S. HRG. 111–65

PUBLIC LANDS AND FORESTS BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

S. 409
S. 782
S. 874
S. 1139
S. 1140

JUNE 17, 2009

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PUBLIC LANDS AND FORESTS BILLS

WEDNESDAY, JUNE 17, 2009

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

The subcommittee met, pursuant to notice, at 1:36 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

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

Senator WYDEN. The subcommittee will come to order. The chairman of our full committee is here, and he's been very, very helpful to this subcommittee in terms of dealing with these issues, and I'd like to recognize Chairman Bingaman for his statement before I and Senator Barrasso have anything to say.

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

The CHAIRMAN. Thank you very much, Senator Wyden, and thanks for having this hearing. These are important bills that you're considering today, and I appreciate it.

I wanted to just take a minute and flag my interest in two of the items, particularly, two of the bills that are on your agenda.

The first is S. 874—that's a bill that I introduced, along with Senator Udall, to establish to a 236,000-acre El Rio Grande Del Norte National Conservation Area.

This Conservation Area includes extinct volcano cinder cones, Pinyon-Juniper woodlands, and high-mason sagebrush grasslands. It incorporates the upper reaches of the Rio Grande Gorge, which was previously designated as a wild and scenic river, and the Conservation Area provides an important habitat for a variety of wildlife.

The area includes important cultural resources that reflect the settlement of this area by Pueblo Indians, and later by early Hispanic settlers. Finally, the proposed Conservation Area is a very popular recreation area in our State.

I've reviewed the Department of Interior's testimony on the bill, I'm very glad to see their support for the proposal.

The other bill I wanted—let me mention, also, in connection with that bill that there—I have received statements of support from Governor Richardson, in New Mexico, our New Mexico State House of Representatives, from the Taos County Commission, from the

pueblo of Taos, and numerous other businesses and organizations, and I would ask consent that we include those statements in the record.*

Senator WYDEN. Without objection, so ordered.

The CHAIRMAN. The other bill I wanted to mention briefly is S. 409, this is the bill Senator Kyl and Senator McCain have proposed to set up a land exchange between the Resolution Copper Company, the Forest Service and the Bureau of Land Management to facilitate the development of a large copper mine in Southeast Arizona.

I've met with Senator Kyl and Senator McCain on this issue, as well as Mr. Salisbury, the President of Resolution Copper, who's testifying today. Our staffs have met several times to try to address how the land exchange should be structured. Obviously there are substantial economic benefits that people could foresee from this development in Southeast—or Southern Arizona—Southeast Arizona. There are also environmental and cultural issues that need to be considered.

It's been my thought that the best way to proceed would be direct the Forest Service to prepare an Impact Statement and then based on that analysis, determine whether it's in the public interest to proceed.

I understand the company has concerns about undertaking very expensive exploration activities without having more certainty that the exchange will proceed, so that is, I'm sure, going to be a focus of the testimony today.

I'd like to extend a warm welcome to two of our witnesses today. Ned Farquhar, who will be representing the Department of Interior today has previously served as an advisor to Governor Richardson. It's my understanding that today is the first time that Ned has testified in his new capacity in the administration, so I'd like to welcome him.

Also, Governor Cooeyate, who is from Zuni Pueblo, is here testifying in connection—or in relation to—the Resolution Copper land exchange legislation, I welcome him, as well.

Thank you, again, Mr. Chairman, for your courtesy. I'm not able to stay for the full hearing, but hopefully can hear some of the testimony, thank you.

Senator WYDEN. Mr. Chairman, thank you.

Let me say, again, what a historic day it was a few weeks ago when we were at the White House, and the President signed that Public Lands package. Over 100 bills, and I thank you for your leadership.

The CHAIRMAN. You were responsible for moving many of those bills through this subcommittee, so we appreciate your good work.

Senator WYDEN. Thank you, and we'll be teaming up, here, again.

Today we're going to be receiving testimony on a number of bills before the committee, these include S. 409, offered by the Arizona Senators, the Southeast Arizona Land Exchange and Conservation Act, that's S. 782, offered by the Alaska Senators, to provide for the establishment of the National Volcano Early Warning and

*Statements have been retained in subcommittee files.

Monitoring System, the legislation Chairman Bingaman has just mentioned, S. 874, S. 1139, that will allow a Forest Service Compound Conveyance Act, and S. 1140, the La Pine Land Conveyance Act, two pieces of legislation that I introduced to convey lands from the Forest Service and Bureau of Land Management to the city of Wallowa, and also to Deschutes County, respectively.

I also want to thank the chairman and the ranking minority member for their courtesy. We've all been juggling what we thought was going to be around-the-clock afternoon in terms of healthcare and the chairman gave us a chance to start this a little bit earlier, and we appreciate that and the witnesses for their flexibility in accommodating the schedule change.

Before we begin, just a few words about the two pieces of legislation I introduced. These are important bills that we think are going to promote cultural history and economic development opportunities in rural Oregon. Like many places in the West, the Federal Government owns much of the land that surrounds these small communities and very often, you've got to have the Federal Government actively working in partnership with these communities.

It's my hope that this legislation will show the positive potential that can grow from that partnership.

The first bill that will allow a Forest Service Compound Conveyance Act, would convey an old Forest Ranger Station Compound to the city of Wallowa, Oregon, for use as a community interpretive center at the site.

The city of Wallowa, along with County Commissioners, the local arts organizations and a broad group of community leaders intend to restore this important example of the rustic architecture of my region, built originally by the Civilian Conservation Corps.

The second piece of legislation, the La Pine Land Conveyance Act, would convey two parcels of property to Deschutes County, Oregon. The bill directs the Bureau of Land Management, in effect, to transfer lands to Deschutes County, this is going to enable the small town of La Pine to develop rodeo and equestrian facilities, public parks and other recreation facilities.

We've had a chance to work with community leaders on these projects, I think they've done exciting work, exactly the kind of work that brings folks together in the rural West, and we look forward to working with them to get the legislation passed.

I think a number of our colleagues are on their way, but with an interest in expediting the proceedings, here, this afternoon, let's bring Mr. Farquhar—Ned Farquhar, Deputy Assistant Secretary, Land and Minerals Management, Department of Interior, and Mr. Joel Holtrop, Deputy Chief, the National Forest System, the Forest Service, Department of the Interior, gentlemen, if you all will come forward, we will get started with your testimony.

Thank you, both, very much for coming. I think you all have heard me say on a number of occasions that what we'd like to do is put your prepared remarks into the hearing record in their entirety. I know that there is almost a physiological compulsion to just read the statement that we're going to make as part of the record, and if you could just summarize your views in 5 minutes, or so, that would be very helpful.

Why don't we begin with you, Mr. Holtrop?

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

Mr. HOLTROP. Thank you very much, Mr. Chairman, and I will just highlight just a few of the key things from my total testimony.

I thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on two of the bills that would legislate land transactions, S. 409, and S. 1139.

S. 409, Resolution Copper Exchange, is a complex bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining, land on the Tonto National Forest if certain conditions are met. The Federal lands to be exchanged may contain a sizable copper ore body, and are adjoining an existing copper mine.

In exchange, the bill provides the Forest Service certain lands in the State of Arizona, and the Department has not completed its analysis of this complex bill, and the administration will provide its views and concerns to the committee upon completion of this work.

The bill requires the Agency to conduct an Environmental Impact Statement after the Agency no longer owns the property in which the mine would be located. The purpose of the National Environmental Policy Act is to inform the decisionmaker about potential impacts, prior to making a decision. Given the current language, we would assume that we would only be analyzing impacts from mining activities on the surrounding National Forest Land, not the land to be conveyed.

Consistent with administration policy, NEPA should be done before moving forward on the land exchange. We also have specific concerns, which we have identified in our testimony.

Regarding S. 1139, the Wallowa Conveyance, this would require the Secretary of Agriculture to enter a property conveyance with the city of Wallowa, Oregon, to convey without consideration, the Wallowa Ranger Station.

The Department appreciates the committee's efforts to assist the city of Wallowa, Oregon with historic, cultural, and economic development, however, we have significant concerns with conveyance of the compound without compensation to the taxpayer, and would ask the committee defer consideration of this conveyance at this time.

