less water than the proposed Resolution Mine (approximately 1,000 acre feet per year). In a 25-day pump test at the Carlota Mine, stream flow in Haunted Canyon (2,300 feet from the nearest well) declined from 45 gallons per minute to 5 gallons per minute, thus threatening the sensitive riparian habitat."<sup>21</sup>

Following its assessment of the dewatering process that will be required to operate Resolution's mine, LEA added, "Given the depth of the ore body and the need to dewater the mine workings that are deep below the water table, Resolution will have to aggressively pump groundwater from the aquifer. The effect of this pumping will be felt far beyond the boundaries of the mine."

Throughout the mining process, water will migrate to the vacant ore body and mining tunnels. For example, Resolution estimates that inflows to the existing workings at Magma Mine are 300 million gallons per year. If mining production on this new project is authorized, the mine dewatering will deplete many billions of gallons of water from surface waters and groundwater throughout the region, resulting in the loss of important seeps, springs, and streams and depleting the perennial pools in *Gaan* (Devil's) Canyon and streamflows in Queen Creek and other surface waters.

The alteration of subsurface and surface geological structures because of block caving and the admitted collapse of the land surface will alter the natural state of the aquifers and surface drainage of the watersheds forever. Resolution has refused to publish the potential impacts on the water supplies of the region despite the fact that this legislation has been introduced in the Congress over the past 8 years. Instead, Resolution has simply claimed that it is urgent for Congress to pass this land exchange.

#### **Additional Damage to the Southeast Arizona Environment**

While water is a paramount concern for the opponents of H.R. 687, it is not the only concern. Resolution Copper has failed to provide data pertaining to its mining and post-mining subsidence analysis, water quality contamination analysis (including acid mine drainage and subsequent pollution), air quality compliance, tailings and overburden storage and placement.

<sup>20</sup>See S. Hrg. 111-65, p. 42 (June 17, 2009) (Hearing before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate, S. 409 111th Cong.) (emphasis original).

<sup>21</sup>Letter from LEA Principal Geologist, James T. Wells, PhD, PG, to San Carlos Apache Tribe, Chairman Terry Rambler (March 18, 2013) (Attached to this testimony) (hereinafter "LEA Analysis").

On March 15, 2013, the local Town of Superior adopted a resolution opposing H.R. 687. The nearby City of Globe has tabled a proposed resolution to support the bill until its questions about the bill have been satisfactorily answered about the impacts of this mine. This bill touts jobs for the local economy. But local community leaders rightfully ask: “What good are jobs if our communities are environmental disaster areas lacking water to support our citizens?”

It is common knowledge that acid mine drainage leaking into groundwater and surface water is a widespread consequence of copper mining. Acid-generating mines pollute surface water and groundwater requiring expensive reclamation and long-term water treatment. The water Resolution is pumping from the Magma Mine shaft is contaminated with heavy metals. That water is being treated at Resolution’s water treatment facility. In order for that treated water to be reclaimed and re-used, it has to be diluted with clean CAP before being transported for use on crops to the Irrigation Districts.

Instead, Resolution and its foreign corporate parents avoid the true costs of environmental compliance through this land exchange. Once these public lands are conveyed, under the permissive mining and reclamation laws of the State of Arizona, Resolution will probably not be required to post a cash bond to underwrite either the cost of remediation during its mining operations or for clean-up upon mine closure. Typically, only self-bonding or *corporate guarantees* are all that is required. This is woefully insufficient to protect the public from bearing the potentially astronomic costs of clean-up resulting from a limited liability company’s massive mining operations. As stated earlier, Resolution can simply walk away from damage to the Oak Flat area. As a result, American taxpayers would be left without any revenue and will be on the hook for the future cost of any environmental remediation.

There are too many environmental questions that Resolution Copper has failed to answer. This land exchange allows Resolution to avoid responding to these questions that Federal law otherwise requires every other company in America to answer. The Subcommittee should ask why Resolution deserves special treatment?

#### **H.R. 687 is a Massive Giveaway of Taxpayer Resources to Foreign, Special Interests**

At a time when all Americans are being asked to tighten our belts, H.R. 687 will result in a giveaway of American wealth to a foreign-owned mining company. The appraisal requirements of H.R. 687 are unique to this land transfer and do not adequately ensure that the public will receive fair value. Since the bill does not afford the Federal agencies the opportunity to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to Resolution, it is impossible for the Congressional Budget Office and/or Office of Management and Budget to effectively evaluate H.R. 687. The public interest requires that a complete and fully informed appraisal and equalization of values be performed *prior to* Congressional passage of H.R. 687, *not after*. Resolution Copper has variously estimated the mineral wealth in the lands ranging from \$100 to \$200 billion. Resolution’s *self evaluation* of the ore body underlying Oak Flat is orders of magnitude greater in value than that of the non-Federal parcels offered in exchange to the public.

A significant amount of information is required for a meaningful and accurate appraisal. Under the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) requirements, a detailed mining plan is necessary to properly assess the value of the exchanged land. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in similar operations. However, it is unknown at this time what Resolution Copper’s production estimates are since mining plan data has not been forthcoming.

UASFLA royalty income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life-span of the project and a determination of the Net Present Value (NPV), including the NPV of the profit stream, based on a discount factor.