The Forest Service has identified the Wallowa Forest Service compound as a site that should be sold under the Forest Service Facility Realignment and Enhancement Act, allowing the proceeds from the sale to be used to address other administrative site needs. Therefore, conveyance without consideration would remove the proceeds from the sale. In addition, the Forest Service has expended funds to repair and improve the compound, as required by the Realignment Act.

The Forest Service desires to reinvest proceeds from the sale and other deteriorating infrastructure on the forest, as provided for in the Act.

Finally, we would request that the subcommittee defer consideration of this bill, while we continue to explore options with the city of Wallowa, in an attempt to address their interests.

This concludes my statements, and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Holtrop follows:]

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

S. 409 AND S. 1139

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on two bills that would legislate land transactions: S.409, would provide for an exchange of federal land containing a proposed copper mine for non-federal land containing riparian areas in Arizona and S.1139, would convey an administrative site in Wallowa, Oregon. We defer to the Department of the Interior on provisions relating to lands to be managed by the BLM.

S. 409—Resolution Copper Exchange

S.409 is a complex bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), lands on the Tonto National Forest if certain conditions are met. The federal lands to be exchanged may contain a sizeable copper ore body and are adjoining an existing copper mine. In exchange the bill provides the Forest Service certain lands in the state of Arizona. The Department has not completed its analysis of this complex bill and the Administration will provide its views and concerns to the Committee upon completion of this work. Nevertheless, there are still a number of preliminary concerns with the bill as introduced.

The bill requires the agency to conduct an environmental impact statement after the agency no longer owns the property on which the mine would be located. The purpose of the National Environmental Policy Act (NEPA) is to inform the decision maker about potential impacts prior to making a decision. Given the current language, we would assume that we would only be analyzing impacts from mining activities on the surrounding National Forest land, not the land to be conveyed. Consistent with Administration policy, NEPA should be done before moving forward on the land exchange.

The bill proposes to use any cash equalization payment for multiple purposes including management. Any equalization payment by the exchange proponent should be deposited into the Federal Land Disposal Account.

The bill proposes that Resolution Copper replace the Oak Flat Campground. We have been unable to locate a suitable replacement site for a campground in the vicinity. Funding provided in the bill to replace the campground provided to the Tonto National Forest should instead address deferred maintenance needs of existing recreation facilities.

The bill directs Resolution Copper to convey a parcel of land known as "the Pond parcel." We are concerned about recreation related liability issues, access, and facilities needed to manage this parcel. A public interest determination analysis under NEPA should be required and provide the basis for determining whether to proceed with the conveyance.

We understand there are concerns about management of the Apache Leap area and in addition, the acreage that would be added to this area. We are concerned about adding another planning process as prescribed in the bill because it is duplicative of an ongoing Tonto National Forest Planning process which can analyze and provide for, if necessary and appropriate, a special management area.

Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area. We will continue to work with these Tribes as we move forward with the analysis.

The bill states that Resolution Copper will surrender the right to commercially extract minerals under Apache Leap "or" the Pond parcel but not both. This language should be clarified by changing the word "or" to "and."

The bill would provide that it is the sense of Congress that the exchange to be completed in one year. We appreciate the sponsors' interest in expediting this project. However, if an environmental impact statement is required on the mining operation on the parcel to be conveyed, prior to conveyance, we will most likely exceed this time frame. We anticipate that there will be considerable concern with any decision and there is a likelihood of administrative appeal and litigation.

S. 1139—Wallowa Conveyance

S. 1139 would require the Secretary of Agriculture to enter into a property conveyance with the City of Wallowa, Oregon to convey without consideration the Wallowa Ranger Station located at 602 West First Street, Wallowa, Oregon. The Department appreciates the Committee's efforts to assist the City of Wallowa, Oregon with historic, cultural and economic development. However, we have significant concerns with conveyance of the Compound without compensation to the taxpayer and would ask the committee defer consideration of this conveyance at this time.

The Forest Service has identified the Wallowa Forest Service Compound as a site that should be sold under the Forest Service Facility Realignment and Enhancement Act (FSFREA), allowing the proceeds from the sale to be used to address other administrative site needs. Therefore, conveyance without consideration would remove the proceeds from the sale. In addition, the Forest Service has expended funds to repair and improve the Compound, as required by the FSFREA. The Forest Service desires to re-invest proceeds from the sale in other deteriorating infrastructure on the forest as provided for in the Act.

In addition, S.1139 includes a requirement for reversion to the Secretary if the facility is used for other purposes or managed by the City of Wallowa in a manner that is inconsistent with an interpretative center or non-profit status. Further, this bill would set a precedent for conveyance of similar properties across the nation contrary to the intent of the Facilities Realignment and Enhancement Act. Finally we would request that the subcommittee defer consideration of this bill while we continue to explore options with the City of Wallowa, in an attempt to address their interests.

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

Senator WYDEN. Mr. Holtrop, thank you.

We've been joined by Senator McCain.

If it's all right with you, Mr. Farquhar, we'll have Senator McCain speak. One of the exciting things about this session of Congress is that we've had Senator McCain join us. We work together often on these kinds of issues, and welcome you, and please proceed as you'd like.

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

Senator MCCAIN. Thank you very much, Mr. Chairman, and I'll—if it's agreeable to you, because we have another panel of witnesses, as well, defer—make my prepared statement part of the record.

Look, this is a land exchange that's been around for a long time.

Mr. Holtrop, the Forest Service favored this for the last three Congresses, now we have a new administration, now you don't favor it. That's disgraceful.

This is an opportunity to provide much-needed resources for America and the world. It is a highly respected corporation, it is a job creator, it is ecologically sound, and now, after all of these years of Forest Service support, you now defer that we move forward.

We've got a company, here, that has to invest more than $750 million, and $3.5 billion more to get the best copper in the world, and this company, this corporation has an outstanding record, and an outstanding reputation.

These are much—going to be—much-needed resources, it could be the biggest in North America, producing 20 percent of United States copper demand, and it will create over 2,600 mining, and non-mining jobs, and the revenues could be in excess of $10.7 billion.

You didn't mention, of course, the fact that we would be trading land, which is incredibly environmentally sensitive, and very important to preserving the great natural treasures of our State of Arizona.

Let me express my extreme disappointment—extreme disappointment—that you would reverse the position of the previous administration, for—I think—because it's a change in administration.

So, I understand that your opposition will probably make this bill very difficult, if not impossible, to pass. You are doing a great disservice—a great disservice—to the State of Arizona, and to the people that live in it, and the people of this country that may need, very badly, copper in the future.

Mr. Chairman, I yield the balance of my time.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, ON S. 409

Chairman Wyden, and members of the Subcommittee, I greatly appreciate your consideration of S. 409, the Southeast Arizona Land Exchange and Conservation Act as part of today's hearing. As you know, the bill would facilitate an important land exchange that will ultimately protect environmentally sensitive lands in Arizona, while providing a much needed economic engine for the Town of Superior, the State of Arizona, and indeed, the nation.

This legislation would direct the federal government to convey to Resolution Copper, LLC, just under 3,000 acres of Forest Service land known as "Oak Flat" near Superior, Arizona. Oak Flat lies adjacent to, and is intermingled with, Resolution Copper's existing private land holdings which include the old abandoned Magma Copper Mine. In fact, approximately 75 percent of the Forest Service parcel is overlain with unpatented mining claims owned by the company. Resolution Copper would utilize the Oak Flat parcel to explore what promises to be one of the largest copper ore bodies in the world.

In return, Resolution Copper would convey approximately 5,000 acres of highly environmentally sensitive lands to the Forest Service and the Bureau of Land Management (BLM) for federal protection. All of the non-federal lands were selected in consultation with the Forest Service, the BLM, and leading conservation groups, including the Trust for Public Land, Nature Conservancy, Sonoran Institute, and Audubon Arizona. The bulk acreage of these properties consists of the 7B Ranch, approximately 3,000 acres (a seven mile stretch) important to the protection of the Lower San Pedro River, one of the last free flowing rivers in the southwest. The 7B ranch also contains one of the largest remaining old growth mesquite forests in the country. Another critical property the BLM would receive is the Appleton Ranch, approximately 1,000 acres which would result in the consolidation of an important birding area and conservation research ranch. The remaining acres to be acquired by the federal government are lands found throughout the state that contain sensitive habitat or offer unique recreational uses.

In addition to the obvious conservation advantages, this bill also presents a tremendous economic opportunity for the State of Arizona. It's believed that the ore body under Oak Flat may be the largest in North America, capable of producing 20 percent of our domestic copper demand. Resolution Copper envisions that subsequent post-exchange development, which would be subject to the National Environmental Policy Act, would result in a 66-year project that would create over 2,600 mining and non-mining jobs with a total economic impact of $46 billion. In terms of fiscal impact, the project is estimated to generate total federal, state, county and local tax revenue in excess of $10.7 billion. Finally, the land exchange itself would provide over 250 acres to the land-locked Town of Superior for economic development.

It's human nature for people to be suspicious of a deal that sounds too good to be true. Indeed, some have questioned why we need legislation when there exists an administrative process for disposing and acquiring land. There are several reasons why this legislative exchange needs to move forward, Mr. Chairman. First, the Forest Service lacks the legal authority under the General Exchange Act to trade National Forest land for land outside a National Forest, which means the eco-

logically important San Pedro River and Appleton Ranch properties could not be included in an administrative exchange- a loss I refuse to accept. Second, before constructing the mine, Resolution Copper must complete extensive studies to develop a mining plan of operations, so for safety and accuracy, the company needs full access to the entire Oak Flat parcel. Third, Resolution Copper will need to invest more than $750 million for exploration activities and another $3.5 billion before commencing production. To justify making an investment of this magnitude, Resolution Copper needs to secure access consistent with industrial development of the land.

Contrary to their statements at today's hearing, the Forest Service and the BLM are indeed familiar with this proposal. Similar legislation was introduced in the 109th Congress (S. 3157) and the 110th Congress (S. 2466), and in each Congress, both agencies appeared before this Subcommittee to provide testimony that thoroughly analyzed the bill and expressed overall support for the land exchange. Moreover, the Forest Service has twice affirmed that the acquisition of the environmentally sensitive non-federal land in exchange for the Oak Flat parcel was "in the public interest." S.409 is nearly identical to previous versions of the bill, and any subsequent changes in the legislation reflect further stakeholder engagement including input from the Forest Service and the BLM. The Subcommittee hearing was noticed two weeks prior, and for both agencies to claim that the Administration hasn't completed its analysis of the bill is disheartening and disingenuous. I trust that in the coming days the Administration will provide a proper statement on S. 409.

The fact is this bill presents a win-win opportunity for the people of Arizona and the nation. Not only would we protect several thousand acres of environmentally sensitive lands across the state, we'd allow Resolution the chance to provide new jobs and other economic benefits to Arizona through the development of what will be a state-of-the-art underground copper mine. I understand there are concerns over the potential environmental and cultural impacts that a new mine would have on the area, but it's important to note that those issues will be addressed post-exchange through existing federal and state laws, including the National Environmental Policy Act. Again, I thank the Chairman and the Subcommittee for their consideration of this legislation.

Senator WYDEN. Thank you, Senator McCain, and I look forward to working with you throughout this session on these bills.

Mr. Farquhar, please proceed.

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

Mr. FARQUHAR. Thank you, Mr. Chairman, Senator McCain.

It's an honor to be here testifying today on 3 bills—S. 409, S. 874, and S. 1140. I'll make my comments brief. In addition, I'm submitting some testimony on behalf of the United States Geological Survey on S. 782, the National Volcano Early Warning and Monitoring System Act.

Ms. Mary Ann Guffanti, Senior Scientist with the Volcano Hazards Program at USGS, is accompanying me and will be happy to answer questions about that bill.

I will briefly summarize, and ask that my entire testimony be made part of the record.

S. 409 provides for the exchange of a 2,406-acre parcel of Forest Service-managed lands to a private company in exchange for a number of parcels within the State of Arizona for management by the Forest Service, and Interior's Bureau of Land Management.

Three of the private parcels are identified for transfer to the Secretary of the Interior. In general, the Department of Interior defers to the Forest Service on the issues directly related to Forest Service lands, and the associated evaluation issues.

There are several issues of concern to the Department of the Interior, including tribal issues, the timing of the exchange appraisal

provision, the withdrawal language and the equalization of values provisions, as outlined in my written testimony.

Regarding the El Rio Grande Del Norte bill, S. 874, that designates nearly 236,000 acres in Northern New Mexico, as well as two wilderness areas within a National Conservation Area, the proposed NCA lies North of Taos, on the border with Colorado, and straddles Taos and Rio Arriba Counties.

Each of the NCAs designated by Congress, and managed by the BLM, is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land mining and mineral leasing laws, off-highway vehicle use limitations, and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established.

This bill honors these principles, and we support the NCA's designation, as well as the designation of the two wilderness areas.

S. 1140 proposes to transfer two parcels of BLM-administered lands, totaling over 1,000 acres, to Deschutes County in Oregon. The lands are within, or adjacent to, the city of La Pine, Oregon, and the transfer is designed to provide the city with additional land to expand its wastewater treatment facilities, and develop a public rodeo grounds and equestrian center.

The bill requires the lands be used only for purposes consistent with the Recreation and Public Purposes Act, and includes a reversionary clause to enforce this requirement.

The BLM does not object to the proposed transfer, but we would like to work with the sponsor and the committee to modify the parcel boundaries.

The National Volcano Early Warning and Monitoring System Act, S. 782, would organize, modernize, standardize, and stabilize the volcano monitoring systems and observatories in the United States, and would unify the monitoring systems of volcano observatories into a single, interoperative system.

The United States is exposed to significant volcanic hazards. This bill, in accordance with the USGS mission of long-term monitoring and warning of volcanic activity, includes elements of a similar plan proposed by USGS in 2005.

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

[The prepared statement of Mr. Farquhar follows:]

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

S. 409

Thank you for the opportunity to testify on S. 409, the Southeast Arizona Land Exchange and Conservation Act. The legislation provides for the exchange of a 2,406-acre parcel of Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the Forest Service 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 United States Forest Service on the issues directly related to Forest Service lands and associated valuation issues. It is our understanding 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 2,406-acre Forest Service parcel overlying the copper deposit as well as the Federal sub-

surface rights. The Administration may have additional concerns as it works through the analysis of the bill.

Conveyance of Parcels to the Bureau of Land Management

We note that while the bill states that three parcels are to be conveyed to the Secretary of the Interior, it is our understanding that the intention of the sponsors is for the parcels to be under the administrative jurisdiction of the BLM. We have prepared maps at the request of Senator Kyl's office depicting these parcels and our testimony reflects the information on those maps dated June 3, 2009. We have recently discovered some inconsistencies in our mapping data. The parcels identified are:

- 3,073 acres along the Lower San Pedro River near Mammoth, Arizona;
- 160 acres within the Dripping Springs area near Kearny, Arizona; and
- The 956 acre Appleton Ranch parcel adjacent to the Las Cienegas National Conservation Area near Sonoita, Arizona.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance key migratory bird habitat along the San Pedro River. S. 409 directs the BLM to manage the lower San Pedro parcel as part of the existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the San Pedro NCA, but is at least 60 miles downstream (north) of the existing NCA, and has substantially different resource issues and needs.

The legislation also proposes to transfer 160 acres in the Dripping Springs area northeast of Hayden to the BLM. 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 to the BLM of the 956-acre Appleton Ranch parcel 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 of the Interior to acquire lands from willing sellers within the planning district for inclusion in the NCA to further protect the important resource values for which the NCA was designated. These lands are part of a significant wildlife corridor.

Additional Department of the Interior Concerns

There are several additional issues of concern to the Department.. Among these are the timing of the exchange, appraisal provisions, withdrawal language, the equalization of values provisions and Tribal consultations

Section 5 of the legislation expresses the sense of the Congress that the exchange be completed within one year. Based on our experience with exchanges, we believe this is not sufficient time for the completion of and review of a necessary environmental documents, mineral report, completion and review of the appraisals, and final verification and preparation of title documents. We are also concerned that one year may not be enough time 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. While this provision is not binding, we believe it is unrealistic to expect this to be completed in less than two to three years.

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

The withdrawal language in section 9(d) is not standard and may not provide the intended protection for the lands acquired by both the Secretary of the Interior and Agriculture.