Deputy Chief Holtrop and BLM Deputy Director Luke Johnson informed the Subcommittee on National Parks, Forests and Public Lands on an earlier version of this bill that the completion of the exchange within 1 year (as required by H.R. 687 Section 4(i)) was insufficient time to complete the required appraisals.<sup>22</sup> Specifically, Mr. Johnson stated:

<sup>22</sup> See S.110–52 (Nov. 1, 2007), pp. 4, 5, 8 (Legislative Hearing before the Subcommittee on National Parks, Forests and Public Lands of the Committee on Natural Resources U.S. House Of Representatives, 112th Congress).

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.

Given the evaluation standards prescribed by the UASFLA, coupled with the lack of factual data from Resolution, the American taxpayer will once again be short-changed.

#### **Resolution Copper's Corporate Parents Partner With Iran and China**

Resolution is not deserving of the special treatment given it under H.R. 687. The Company is a subsidiary of Rio Tinto (55 percent majority owner) (UK headquarter/Australian offices) and BHP Billiton (45 percent shareholder) (Australia headquarter/UK offices). Rio Tinto is a partner with Iran in the Rössing *uranium* mine in Namibia.

Rio Tinto currently owns a majority stake in the Rössing mine; while, the Iran Foreign Investment Company (IFIC) owns a 15 percent stake in the same mine. The IFIC is wholly owned by the Iranian government. United Against Nuclear Iran (UANI) raised concerns about Rio Tinto partnership and called on Rio Tinto and Rössing to sever ties with the Iranian government. In a letter to the Chairman of Rio Tinto, UANI President, Ambassador Mark D. Wallace, wrote:

Thank you for the letter of November 8, 2010 from the Rio Tinto Group. While your letter attempts to address some of the concerns . . . the largest issue—the current Iranian government's 15 percent stake—remains outstanding and is of serious concern to UANI and many within the international community . . . You dismiss the concerns raised by UANI because the government of Iran initially acquired its share in the Rössing mine in 1975 . . . This fact is not relevant in 2011 when the government that has been profiting from the mine for over three decades is one that is pursuing an illegal nuclear weapons program, [and] sponsoring terrorism in the region . . .”

Letter from Former U.S. Ambassador and UANI CEO Mark Wallace to Rio Tinto Group Chairman Jan du Plessis (Jan. 13, 2011).

In addition, there are no guarantees that the copper mined pursuant to H.R. 687 will even be processed or used in the U.S. Chinalco, owned by the Chinese government, holds a 9 percent stake in the Rio Tinto Group. Nothing in the bill requires Resolution Copper, Rio Tinto's subsidiary, to process or sell the copper to U.S. companies or even use U.S. resources to mine the copper.

Based upon the history of parent company Rio Tinto's business relations with Iran and China and in light of the U.S. and international sanctions against Iran, it is not in America's interests to trade valuable Federal land to this foreign-owned mining company.

#### **Speculative Economic Benefits**

Without substantiation, Resolution has touted local job creation as the primary justification for this land exchange. Resolution's jobs claims have varied widely over the years that this project has been proposed. Because Resolution is not required to publicly disclose a MPO before the land transfer, Resolution's jobs claims are speculative at best. Resolution takes pride in the fact that they are building the mine of the future. Resolution's Vice President stated, “Our grandfathers wouldn't recognize the mines of today.” The proposed mine, under H.R. 687, will be highly automated and the likely actual jobs produced will come in far below the speculative figures promised. In addition, Resolution has opposed all efforts to amend the bill to require that: (1) the project headquarters to be located in Southeast Arizona; (2) local Arizonans be considered first for any job opportunities that may result from the project; and (3) the ore is processed and used in the United States—and not in China or another foreign nation. Further, Resolution has admitted that it will take at least 10 years to develop technology to access the ore body given that it is 1-mile beneath the surface of the earth where it is a temperature of 175 degrees.

#### **Conclusion**

In 1871, the U.S. established our Reservation. Since then, the United States diminished our Reservation several times due to the discovery of silver, copper, coal, water and other minerals and natural resources. Our burial sites, living areas, and

farmlands on our Reservation were flooded for a Federal dam for the benefit of others. Based upon this history and for the reasons stated above, the Tribe strongly opposes H.R. 687 or any other conveyance of our tribal ancestral lands in the Oak Flat area to Resolution Copper for mining that would permanently destroy this sacred site. Once done, this action cannot be undone.

[Note.—The material attached to Mr. Rambler's Prepared Statement and the letter referred to in footnote 21 have been retained in the Committee's official files.]

#### QUESTIONS SUBMITTED FOR THE RECORD TO TERRY RAMBLER

##### QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE GRACE F. NAPOLITANO

*Question.* Where are tribal sacred sites located?

Answer. Apache culture, heritage and religion do not focus upon a specific site or place as sacred, in the traditional convention of Anglo-European site location. Instead, an area or region is deemed by the Apache People to have cultural, sacred and religious significance.

The Apache lands which are impacted by the land exchange with Resolution Copper Mining cover a wide area and include lands known in Apache as *Chi'chil bigagoteel*. *Chi'chil bigagoteel* encompasses the Oak Flat campground. Nearby is *Dibecho Nadil* (Bighorn Sheep Are Put There), the geological feature known as Apache Leap. *Chi'chil bigagoteel* is bounded by *Gan Bikoh* (Crowndancers Canyon), also known as Devil's Canyon. To the north it is bounded by *Ga'an Daszin* (Mountain Spirits Standing), also called Queen Creek Canyon.

This area is documented as the ancestral home of the Pinal and Aravaipa Apache Bands of the Western Apache, San Carlos Apache Group. It was also known to have significance to the Western Apache, Tonto Apache Group.

Apache spiritual beings, *Ga'an*, live and exist within the sacred sites of Oak Flat, *Ga'an* Canyon (Devil's Canyon) and Apache Leap. The *Ga'an* are spirit entities made for the Apache People by *Yusn*, Life Giver, and are responsible for teaching the Apache People the proper way of living. *Chi'chil bigagoteel* is recognized as home of the *Ga'an*.

Oak Flat has, for generations, played a crucial role in the exercise of the religious, traditional and cultural practices of the Western Apache. These practices continue to this day. Oak Flat and the surrounding area have long been used—and are used today—for religious ceremonies, sweat lodge ceremonies, and Sunrise Dances (puberty ceremonies). *Chi'chil bigagoteel* provides plants and other natural resources for spiritual, ceremonial and medicinal uses. It has been said by San Carlos Apache Tribal Cultural Officer, Vernelda Grant, that the uniqueness of the ecosystem of this area adds to significance and sacredness of the area to the Apache People.

Losing access to these ecosystems, both by their closure [to Apache People] or their destruction profoundly weakens the strength to both Apache and Indigenous peoples' prayer and ceremony, and severely limits the abilities of Apaches and Indigenous peoples to effectively practice their religion, ultimately resulting in physical and spiritual harm to Apaches and Indigenous peoples and neighboring communities.

*Question.* Are sacred sites in jeopardy?

Answer. There is no question that Apache sacred areas are in jeopardy as a consequence of the *Southeast Arizona Land Exchange and Conservation Act of 2013*.

The ore body which Resolution Copper Mining (RCM) seeks to exploit lies directly under Oak Flat, *Chi'chil bigagoteel*. As pointed out in my testimony on March 21, 2013, the surface lands of Oak Flat will collapse as a result of the mining method, block caving, RCM will employ to extract the ore body. RCM's own website admits to such subsidence. The exhibits which were presented with my testimony exemplify how the block cave mining method works and the land subsidence which inescapably follows. Virtually the entirety of *Chi'chil bigagoteel* will be destroyed by RCM's mining operation.

RCM's mining operation will also require enormous quantities of water estimated at 20,000 acre feet per annum, or 600,000 acre feet over the life span of the mine. Groundwater pumping will inevitably be a large source for that water. Seeps, springs and streams well beyond the physical boundaries of Oak Flat will be affected by this pumping. Furthermore, in order to operate the mine at depths of 4,500 to 7,000 feet below the surface of the earth, RCM will be required to pump groundwater to keep its mine from flooding further depleting water resources throughout the area. RCM's groundwater pumping activities will destroy the medicines and plants that we gather, which will effectively suffocate the practice of our religion.

Certainly, the land subsidence and groundwater pumping will destroy Apache sacred areas. Without belaboring the point, other aspects of the mining operation, such as toxic water pollution associated with copper mining and tailings waste sites, will further contribute to the destruction of areas sacred to the Apache and other Indigenous people.

*Question.* Does H.R. 687 provide adequate protections to avoid the land from collapsing?

*Answer.* H.R. 687 provides no protections to avoid the land from collapsing. Indeed, the protections which are usually afforded the public under various Federal laws, such as National Environmental Policy Act (NEPA), to assess potential harms and suggest possible alternatives are circumvented by H.R. 687. Once the land is in the private ownership of Resolution Copper and its parent corporations Rio Tinto and BHP Billiton, NEPA and other protections will be lost. H.R. 687 virtually eliminates the Secretary of Agriculture's discretionary authority to determine under the Federal Land Policy Management Act (FLPMA) or other laws the best interests of the public and the American taxpayer. Please see my written testimony at pages four to seven.

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Dr. GOSAR. Thank you, Chairman Rambler.  
Our next guest is Ms. Soyla Peralta, otherwise known as Kiki.

**STATEMENT OF SOYLA "KIKI" PERALTA, COUNCIL MEMBER,  
SUPERIOR TOWN COUNCIL**

Ms. PERALTA. Good morning, members of the Subcommittee. My name is Kiki Peralta, and I am councilwoman for the Town of Superior. The project mandated by H.R. 687 will have the most direct and greatest impact on our town. This project will be in our back yard. And we can't let that happen, because this is our town. We were born and raised in Superior. I was married in Superior, and I raised my children in Superior.

Unfortunately, we are here because we want our voices heard. Our county and Arizona Delegation is not listening.

I support the mining industry. The Town of Superior supports the mining industry and recognizes the role that copper mining has played in Superior's history and economy. My father, brother, husband were all miners. As a matter of fact, I was the first female hired by Magna-Copper Company in 1975 as a laborer.