Section 4(e) provides for an equalization of values if the land values are disparate. We support 4(e)(1) directing any equalization payment by the exchange proponent be deposited into the Federal Land Disposal Account established under the Federal Land Transaction Facilitation Act (FLTFA; Public Law 106-248). Funds in that account are used for the acquisition of environmentally sensitive lands within Forest Service, BLM, National Park Service, and Fish & Wildlife Service units. We have concerns with the geographic scope of section 4(e)(1)(A), and wish to broaden the area where land acquisitions could occur using proceeds from the land equalization.

The funds could then be used in a manner consistent with other FLTFA acquisitions.

However, section 4(e)(1)(B) provides for the use of these funds for management activities. We oppose this provision and recommend that subsection (B) be deleted. Because the deposited funds are a result of the exchange of lands out of Federal ownership, these funds should be available to acquire highly sensitive conservation lands consistent with the intent of FLTFA.

S. 409 includes a provision in Section 12 that would require a payment to the United States should the cumulative production of locatable minerals exceed the projected production used in the appraisal required by section 7(a)(4)(D). 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 should the actual production exceed the projected production. This provision needs clarification.

Finally, rather than creating a new fund in the U.S. Treasury as envisioned under section 12(d), the Department recommends the receipts be placed in the Federal Land Disposal Account consistent with the provisions of section 4(e)(1)(A) of S. 409. 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.

Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area.

Conclusion

Thank you for the opportunity to testify. The exchange proposed in S. 409 is complex and the Administration is continuing its analysis of the bill to assure that the Federal government's interest is appropriately protected in any final legislation.

S. 874

Thank you for the opportunity to testify on S. 874, El Río Grande Del Norte National Conservation Area Establishment Act. The Department of the Interior supports S. 874, which designates the nearly 236,000-acre El Rio Grande Del Norte National Conservation Area (NCA) in northern New Mexico as well as two wilderness areas within the NCA.

Background

The proposed El Río Grande del Norte NCA lies north of Taos on the border with Colorado and straddles Taos and Rio Arriba Counties. The area includes the Cerro de la Olla, Cerro San Antonio and Cerro del Yuta volcanic cones jutting up from the surrounding valley—reminders of the area's turbulent geologic past. Between these mountains is the Río Grande Wild & Scenic River gorge, carving through the landscape and revealing the basalt rock beneath the surface.

The human history of the landscape is as diverse as its features. Early prehistoric sites attest to the importance of this area for hunting and as a sacred site. Today the area is home to members of the Taos Pueblo, as well as descendents of both Hispanic and American settlers. Wildlife species—including bighorn sheep, deer, elk and antelope—bring both hunters and wildlife watchers, while the Río Grande and its tributaries provide blue ribbon trout fishing and other river recreation. Above it all soar the golden and bald eagles, prairie falcons, and other raptors.

S. 874

S. 874 designates nearly 236,000 acres of land administered by the Bureau of Land Management (BLM) as El Rio Grande del Norte NCA. Each of the NCAs designated by Congress and managed by the BLM is unique. For the most part, however, they have certain critical elements, which include withdrawal from the public land, mining and mineral leasing laws; off-highway vehicle use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established. Furthermore, NCA designations should not diminish the protections that currently apply to the lands. Section 3 of the bill honors these principles, and we support the NCA's designation.

Section 4 of the S. 874 designates two wilderness areas on BLM-managed lands within the NCA—the proposed 13,420-acre Cerro del Yuta Wilderness and the 8,000-acre Río San Antonio Wilderness. Both of these areas meet the definitions of wilderness. They are largely untouched by humans, have outstanding opportunities for solitude and contain important geological, biological and scientific features—cri-

teria outlined in the Wilderness Act of 1964. We support both of these wilderness designations as well.

Conclusion

Senator Bingaman's bill is the product of many years of discussions and collaboration with the local community, stakeholders, and other interested parties. It protects both the valuable resources of the area and the way of life in this unique area of northern New Mexico.

Thank you for the opportunity to testify in support of S. 874.

S. 1140

Thank you for the opportunity to testify on S. 1140, the La Pine Land Conveyance Act. The BLM does not object to the conveyances in S. 1140. We note that these conveyances are consistent with our existing authority under the Recreation and Public Purposes (R&PP) Act, so they could be accomplished administratively. We would also like to work with the sponsor and the Committee on modifications to parcel boundaries.

Background

La Pine is a rural community located in southern Deschutes County, Oregon. The BLM and the City of La Pine have a long history of working together and have completed several Recreation and Public Purposes (R&PP) Act conveyances, including the sites of the La Pine library and fire station. Since La Pine is surrounded by BLM-administered lands, community leaders have held ongoing discussions with the BLM concerning the city's need for additional land to serve other public purposes.

The R&PP Act authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes, including campgrounds, municipal buildings, hospitals, and other facilities benefitting the public. The La Pine Special Sewer District submitted an R&PP application to BLM's Prineville District Office in 2007, and an amended application in January 2009, for 750 acres of BLM-administered lands on the eastern edge of the La Pine city limits. Their intention is to use the lands to expand their current wastewater treatment facilities. The parcel is largely vacant, but does contain a number of rights-of-way including a natural gas pipeline, transmission line, and roads. This parcel of land is shown as "Parcel B" on the map prepared at the request of Senator Wyden, dated May 22, 2009.

Additionally, the City of La Pine has expressed an interest in developing a public rodeo grounds and equestrian center on a 320-acre parcel of BLM-administered lands adjacent to the southwest border of the city. This parcel is also largely vacant, but contains a number of rights-of-way, including a road and transmission lines. This parcel of land is shown as "Parcel A" on the map prepared at the request of Senator Wyden, dated May 22, 2009.

S. 1140

S. 1140 proposes to convey, at no cost, to Deschutes County, Oregon, all right, title and interest of the United States to the two parcels (320 acres and 750 acres), detailed on the map prepared at the request of Senator Wyden, dated May 22, 2009. These conveyances would be subject to valid existing rights and are intended to address the city's stated need for additional land to accommodate the expansion of its wastewater treatment facilities and provide land for the development of a public rodeo grounds and equestrian center.

The bill requires that the two parcels of land be used only for purposes consistent with the R&PP Act and includes a reversionary clause to enforce that requirement. Finally, the bill requires the County to pay all administrative costs associated with the transfer.

As a matter of policy, the BLM supports working with local governments to resolve land tenure issues that advance worthwhile public policy objectives. In general, the BLM supports the proposed conveyances, as they are consistent with the existing R&PP authority. We also recommend modifying the boundaries of Parcel A to address an important travel corridor and shelter area for elk along the Little Deschutes River.

Conclusion

Thank you for the opportunity to testify. We look forward to working with Senator Wyden and the Committee to address the needs of La Pine, Oregon.

Senator WYDEN. Thank you, both, and we'll just do some 5-minute rounds.

So, Mr. Holtrop, let's focus on Wallowa. I mean, this is a community that has just been flattened in recent years, and to a great extent I look at the Forest Service policies and I see those policies have contributed to a lot of the immense hurt that we are seeing there. Fifteen percent unemployment, lost a lot of family wage jobs. The Forest Service has slashed funding for managing harvest, for stewardship contracting, for recreation, and this community has directly felt the body blows as a result of those policies.

So, now what they want to do is try to—with this conveyance—preserve this extraordinary history, these great—these great facilities, this exceptional architecture of property built in the Civilian Conservation Corps days, and you all are going to say the developers can go out and develop it, and we're just going to sell it it's just going to be like anything else.

My first question is, is what plans do the Forest Service have to ensure that these unique architectural features and the cultural and historic aspects of the property are going to be maintained if it's sold under existing law?

Mr. HOLTROP. The way that it would be sold under existing law—there are requirements in that, in the way we accomplish the selling of those administrative properties that we have already done some work on, invested some funds already into the building process, to make sure that—into the office complex—to make sure that when they are offered that we're going to retain some of those character—this historic and cultural significance of them. As you know, they were all constructed during the CCC era, so they are important, culturally.

I also appreciate that we need to be as part of this community, and we want to work with the community to help them accomplish their goals on this. Again, what our testimony is asking for is that you allow us some additional time, to work with the community, to look at some alternatives that would allow us to retain our longstanding policy of when national deferral assets are disposed of, that the American taxpayer gets a fair return for those.