I have to let you know up front that in the past this Council has supported this project. However, for the following reasons, the Town of Superior now opposes the Southeast Arizona Land Exchange. Information has been difficult to come by. But with the little information that we have, we have learned the true impacts of this project. This has forced me and our Town Council to rethink our position.

Our opposition to this project is based on three major points: number one, the lack of a NEPA study to show what impacts we will be facing; number two, the impact of our water and/or hydrology studies; and three, the impacts of block cave mining on our environment, and the lack of jobs that it will produce.

First, on the NEPA and Mining Plan of Operation. We strongly oppose this land exchange moving forward without first performing the NEPA studies and informing our town about the negative impacts of this project. Section 4(h) of the bill provides that if this bill is passed, the lands will be treated as if they are in private ownership. As a result, no tribal consultation or no NEPA studies will be required.

A Mining Plan of Operation will also help inform our community. Where will the tailings and waste products be dumped? What impacts will they have on our town and surrounding communities? My question is, once again, why must this project move forward before informing our community what we can expect? This is like playing Russian Roulette with our community.

Next, the water. It is often said that whiskey is for drinking and water is for fighting. Water in Southeast Arizona is more precious than gold, and it is surely worth more than copper. Where will this water come from? And what effects will such large water consumption have on the regional water balance? Again, where are the hydrology studies? Again, I ask, how can this project move forward before a question as vital to our lives as water is answered?

Finally, we have serious concerns with the block cave method of mining. Block cave mining historically has not been used in Superior. We know mining, and this method is proven to be destructive and harmful to the environment. My other concern with block cave mining is the jobs. Resolution promises jobs for our community. But in reality, with the use of block cave mining, most of it will be mechanized and employ only a small workforce.

I wish that Resolution Copper would answer these questions today, and I wish that the Arizona Delegation and Congress would demand these answers. But the bottom line is that today I am here to represent my community and to protect the long-term interest of my town.

It was great to hear Pinal County Chairman Miller speak today. Unfortunately, this is the first time I have seen him. Neither him nor Congressman Gosar or Kirkpatrick have met with us on this issue. Yet again, our town will suffer the most direct impacts of this project. Our water, our environment, our air will all be harmed. Yet no one has come to me with our Council. Unfortunately, our county and congressional delegation are not listening. I wish that my Congresswoman, Ann Kirkpatrick, could have stayed to listen.

With that said, I am here to fight for my community and I am glad that you are here to listen. I urge you to oppose this bill. The Town of Superior can't afford this deal. I again want to thank you for this opportunity.

[The prepared statement of Ms. Peralta follows:]

PREPARED STATEMENT OF SOYLA "KIKI" PERALTA, COUNCIL MEMBER, SUPERIOR TOWN COUNCIL, ON H.R. 687

The Town Council of the Town of Superior, Arizona 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 H.R. 687 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 (NEPA) review and analysis process. This is public land, and the public must be heard openly and fairly under the NEPA process. A decision regarding these public lands should be made with the utmost knowledge and care. Once these lands are lost to the public, they can never be regained.

We appreciate and thank you for the opportunity to express our views and voice our concerns about H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013 that will profoundly affect our Town and Region.

**Oak Flat Land Exchange and Loss of Important Public Campground and Recreational Areas**

Resolution Copper Mining, LLC, owned by Rio Tinto based in the United Kingdom, and BHP-Billiton based in Australia, 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 2,406 acres of the Tonto National Forest will become private property and forever off limits to recreationists and other users. Privatizing 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 square miles, from economic diversification in and around our community. It would also deprive the San Carlos Apache Tribe of their religious and cultural attachments to the area.

Located just 5 miles east of Superior, Oak Flat and Devil's Canyon are recognized as some of the most unique, scenic, popular and unspoiled areas in the State of Arizona; and they are 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 citizens, our neighbors, and the Apache people, for their cultural values and religious heritage.

The Oak Flat Campground, Apache Leap, and the surrounding area are 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, Ph.D., Archivist and Historian for Arizona State University and who is a former resident of Globe, Arizona, and still has family in Superior, Arizona, 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. It is because of this that our Resolution No. 451 (attached) includes this reference.

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. There is no compelling reason for these Orders to be overturned.

We are particularly concerned that this legislated land exchange of the Oak Flat Campground and surrounding area would bypass critical environmental impact studies. We fear that natural and cultural resources will not be protected. We know, without a doubt, 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 downstream pollution 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 plus 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. We are also worried that a mine would dry up not only the Town of Superior's water supply, but a portion of the water supply for the Phoenix metropolitan area. We also have good reason to believe that mining at Oak Flat will destroy the riparian habitat not only at Oak Flat, but the nearby Devil's Canyon which is one of Arizona's great undiscovered riparian treasures. It is for these reasons and many more that we oppose the enactment of the Southeast Arizona Land Exchange and Conservation Act prior to proper NEPA reviews.

### **Water, the Environment, and Destruction of Land Surface**

The Town 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, has indicated 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 decades long 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 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 such a massive mining operation will negatively disrupt the underground water flow and negatively impact hundreds of thousands of residents; 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.

RCC has already begun to dewater shafts to prepare for additional exploration of the ore deposit. We fear that in removing the more than 2 billion gallons of water that have accumulated in the mine since it was last shut down in 1996 will upset the water balance of the Oak Flat, Apache Leap, and Devil's Canyon riparian areas. In 1946, Queen Creek was called a perennial flowing stream. Our Town elders tell us that when the Magma Mine was in full production during the 60s and 70s, riparian areas at Oak Flat and in the Town of Superior dried up. An independent analysis of the impact of a potential mine at Oak Flat to the water balance of the entire region should be conducted before this bill should even be considered by Congress.

The Town is alarmed about the issue of subsidence from Resolution Copper Company's proposed block-cave mining method and its effect on Oak Flat Campground, Apache Leap escarpment, US Highway 60, and the Town of Superior. Resolution Copper Company has admitted to only "minimal subsidence." However, they admittedly chose this method of mining as it is the least expensive and quickest method to approach this massive ore body. However, experts have demonstrated that there will be irreparable destruction of unknown extent to the surface utilizing the block-cave method of mining. This is absolutely unacceptable. Does block cave mining eventually lead to open pit?

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 Town is concerned about the contamination associated with this activity. We are also concerned regarding reclamation of these tailings upon mine closure.

H.R. 687 mentions 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 "NEPA" language in the bill is so vague that the company could easily avoid doing any "NEPA" analysis. Even if a "NEPA" study were to be conducted after the land exchange went into effect, the results would be meaningless as the outcome of the study would already be mandated by law.

The Town 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 permitting and 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 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 land exchange.

### **Threat to the Town of Superior's Economic Diversification and Sustainability**

Many citizens of the Town have lived through the boom and bust cycle of mining. After closure of the Magma/BHP mine in the 1990s, many people fled the commu-

nity 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 base 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 Town 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. Additionally, the process of mining in the 21st century is very technologically advanced and requires specialized training. Resolution Copper Company has not indicated that they will hire untrained, local labor. In fact, today's activity on the project reflects an influx of mining technicians from outside the community. We routinely see vehicles with license plates from Utah, Colorado and Mexico. We are seeing more and more articles regarding the development of robotic workers for future mining activities. These robotic systems are being tested today in South American and Australian mining operations. It would be no surprise if many of the technical jobs that are available will be held by highly trained individuals sitting at a computer in another state—or even another country—controlling our robotic work-force remotely. The loss of this natural resource and already protected public lands compromises the potential for our community to foster and promote a more diversified economy based upon tourism and outdoor activity. At a minimum, the Boyce Thompson State Park to the west and the Oak Flat Campground to the east create a natural flow of traffic to and through the Town. Tourists, Boy Scout troops and other individuals and groups routinely pass through to camp overnight at the Oak Flat Campground. They stop for gas, sundries and refreshments at local establishments in far greater numbers than local workers. Superior is a natural “pit stop” for eco-tourism and this is the type of activity that sustains our economy.

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 local government 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 and unqualified 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.

H.R. 687 does not represent a land exchange that is in the broader public interest. It is clear to the Town 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 would set a terrible precedent.

The Town urges this 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 H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013 and feel that it should be rejected, until such time as our concerns are at least addressed through proper NEPA studies.

Thank you for your time and consideration.

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Dr. GOSAR. Thank you very, very much. There are two things now—if we can have the screens cleared, please? Thank you.

The Chairman would like, by unanimous consent, to have two things, the “Pentagon Warns of Mineral Shortfalls,” and a Congressional Research memorandum to be included in the record. So ordered?

[No response.]

Dr. GOSAR. No objections, so ordered.

[The information submitted for the record by Dr. Gosar has been retained in the Committee’s official files:]

Dr. GOSAR. I would like to acknowledge myself for the first aspects of questioning.

Ms. Peralta, thank you for coming here today. I noticed in your testimony that you made the following statement, “This is public land, and the public must be heard openly and fairly under the NEPA process.” You are aware that when Resolution files its Mining Plan of Operations, that it will go through the environmental review process, and that the public will have opportunity to provide comments, as guaranteed in the law. Are you familiar with that?

Ms. PERALTA. Yes, I am.

Dr. GOSAR. Thank you. Sections 4(i) and 4(j) address explicitly and implicitly compliance with the Federal environmental laws and regulations pertaining to conveyances of Federal land and approval of Mining Plan of Operations. My bill is clear that the mine can only move forward following preparation of a full environmental impact study that is in accordance with NEPA and all other applicable Federal laws and regulations. That includes national historic preservation acts, endangered species acts, Executive orders pertaining to wetlands and floodlands, and hazardous material surveys.

Additional environmental compliance requirements will also have to be addressed at the State and local levels in order for this mine to be developed. As you know, and should know, many of Arizona’s environmental compliance laws are even stronger than those of the Federal laws. This legislation promotes economic development in an environmentally responsible way.

Now, I agree that the public should be heard, and that is why we invited you here today. Why do you feel it is so important for the public to be heard in the NEPA process, while you and your colleagues silenced the voices of almost 200 citizens last week at your Council meeting when you adopted your resolution to oppose this bill? You stated that you had made up your mind, no executive session was necessary, no public input would be taken, and that if anyone acted up, they would be escorted out by the police. Is that fair, Ms. Peralta?