Senator WYDEN. So, you're willing to work with the community, that's constructive. I still don't understand how an economically depressed, you know, town, you know—our unemployment rate rose again yesterday, and this part, you know, the State's been very hard-hit. I don't understand how an economically depressed community with few resources is going to be able to compete with commercial, you know, developers, but you have asked for some additional time, how long would you need? I mean, what can we do to make sure that this gets turned around in a prompt kind of fashion?

I'm certainly open to what you're talking about, as long as I know that we are going to get to something that addresses the community's needs quickly.

Mr. HOLTROP. Mr. Chairman, I'd be more than happy to work with you to make sure that we expedite this appropriately.

If we were to proceed by the offering of the property under the Realignment Act, our intent is to offer that for sale this fall. There are other options that we could continue to work with you and work with the city of Wallowa, as to whether there might be something that we could work directly with them. There may be other

interests interested in acquiring the same property, and that's one of the fairness issues that we would need to address, but be willing to continue to work at looking at additional options.

Senator WYDEN. So, can I take out of this hearing that, I mean, the fall, that sounds like, essentially, 90 days, that we can talk in terms of 90 days and a effort by the Agency to try to work this out in a fashion that addresses the community's concerns about preserving these cultural and architectural and historic features of the property?

Mr. HOLTROP. To the extent that an agreement like this is dependent on more than just the Forest Service party, but you have my commitment that the Forest Service would work toward that end.

Senator WYDEN. Very good.

Mr. Farquhar, you've been supportive of both of the pieces of legislation and we're going to work with you to try to address, I know, some of the concerns that the Agency has.

I have additional questions, a number of colleagues have come on in, Senator McCain is here, why don't we let Senator McCain ask questions at this point, and then we'll go to our ranking minority member, Senator Barrasso, and Senator Risch is here, as well.

So, after Senator McCain, Senator Barrasso, and Senator Risch.

Senator McCain.

Senator MCCAIN. Mr. Chairman, I've been around long enough to know what the testimony of the two witnesses means, unfortunately.

Mr. Holtrop, on two occasions you've testified before this subcommittee in support of this proposal. Last Congress you said, "The proposed exchange would result in the protection of lands that have outstanding natural qualities. The Department supports the exchange, and believes that, overall, it's in the public interest."

Then, in 2006 you testified, and I quote, "The Department believes the acquisition of the non-Federal parcels to be managed by the Forest Service is in the public interest, and would provide protection for riparian habitat and water rights, archeological sites, lands along permanently flowing stream, a year-round pond, an endangered cactus species. In this context, the Department supports the exchange."

Now, you have announced that you need more time. What were you doing the last 4 years?

Mr. HOLTROP. The testimony from the previous couple of times that I have testified on this did recognize the value of those parcels that would be acquired for——

Senator MCCAIN. Not only that, you said, "The Department supports the exchange, and believes that it's overall in the public interest." You supported the exchange. Now you don't support it, you want more time. What's changed?

Mr. HOLTROP. There are a couple of things that have changed. One of the things that it's important to point out, that the Department did express support for it in the previous testimony, but also continued to recognize that there were concerns, and that—it was also part of my testimony——

Senator MCCAIN. You did not testify, Mr. Holtrop, in the last two Congresses that you wanted more time to study the issue, did you?

Mr. HOLTROP. We did not.
Senator MCCAIN. You did not.
Mr. HOLTROP. No.
Senator MCCAIN. No.
Mr. HOLTROP. But we, the——
Senator MCCAIN. But, now what has changed that now you need more time to study the issue?
Mr. HOLTROP. This is clearly a complex bill that the administration is saying that they have not developed——
Senator MCCAIN. It wasn't so complex the last Congress that you said you needed more time.
Mr. HOLTROP. One of the issues that we have had with the bill, throughout, is——
Senator MCCAIN. Did you mention that issue, and that you needed more time in the last Congress, Mr. Holtrop?
Mr. HOLTROP. I did not mention that I needed more time, did mention that there were concerns.
Senator MCCAIN. Mr. Chairman, let me just say that I would like to point out for the record what this land exchange would mean.
It is a ranch called 7B Ranch, 3,000 acres, 7-mile stretch, important to the protection of the Lower San Pedro River, one of the last free-flowing rivers in the Southwest, contains the largest remaining old-growth mesquite forests in Arizona. The Nature Conservancy wants us to have the Federal acquisition of that.
There's the Appleton Ranch, 1,000 acres in Santa Cruz county that would consolidate an important birding area and conservation research ranch. The Tucson Audubon Society and the Sonoran Institute strongly support the Federal acquisition of this ranch, and then there's other areas that are vitally important to the environment.
So, we've got an economic side of this, and we've got protection of the environment. I'm proud of my record of preserving and enhancing the environment of my State of Arizona, and I'll put my record up against anybody's, anywhere.
This is good for Arizona, to move forward, it's good for the country. Now, with a new administration, instead of the endorsement that we had from the agencies of government, we now say that they need more time.
We know what that means, I've dealt with them before. We have been discussing this issue for 6 years, and the fact is, they know, that if you delay long enough, that Resolution Copper, who has already invested some $200 million to—in preparation for this exchange—is going to walk away from it. Arizona, the country, and the world will suffer because of it.
Senator WYDEN. I thank the Senator, and it's my intention to work very closely with him and Senator Kyl on this. I know this is a priority matter for you, and we will work closely with you.
Senator Barrasso and Senator Risch.
Senator BARRASSO. Thank you very much, Mr. Chairman, I appreciate you holding this hearing. Thank you for coming to Wyoming, Mr. Holtrop, to visit with our friends a week or so ago.
Mr. Farquhar, thank you very much for being here.
Mr. Chairman, since the hearing is already underway I want to submit my comments for the record and I want to commend you,

specifically, Mr. Chairman, for holding this hearing, today. It's important that we work on natural resource policy in this committee. We've spent considerable amounts of time on energy legislation, I'm glad we're moving to these important policy matters now.

In that spirit, Mr. Chairman, I would like to ask for your cooperation to have the Good Neighbor Forestry Act added to our agenda as soon as possible. That's S. 1122. It's a simple, practical bill for land management. Currently, Senators Johnson, Risch, Udall of Colorado, Bennett of Colorado and Bennett of Utah are all co-sponsors of this bill.

Mr. Chairman, this Good Neighbor legislation has languished in the committee since 2007, and I believe it is time, now, for a hearing.

So, I would appreciate a hearing, if we could, on S. 1122, the Good Neighbor Forestry Act, and with that, I'll submit the remainder of my opening statement for the record, I'll submit questions for the record, and I see that Senator Kyl has arrived.

Thank you, Mr. Chairman.

[The prepared statement of Senator Barrasso follows:]

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

Good afternoon, first I want to thank you, Mr. Holtrop, for visiting Wyoming recently.

I hope your trip to Gillette went well. We appreciate your time.

I want to commend the Chairman for holding this hearing today.

It's important that we work on natural resource policy.

We have focused a lot on energy in this committee—and it is good that we refocus now.

In that spirit, I would like to ask for your cooperation, Mr. Chairman, to have the Good Neighbor Forestry Act added to our agenda as soon as possible.

S. 1122 is a simple, practical bill for land management.

Senators Johnson, Risch, Udall of Colorado, Bennet of Colorado and Bennett of Utah are cosponsors of the bill.

Good Neighbor legislation has languished in this committee since 2007, and it is time, now, that we hold a hearing.

Thank you, and I'll submit my opening statement and questions for the record.

Senator WYDEN. Thank you, Senator Barrasso. It sounds reasonable, and we will be working with you toward that end.

So, we have Senator Kyl here, or about to walk in?

Senator Kyl, what's your pleasure? Senator Risch is here, do you have time for him to have his 5 minutes, and then go to you?

Senator RISCH. I'll yield to Senator Kyl.

Senator WYDEN. Very good.

Senator KYL. Would you like for me to be here, Mr. Chairman?

Senator WYDEN. Please, get comfortable, and we'll welcome your remarks when you are.

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

Senator KYL. Mr. Chairman, members of the committee, I really appreciate your courtesies, thank you very much, both for allowing me to say a few words, and also interrupting the flow, here.

I was just asking my staff, and I think, my colleague, Senator McCain has already weighed in a little bit, and so rather than reading my testimony, let me ask unanimous consent that it be submitted for the record.

Senator WYDEN. Without objection, so ordered.

Senator KYL. Basically encapsulate a couple of the key points.

This is the fourth hearing that this legislation has had, I believe there are three in the Senate, and one in the House of Representatives. So, even though this is a new bill, it's not a new land exchange, and it's been around for between 3 and 4 years, now.

In every one of the hearings, the agencies involved—the Forest Service and the BLM—have testified in support of the exchange, and I think that's a point that Senator McCain made. I won't quote Mr. Holtrop's previous testimony, I will simply—and I'm sure he would agree—that he spoke in fairly glowing terms about this legislation before.

Nothing has changed except that some of the peripheral issues that existed before have been worked out between the parties, so if anything, the legislation has gotten better, so I know you would agree with that.

So the question is, what's really different? One of the things that is evolving that I think is different is, when making the public interest determination—now, bear in mind that when the agencies do that, when the Department of Interior does it, it has to go—it usually goes through a process which involves all of the environmental reviews, and so on, and then it weighs the considerations and makes the public interest determination, in order to effect the land exchange.

Ordinarily, as is in this case, the person who wants the exchange goes out and acquires a bunch of land that the Federal Government wants—usually environmentally sensitive land, as is the case here, and then they get an equivalent value of land to do whatever it is that they're seeking to do—precisely what's happening here.

Because our society is evolving toward a more environmental-conscious society, with a lot of focus on going green—green cars, battery vehicles and all of there rest—we know that our society is going to require an enormous amount of copper. That was not the case before. You need copper.

If you just look at wind, for example, large wind- driven turbine incorporates more than a ton of copper—one turbine. In the transportation systems, there a huge demand for copper, as well. In electric and hybrid car production use twice as much copper as traditionally designed vehicles, for example.

Where's that copper going to come from? The good news is that America has a lot of good copper reserves—we're one of the biggest producers, my State is one of the biggest producers. This particular mine that would be developed as a result of the land exchange, is said to be potentially the richest vein of copper ever discovered in the United States of America. That's the good news.

The bad news is, it's about 7,000 feet down, and they're not exactly sure how they're going to get it all out. But it's also good news that it's not an open-pit copper mine, as is the usual way of mining copper. It will be done by sinking a shaft and extracting it through that shaft.

So, from an environmental standpoint, things are evolving. That was the idea when the legislation was fist introduced, but it has certainly matured since then.

That goes into the public interest determination that Congress makes. Remember, in these land exchanges, when it's done by Con-

gress, we get to decide what's in the public interest, not the agencies. As much as I love the agencies, I would respectfully disagree that they need more time to make public interest determinations, if that's the point. We make that determination.

We also have spent how much money on a Stimulus Package? Talk about stimulus. This legislation would have a significant impact on jobs, on the Federal Treasury, on revenues for the State and local governments. Once in operation, this mine could have an impact of over $50 billion—one mine. Over $800 million a year if the price of copper were less—were a dollar less than it is today, that's calculated at $1.30 per pound.

We need to put people back to work. There are about 1,400 permanent high-quality, technical jobs involved in this particular mining activity.

To me, the most important thing, here, I mean, it's important to put people to work, it's important to get revenue for our governments from an activity like this by developing a natural resource in America, which can be done in a very environmentally safe way.

To me, the important thing is, we have an incredible resource, here, one of the richest finds of copper, ever. Why wouldn't we want to develop it? What's standing in the way—I don't know. Because the environmental concerns will—to the extent that they haven't already been addressed—every one of them will have to be addressed. Every environmental law, every NEPA statement, everything that we ever have to do, from an environmental standpoint, will have to be done, it's in the legislation, wouldn't have to be there, they'd have to do it, anyway.

So, I don't really understand what the issue is. The land that's being acquired, everyone acknowledges, is very good, environmentally sensitive land. Most of the issues that relate to other uses of the land—the rock-climbers, and so on, has all been taken care of. You'll hear testimony from Native Americans, and I would submit that the proponents of the legislation can explain how all of those issues are dealt with.

I'll just close with this point. America is great, over the last 200-plus years, because we have found ways to capitalize large investments in major projects that have brought a lot of wealth to the United States, including during mining activity. The people who are funding this activity have spent about $300 million already, and have, essentially, nothing to show for it.

The investors, last year, were beginning to ask, "Are we ever going to have anything to show for this, or do we need to cut this off?" I am concerned that if we don't get off the dime, and get this done, now, the opportunity will be lost. The people who are raising the capital to do this will say, "We can't spend another couple hundred million dollars without any indication that at the end of the day we're going to be able to start producing copper."

Final point—in terms of land and valuation, there shouldn't be any issue, here, either. You've got 9 pieces of land that are being acquired, with great environmental value, you've got a known piece of land, here, that isn't worth anything, except for the activity that the owners would like to put it to, and the value is determined for both.

What's not determined, yet, is the value of the copper in the ground. Whatever it is, this bill says, that's the royalty that will have to be paid to the United States.

So, now, determining that is a hard thing. But the legislation takes care of that by saying, "Whatever it turns out to be, the copper company has to pay it."

So, I really don't understand the reason for delay, I really urge the committee to move forward with the legislation, as quickly as you can. If there are questions, I think the people directly involved are very happy to try to get them answered. But I hope that the new position of the agencies, here, doesn't represent an effort to just slow this down and kill it through inaction. That would be a tragedy for our country.

Senator WYDEN. Senator Kyl, thank you.

You have talked to me about this legislation on a number of occasions and made a number of points that certainly make sense to me. I'm going to have some questions about your bill, here, in a few minutes you're welcome to join us if you choose to, I'm sure you have a busy——

Senator KYL. I wish I could, and I know I'll get a report, and I thank you, again, I appreciate your courtesy in letting me just sort of parachute in here.

Thank you, gentlemen, for allowing me to interrupt you.

Senator WYDEN. We'll be following up.

Senator Risch, for questions.

Senator RISCH. I'll pass.

Senator WYDEN. OK.

Mr. Holtrop, how much more time does the Forest Service need to review the legislation of Senator McCain and Senator Kyl?

Mr. HOLTROP. The administration is looking at what is clearly a very complex piece of legislation. I think the way for us to move forward on more understanding, what the administration's position on that should be, should be accomplished, largely, through the QFR process, through the questions for the record. The more precise questions you can ask of us, we'll be able to be responding to those, and that's one of the ways that I think we ought to be able to move forward on this.

The administration position is that they have not developed a position on the bill, and I don't think there's an intent for that to be a delay that goes on and on. I think the intent is to better understand the complexities of the bill and be able to move forward.

Senator RISCH. Mr. Chair, could I?

Senator WYDEN. Yes. Sure, of course.

Senator RISCH. You indicated we should ask questions for the record? We don't have questions. It's my understanding the Forest Service has got questions. Or is it your intent to ask questions of the committee? I'm lost.

Mr. HOLTROP. I believe that there are some questions that remain as to when and what scope the NEPA documentation should be accomplished, and we're seeking some clarity from the committee as to what the committee's expectations are, there, and that we will be able to respond to that, and in response to questions for the record.

Senator WYDEN. I will tell you, Mr. Holtrop, I share my colleagues' frustrations with respect to the timetables, so let me kind of unpack this a little bit differently.

The formal invitation to testify on the bill went to you all 2 weeks ago. Of course, the Forest Service has been familiar with the exchange, and Senator McCain, and Senator Kyl have talked about the fact this has been talked about for years, so, you've got to say, it's frustrating and understandable to not have the Department's complete views on the legislation.

So, can you give us a date by which the subcommittee will have the administration's complete comments on the bill?

Mr. HOLTROP. Let me start by acknowledging the frustration, and I do understand that. I think it is important for us to move forward expeditiously in getting to the point of being able to clarify the administration position on this.

One of the things that has been a complex issue for us to look at, again, it has to do with the NEPA documentation, and the timing of the NEPA documentation. I believe, again, I can't give you a specific date, but I do believe that if we utilize the process of looking at any questions that you might ask of us around, for the record, that that would help us clarify what that administration position is, in an expeditious fashion.