Ms. PERALTA. Once again—

Dr. GOSAR. Is it fair, ma’am?

Ms. PERALTA. Yes, it is. According to the open meeting law, I had those rights. I was the Chair of the meeting.

Dr. GOSAR. Thank you very much. For the record, even my chief of staff went to the meeting at my request, tried to meet with members of the Council prior to the meeting, and was not given the opportunity to address the Council. In fact, everyone in the town that attended your 4-minute meeting—4 minutes, 4-minute meeting—was threatened with police removal if they spoke. It doesn’t really sound like you or your town manager want to engage at all.

I have been humbled by the outpouring of support of your community that was given to Congressman Kirkpatrick and myself in our efforts to take action. I have been submitted, in regards to the record, over 400 letters and petition signatures opposing the town's actions and supporting our bill collected over the span of just 3 days. The Town of Superior has little over 2,500 residents. This is pretty incredible.

Ms. Peralta, is it true that petitions have been taken out to recall you from your seat on the Council?

Ms. PERALTA. Yes, it is.

Dr. GOSAR. Yes, it is. They were actually filed this morning.

Ms. PERALTA. But—yes, they were.

Dr. GOSAR. Yes, thank you.

Ms. PERALTA. And I think they have been taken out before—

Dr. GOSAR. The Town of Superior held local elections just a week ago, after the current Council broke its Mutual Benefits Agreement off with Resolution Copper. The two top vote-getters in the pick-three election were the only two candidates in the race to express vocal opposition to the current Council's actions. Two of the current Council members who were part of this action were the bottom two vote-getters.

I would like to submit for the record the results of the March 12th election and the statements of the opposition to the current Council's actions.

I would also like to submit the local media accounts of the report: the Superior Sun: "Business Owners, Townspeople React to Superior's Council Decision;" "Thank You, Town Council, for Losing Superior's Jobs with Resolution Copper," right here on the front page. "The Copper New Superior Council Meeting Stirs Anger."

Ms. Peralta, it appears the only person dividing your Council is you and the three Council members that have spearheaded this effort. I encourage you to read these letters, these petitions, and hear from your citizens and what they are telling you. I am hard-pressed to believe that you would be here today with your position if you had listened to your community.

Ms. Peralta, what is the current financial situation and status of the town?

Ms. PERALTA. We are broke.

Dr. GOSAR. Yes. My understanding is the community is in dire financial conditions. Four months ago you could not even meet payroll or pay for garbage collection. Is it true that Resolution advanced monies due in 2013 under your Mutual Benefits Agreement to cover these bills?

Ms. PERALTA. Yes, it is.

Dr. GOSAR. Hardly sounds like a bad partner. Supervisor Miller, why do you think the Town Council has taken such a radical reversal in position?

Mr. MILLER. Congressman Gosar, I don't know what the total motivation was. I thought it was interesting that, at my board of supervisors meeting, we had 12 residents from Superior in support of the resolution that we passed, and 2 against it, one of which was the new town manager, who stood up and advised us that they were broke, that they couldn't even put two police cars back into duty. I thought that was awfully telling as to their status.

Dr. GOSAR. Supervisor Miller, just one last question. In my tenure in representing District 1, have you seen my presence in and around Superior in regards to being accessible and answering questions? Because the witness prior said that I was not accessible and never had been consulted about this mine.

Mr. MILLER. Congressman Gosar, you have been one of the most accessible legislators I have ever seen. And if there was an issue and we called you, you made yourself available at any time.

Dr. GOSAR. For the record, without objection, I would like to highlight those things that I highlighted. And one last exception is a letter in regards to Chairman Rambler dated April 15, 2011 in regards to my office in regards to the issues with tribal consultation and tribal issue in regards to this mine that was prepared by my staff and experts in Native American law that I would like submitted for the record.

[No response.]

Dr. GOSAR. No objection, so done.

[The information submitted for the record by Dr. Gosar has been retained in the Committee's official files:]

Dr. GOSAR. I would like to now turn it over to the Ranking Member, Raúl Grijalva.

Mr. GRIJALVA. Thank you very much, Mr. Chairman. Ms. Peralta, welcome and thank you for taking the time. Can you tell us about the City Council? There is a number of your colleagues that can't vote on this issue. Is that correct?

Ms. PERALTA. That is correct. We—

Mr. GRIJALVA. How many?

Ms. PERALTA. We have our Mayor and our Vice Mayor, John Tameron, who are in conflict.

Mr. GRIJALVA. Conflict because of what?

Ms. PERALTA. Our Vice Mayor's son is employed by Resolution.

Mr. GRIJALVA. It is because of employment?

Ms. PERALTA. And then our Mayor's daughter is married to him, so that puts him in conflict, also. And our Councilman John Tameron has a contract with Resolution for cleaning services he provides.

Mr. GRIJALVA. It is my understanding that one of the councilmen, I don't know how recently, left the Council after some adjudication?

Ms. PERALTA. Yes, which is why we had to—which is why the mutual benefits agreement is null and void. Councilman Hank Gutierrez was indicted for conflict of interest.

Mr. GRIJALVA. And he works where?

Ms. PERALTA. He has a contract with Resolution.

Mr. GRIJALVA. Thank you, Ms. Peralta. I also wanted to ask you. There was a, you know, we get into the discussion, and I appreciate the Supervisor's point that Resolution has not only raised the reading scores in the area but is prepared to spend \$16 billion of revenue. At some point we will follow up with the Supervisor and get some information and some facts. It is nice to put a little facts, figures around, but you know, at some point you have to substantiate them. And we will be following up with questions.

Chairman Rambler, and thank you very much for being here, as well. Oak Flats' significance; you hear that we are going to leave

the surface alone, so what is the problem? Proponents of the legislation say, "We are going to leave the surface alone, so what is the problem?" And would you please tell them what the problem is going to be down the road, not only in terms of a sacred site, but in terms of the excavation that could potentially occur underneath?

Mr. RAMBLER. Yes, thank you. I know in reading some parts of the bill itself, the proposed bill, it talks about surface, but it doesn't talk about subsurface. So, on the surface, for example, Oak Flat and Apache Leap itself, even though in this particular case the bill itself may say Apache Leap will not be disturbed and a fence may be put around it to not disturb it further, but there is nothing there that prevents it from being disturbed underneath.

So, when we look at it, we look at it in total, the sacredness of the whole area in total. And so, when underground it is going to be disturbed, when there is going to be a big hole left under there, and we don't know what the potential impact is to the water resources, but we know from history that when there is a big hole and it rains and it snows and water comes running down, where is that water going to go, it is going to go to that big hole, and so we don't know what the impacts are, and that is how we believe that what is going to happen under ground is going to affect whatever is going to be on the surface.

Mr. GRIJALVA. Thank you. And there has been discussion saying that this bill does not weaken the NEPA process, and so people are convinced that the State of Arizona permitting process for mines and private lands is the same as NEPA. Even if we side-step NEPA on this one, that is absolutely not true. The State is far weaker. The public comment period is short. There is no quick turnaround in the submission of critical documents. There is no pre-scoping, and the process does not require bonding to guarantee a clean-up and reclamation after the fact. And that is just the environmental side of it. On the consultation, that is a whole other story that doesn't exist.

And so, there is no substitute for, one, skipping over NEPA and doing it after the fact where there is no enforceability, and saying, well, the State can take care of it. The State can't take care of it. The State won't take care of it. This NEPA process guarantees not only the people of Superior and the surrounding community, but the viability and the intended or unintended consequences of this mine everybody is going to know up front.

And I, for the life of me, you know, many of the critics of this process could have, would have been shut up a long time ago, 5 years ago. But for some reason there is a drive to get it done without NEPA, do it after the fact. If there would have been agreement, "Let's do NEPA now," we would be waiting and resolving and debating what the remediation would have had to be. The consultation government-to-government, we would have dealt with those consequences, and maybe they wouldn't have been good.

One suspects, and it is only a suspicion, that a full-blown NEPA process with public comment is going to disclose and make transparent some consequences that not only the Tribes and the Council lady from Superior are going to be opposed to, they are going to have some consequences that the whole region will be very, very

concerned, particularly around water and sacred sites. Thank you very much, Mr. Chairman.

Dr. GOSAR. Thank you. I would like to acknowledge the gentlewoman from Wyoming, Ms. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. And I would like to slip back in to the much more mundane topic of soda ash in Trona.

[Laughter.]

Mrs. LUMMIS. Mr. Hohn, give everybody just a little break, could you explain a little bit about China and its trade practices that are distorting the markets for soda ash, globally?

Mr. HOHN. Absolutely. You know, the facts are China's capacity to produce synthetic soda ash is growing. Another fact is that China's exports of soda ash are growing. Another known fact is that China has incentives such as the VAT that enables China to sell soda ash below their cash costs. These are all facts that we are dealing with within the global soda ash markets.

Mrs. LUMMIS. I have another quick question, and it relates to the checkerboard. I think a lot of people don't understand that the Union Pacific Railroad, when it was given its right-of-way across the Untied States, was given every other section, and that this area where the Trona resource lies is within that checkerboard.

So, the surface, and, therefore, the subsurface mineral interests under it—lie 640 acres of private land, and next to that, 640 acres of public land, and that the mining technology is such that when you are mining a long wall, those things are enormously expensive to move. Almost indescribably expensive to move, a long wall, once you set it up and start along its mining course of action.

Is it possible to just lift those up, or lift your mining up and go where the royalty is the lowest?

Mr. HOHN. It is very, very, very difficult. It requires years of advanced mine planning as we look at how we mine the checkerboard, as you just described. I can assure you with confidence that, prior to my current role as General Manager of the Soda Ash Business for OCI Chemical Corporation I was the Site Manger out in our facility out in Green River, Wyoming. And while we employ a bit of a different mining technique, it is a continuous miner operation with room and pillar advancement—it is impossible to pick up and just change a mine plan very, very rapidly. And while I don't have the long wall mining experience, I can assure you also that from my education, that also requires many years of advanced mine planning.

Mrs. LUMMIS. Thank you. And, Mr. Chairman, I will save the rest of my time and yield back to you to use for whatever purpose you wish to use it for.