There has been clarity, as my testimony indicates, that the administration has taken the position that NEPA should be completed prior to the land exchange, that's the administration's position.

Senator WYDEN. I think the Arizona Senators, and this subcommittee, have a right to know when we will get the administration's complete comments on the bill. I gather that you can't tell us that at this point, I hope you'll go back and get us an answer to that.

Mr. HOLTROP. I will do that.

Senator WYDEN. Very good.

All right, a couple of other questions, just in terms of information——

Senator RISCH. Mr. Chairman, can I jump in, again?

Senator WYDEN. Sure.

Senator RISCH. You know, I guess I'm not ready to let it go at that.

Senator WYDEN. Fair enough.

Senator RISCH. I, you know, I sat here and listened to Senator McCain, and then I listened to Senator Kyl, and obviously they have different styles——

[Laughter.]

Senator RISCH. But both indicate considerable frustration on this, and we're not getting answers, here. Are we talking a week, are we talking a month, are we talking 6 months?

Mr. Holtrop, you've been in this business a long time. Give us a ballpark, and let's try to talk a little bit about that.

Mr. HOLTROP. Generally, I think—my experience on following up on a hearing such as this through questions for the record, usually that is accomplished in a number of weeks, a month, or something like that. That's sort of the timeframe that I'm thinking of, to try

to get to the point of understanding all of the complexities of this issue.

There—with the position of—that the administration has taken of completing NEPA prior to the land exchange, that would also allow us, through that process, to accomplish some of the complexities of working with some of the issues that we have with tribes, consulting with the tribes through the NEPA process, as well.

Senator RISCH. The NEPA process isn't going to start until after this bill passes, am I right on that? I mean, surely you wouldn't start NEPA if there isn't a project on the table?

Mr. HOLTROP. Yes, as long as there's a legislative process ongoing, we would be unlikely to decide to start a NEPA process through an administrative effort.

Senator RISCH. OK, so, then right here, I guess, we don't care about the time on NEPA, I mean, our job is to pass the bill. Once the bill's passed, then it's your job to do the NEPA, the court's to resolve the NEPA, et cetera.

We're looking for a time that you're going to say, "The administration gives us the thumbs up," or "thumb's down," and why.

What I'm short of, here, is what do you want us to ask you?

Mr. HOLTROP. I think there are questions that you might ask around the timing of NEPA, what the administration That's different than what the legislation says right now.

Senator RISCH. We're not tracking. I don't think anybody here cares about NEPA, that's after the bill passes. That's your Bailey wick after the bill passes.

What, I think, this committee is looking for is a thumbs up or a thumbs down from the administration, in order to move forward on the legislation. Let's set NEPA aside, OK? You take care of NEPA when we're done. When are you going to be able to give us whatever you're going to give us so we can move forward on the legislation, and forget about NEPA at this point?

Mr. HOLTROP. OK. I promise to answer your question if I can just—I just would like to say one more thing about NEPA—I do believe NEPA would be our responsibility, what I'm seeking is clarity as to what is expected of NEPA.

In answer to your question, as I mentioned to the chairman—it's a complex bill. I am not here ready to be able to tell you when, exactly, the administration would have a position on—of having worked through all of the details of this.

I do think that if we were to do so through follow-up questions that you would have, that that would expedite the process for us, and so I don't think that that would happen it's a matter of weeks.

Senator RISCH. I don't have any follow-up questions. The questions I've got, the question I have is, is when are you going to give us the final product that you're going to give us so we can vote on the bill? No follow-ups, it's that simple.

Mr. HOLTROP. If there are no follow-ups, then I will work on getting you an answer to that question. I don't have it at this time.

Senator WYDEN. Mr. Holtrop, here's the way it's going to work, and Senator Risch has made an important point, my colleagues have made an important point. We are going to send you some questions for the record on this piece of legislation. Under the committee rules, you are required to respond to us, within 2 weeks. If

you don't send us your position on the bill within those 2 weeks, we're just going to move on. We'll proceed, and make judgments, we work in a bipartisan way, I hope that you'll comply with the committee's rules and respond to our questions if you want the Agency's views considered, you'll get us the Agency's position on this bill within 2 weeks. Is that clear enough?

Mr. HOLTROP. It's very clear.

Senator WYDEN. OK.

We'll have some additional questions for both of you for the record, obviously.

Senator Risch, anything else you want to cover?

OK, let's go on to our next panel, gentlemen, we'll excuse you at this time.

Mr. HOLTROP. Thank you, Mr. Chairman.

Senator WYDEN. OK.

I hope I am not doing violence to the Governor's name, but we have Governor Cooeyate, representing the Inter-Tribal Council of Arizona, Governor—got a thumbs up on that? OK, better quit while I'm ahead. The Governor represents the Inter-Tribal Council of Arizona, Phoenix, Arizona, Roy Chavez, Concerned Citizens and the Retired Miners Coalition of Superior, Rosemary Shearer, Executive Director of Superstition Area Land Trust (SALT), Apache Junction, Arizona, and David Salisbury, President and CEO of Resolution Copper, Superior, Arizona.

We appreciate everybody being with us today, we're going to make your prepared remarks a part of the hearing record in their entirety, we hope everybody will stick to 5 minutes or so by way of summarizing your principle views.

Governor, why don't we start with you?

STATEMENT OF NORMAN COOEYATE, GOVERNOR OF THE ZUNI TRIBE, INTER-TRIBAL COUNCIL, PHOENIX, AZ

Mr. COOEYATE. Thank you, Chairman.

Before I begin my testimony, I'd like to ask the rest of the tribal leaders who are here with me to stand as I acknowledge them.

I've got Clinton Pattea, the President for the Fort McDaly Apache Tribe, I've also got Chairman Wendsler Noise, for the San Carlos Apache Tribe, and I also have John Lewis, who is the Executive Director for Inter-Tribal Council of Arizona, with me today.

Senator WYDEN. We're very pleased that all of you are here, you are guests of the subcommittee and we're very happy that you're here with us.

Please proceed.

Mr. COOEYATE. Thank you, and I'll try to stay under 5 minutes.

Mr. Chairman, committee members and Guests. Keshi, k'o don la:k'yadinapkya. My name is Norman Cooeyate, I'm the Governor for the Zuni Tribe. My tribe is a member of the Inter-Tribal Council of Arizona.

I speak today on behalf of the Inter-Tribal Council of Arizona (ITCA) which consists of 20 federally recognized tribes, nations and communities in Arizona who join together on matters of international, national, and statewide importance to the Tribes with lands which are now within the State of Arizona and other states.

The Zuni tribe has worked to protect sites in the past. We were successful recently in the designation of Mount Taylor, Dewankwi Kyahachu Yalanne, as a cultural property in New Mexico.

We fought for the protection of the sacred Zuni Salt Lake from depletion of groundwater pumping, and we were successful in the recovery for our people of Kolhu:wala:wa, the Zuni Heaven Reservation in northeastern Arizona. Now, we are grateful for this opportunity to address the subcommittee concerning the religious, cultural and environmental concerns of our 20 tribes related to the lands which would be impacted by S. 409.

ITCA opposes the passage of S. 409 for many reasons including the fact that the proposed mine would destroy much of the earth in an area of Oak Flat, Apache Leap, Gaan Canyon and the Pond, that is of spiritual, religious, cultural and historical importance to Native Americans. A copy of the Inter-Tribal Council of Arizona Resolution 0209* dated June 12, 2009, is attached to this presentation, our tribal members of the ITCA tribes and the children of the ancestors who first walked on the lands, which are the subject of S. 409.

Archeological evidence reveals our ancestors occupied, live, worshipped, died, and have been buried in this sacred land for thousands of years. Of course, these facts we know without validation of academics. Our songs, stories, religious practices, and our ancient gatherings together in this place of peace and refuge are a part of us even today. The shrines, sacred paintings, places of prayer and religious practices are near its springs, caves, canyons, and cliffs. The sacred plants, medicines, and paints and animal places nurtured by this place are there, too.

These are the essential and irreplaceable elements of the religious and cultural practices of our people. We understanding that everything in our world is alive and has power. We have a name for everything, the plants, the animals, the birds, the atmosphere, the minerals, the winds, the stars, the bodies of water, the places and everything else, we recognize the power that each element of the natural world has, and that each individual power is directly related in particular holy beings.