Dr. GOSAR. I thank the gentlelady. Before her time runs out I would like to address some issues laid out in the Administration's testimony regarding tribal consultation and the protection of historical significant sites.

As someone who has lived among Native Americans my entire life, first in Wyoming, then in Creighton University in Omaha, Nebraska, and finally in Northern Arizona, tribal consultation and Congress's trust responsibility to Tribes is very important to me. In fact, I have been very outspoken in favor of the policies that benefit Tribes in my short time in Congress. That is why, in crafting this

legislation, I have taken specific measures to protect those interests.

However, regarding Oak Flat Campground, I wanted to correct some of the misinformation that has been thrown around here. When the Oak Flat Picnic and Campground was withdrawn in 1955 by a Public Order, PLO1229, in the text it read, "Reserving lands within National Forests for use of the Forest Service as campgrounds, recreation areas, and for other public purposes." The withdrawal was done to protect the Federal Government's interest in the capital improvement of the campground. It made no mention of tribal sacred sites. In fact, members of communities that surround the area have given firsthand accounts that the San Carlos did not utilize the area for ceremonies until this project was announced about a decade ago. I will submit a variety of accounts longtime residents of the area have provided for the record.

I would also like to point out on September 20, 1971 the Oak Flat Picnic and Campground withdrawal area was modified by Public Land Order 5132 by Assistant Secretary of the Interior Harrison Loche. Since then, the 760 acres, known as Oak Flat Picnic and Campground Area, has been eligible for disposal by land exchange and other disposal authorities of the Forest Service.

Once again, I would like to keep the discussion about facts, because the facts set you free.

The Ranking Member has two articles that he would like to be included?

Mr. GRIJALVA. Thank you, Mr. Chairman. And an inventory and a list of all the Native Nations and tribal governments that are in opposition of the legislation. Also we will be submitting for Chairman Lamborn a kind of an explanation between fee simple and trust land that is for the purpose and use by Native Tribes under law.

And, Mr. Rambler, thank you. I like the NEPA process, I like consultation, government-to-government, because I don't try to tell you what to do and what you need.

Dr. GOSAR. Without objection, so ordered.

[The information submitted for the record by Mr. Grijalva has been retained in the Committee's official files:]

Dr. GOSAR. As of this, with no further objections—oh, no, I am sorry. Mr. Cramer?

Mr. CRAMER. I have nothing, Mr. Chairman, but would yield my time to the Chair, if he needs it.

Dr. GOSAR. Well, thank you very, very much. Without further ado, I know a number of you have to catch your planes. So thank you very, very much for the testimony, and as of now—thank you—we stand adjourned.

[Whereupon, at 2:05 p.m., the Subcommittee was adjourned.]

#### [Additional Materials Submitted for the Record]

The documents listed below have been retained in the Committee's official files.

Submitted for the record by Representative Paul A. Gosar on H.R. 687:

- Letters of support from the State government delegation of the affected region: Governor Jan Brewer, State Senator Barb McQuire, State Representatives Frank Pratt, T.J. Shope, and Brenda Barton
- A resolution unanimously passed by the bipartisan Pinal County Board of Supervisors and letters of support from the entire bipartisan Gila County Board of Supervisors. These two counties encompass the areas most affected by the exchange.

Additional material submitted for the record by Representative Paul A. Gosar:

- Article: Hope for Resolution Copper mine is bipartisanship, By Editorial board, The Republic/azcentral.com, 2/19/13
- E&E Article—Pentagon Warns of Mineral Shortfalls, 3/20/13
- Letter of support from Senate President Biggs
- Letter from the Queen Creek Coalition (rock climbing group)
- Superior Town Council election results with quotes from two candidates and links to news articles where they were quoted
- News Articles: Superior Sun and the Cooper Country News
- CRS Report on Earnings of Mining and Tourism Industries
- Letter from Representative Paul A. Gosar to Chairman Rambler dated April 15, 2011
- Petition and letters of support for H.R. 687, 400 signatures
- Letter of support from The Nature Conservancy
- Letter of support from the Sonoran Institute

Additional material submitted for the record on H.R. 687:

- Access Fund Executive Director Brady Robinson
- Affiliated Tribes of NW Indians
- Colorado River Indian Tribes
- Fort McDowell Yavapai Nation
- Inter Tribal Council of AZ Tribes
- National Center for Policy Analysis Finding Sources of Rare Earths beyond China
- Ramona Band of Cahuilla Indians
- Letters from the Mayor of the Town of Payson, the Mayor of Globe, Terry Wheeler, Superior Councilman John Tameron, and a resolution of support from the Town of Kearney

Submitted for the record by Representative Raúl M. Grijalva:

- Written Testimony of Roger Featherstone, Director, Arizona Mining Reform Coalition, Testimony on H.R. 687

Submitted for the record in response to James M. Iwanicki's testimony:

- Keweenaw Bay Indian Community
- Upper Peninsula Environmental Coalition

Submitted for the record by Representative Joseph J. Heck on H.R. 697:

- Historic Defense Plant Corporation areas
- Three Kids Mine and Mill Site Layout
- Three Kids Mine Project Site Map Final
- Statement of the Honorable Andy Hafen, Mayor, City of Henderson, Nevada, on H.R. 697