We need access to these places, in particular, for various species and ecosystems, in person or remotely, by physical access, prayer, songs, vision, or through ceremonials. Our traditional specialists use song cycles in ceremonials to and from this place—just like modern academics use formulas and technology—for the healing, protection, and physical and spiritual well-being and happiness of our tribes.

Oak Flat is a flat part of the sky land, rising to heights from the arid lands surrounding it. It is a weather maker, it's a place of snow, rain, and refuge and religious worship. The great mountains of the Southwest rising from the arid land have provided us with points of reference and anchors for both our collective and unique identities since the beginning of time. We have survived in this arid land since the beginning, because of our relationship with them.

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*Document has been retained in subcommittee files.

These mountains are living beings, they were created during a time when the earth was formed, and since then they have provided and sustained life to all living beings. These are geological features which support Oak Flat, Apache Leap, and Gaan Canyon, and her sister mountains provide life to all living beings.

Our ancestors, represented by the tribes who ask for your understanding and help today in our sacred mountains, all are born from the womb of Mother Earth. The area, Oak Flat and the canyon, known in Apache language as Gaan Canyon, and Apache Leap exist for the very special purpose which sustains our unique relationship with the natural world, therefore we have the responsibility to protect it, and in turn it provides for the people.

The Apache leaders have spoken to you in the past, and they are in this room today. By their words, Oak Flat is Chich'il Bi. The proposed Resolution Mine will destroy the living place and its unique ecosystems. It will destroy the living things that are associated with holy beings, again, of Apache religion, the mountain spirits, to those who may not know these Apache words. It will forever alter and damage the waters of the land and below the ground, and from the springs. This water has been provided by the snow and rain as a blessing over this land for eons of time.

Some things, such as the Resolution Mine, may look attractive at first, but when you—you are fully informed, you realize that they simply must not be done. The place, Oak Flat and Apache Leap, can not be replaced and should not be disturbed. The remains of our ancestors and other things related can not be, in good conscience, be moved or disturbed. We respectfully ask that you protect this sacred place, Oak Flat, Apache Leap, Gaan Canyon, and all that is part of it.

Mr. Chairman, I respectfully request that the Resolution previously passed by ITCA, dated June 12, 2009, and a statement made by Shan Lewis, the President of ITCA, to this subcommittee a year ago, July 9, 2008, concerning S. 3157, the predecessor to S. 409, and a letter dated April 6, 2009, to the Honorable Nick J. Rahall, from Shan Lewis, also be part of the record entered today.*

Personally, if I might ask, when I hear you talk in terms of consultation on a government-to-government level, I ask that this Federal Government abide by its trust responsibility in assuring that consultation occurs with governmental entities, such as Native Americans. I ask respectively that you have a government-to-government consultation with the Apache Tribes who are affected by this resolution.

Thank you very much.

[The prepared statement of Mr. Cooeyate follows:]

PREPARED STATEMENT OF NORMAN COOEYATE, GOVERNOR OF THE ZUNI TRIBE, INTER-TRIBAL COUNCIL, PHOENIX, AZ, ON S.409

Mr. Chairman, Committee Members and Guests. Keshi, k'o don la:k'yadinapkya. Good afternoon. My name is Norman Cooeyate, Governor of the Zuni (A:shiwi) Tribe. My Tribe is a member of the Inter-Tribal Council of Arizona.

I speak today on behalf of the Inter-Tribal Council of Arizona (ITCA) which consists of 20 federally recognized Tribes, Nations and Communities in Arizona who

*Documents have been retained in subcommittee files.

join together on matters of international, national, and statewide importance to the Tribes with lands which are now within the State of Arizona and other states.

[Governor Cooeyate may acknowledge certain Tribal leaders in attendance at this point in his presentation.]

My Tribe, the Zuni Tribe, actively works to protect sacred places. We were successful in the recent designation of Mt. Taylor, Dewankwi Kyahachu Yalanne, as a Cultural Property in New Mexico. We fought for the protection of the sacred Zuni Salt Lake from depletion by groundwater pumping, and we were successful in the recovery for our people of Kolhu:wala:wa, the Zuni Heaven Reservation in northeastern Arizona. Now, we are grateful for this opportunity to address the Subcommittee concerning the religious, cultural and environmental concerns of our 20 Tribes related to the lands which would be impacted by S.409. ITCA opposes the passage of S.409 for many reasons including the fact that the proposed mine would destroy much of the earth in an area of Oak Flat, Apache Leap, Gaan Canyon and the Pond, that is of spiritual, religious, cultural and historical importance to Native Americans. A copy of the Inter-Tribal Council of Arizona Resolution 0209 dated June 12, 2009 is attached to this presentation.

Our Tribal members of the ITCA Tribes are the children of the ancients who first walked on the lands which are the subject of S.409. Archeological evidence reveals our ancestors occupied, lived, worshiped, died and have been buried in this sacred land for thousands of years. Of course, these facts we know without the validation of academics. Our songs, stories, religious practices, and our ancient gatherings together in this place of peace and refuge are part of us. The shrines, sacred paintings, places of prayer and religious practices are near its springs, caves, canyons, and cliffs. The sacred plants, medicines and paints and animal places nurtured by this place are there. These are the essential and irreplaceable elements of the religious and cultural practices of our people.

We understand that everything in the natural world is alive and has power. We have a name for everything: the plants, the animals, the birds, the atmosphere, the minerals, the winds, the stars, the bodies of waters, the places, and everything else. We recognize the power that each element of the natural world has, and that each individual power is directly related to particular Holy Beings.

We recognize that each of these elements works in concert with the other elements that make up an ecosystem. The power of each species is influenced by the other species in the ecosystem, and these combinations of power contribute to the power of the entire ecosystem. All of these powers are in turn influenced by the particular power of the place where they are found, so that the power of each ecosystem cannot be duplicated or replaced.

We need access to this place and to particular species and ecosystems, in person or remotely, by physical access, prayer, song, vision, or ceremony. Our traditional specialists use song cycles and ceremonies to and from this place—just like modern scientists use formulas and technology—for the healing, protection, and physical and spiritual well-being and happiness of our Tribes.

Oak Flat is part of a sky island rising to heights from the arid land surrounding it. It is a weather maker. A place of snow and rain, refuge and religious worship.

The great mountains of the Southwest rising from this arid land have provided us with points of reference and anchors for both our collective and unique identities since the beginning of time. We have survived in this arid land since the beginning because of our relationships with them.

These mountains are living beings. They were created during the time when the earth was formed, and since then they have provided and sustained life to all living beings. This great geologic feature, which supports Oak Flat, Apache Leap and Gaan Canyon, and her sister mountains provide life to all living beings.

Our ancestors, represented by the Tribes who ask for your understanding and help today and our sacred mountains, are all born from the womb of Mother Earth.

This area, Oak Flat, the canyon known in the Apache language as Gaan Canyon, and Apache Leap—exist for the very special purpose which sustains our unique relationship with the natural world. Therefore, we have the responsibility to protect it and it in turn provides for the people.

The languages of our Tribes are ancient and unique. We are the keepers of these ancient words given to us for all things and places in the beginning. Therefore, we each have our own words for this area, its plants, animals and sacred paints and medicines.

The Apache leaders have spoken to you in the past and they are in this room today. By their words, Oak Flat is Chich' il Bi [dagoteel]. The proposed Resolution Mine will destroy this living place and its unique ecosystems. It will destroy the living things that are associated with Holy Beings, the Gaan of the Apache Religion—the Mountain Spirits to those who may not know these Apache words. It will forever

alter, and damage the waters on the land, and below the ground, and from the springs. This water has been provided by the snow and rain as a blessing to this land over the eons of time.

We are careful and discrete in the practices of our religion. We are hesitant to provide this information because it may not be received with the proper respect. Such information has been used by those who would desecrate our sacred places, steal and destroy objects necessary to the practice of our religion, and to ravage the final resting places of our ancestors, our spiritual leaders, and the funerary objects placed there and "put away" to resume their place as part of the earth.

Some things, such as the Resolution Mine, may look attractive at first, but when you are fully informed you realize that they simply must not be done. This place, Oak Flat and Apache Leap, cannot be replaced and should not be disturbed. The remains of our ancestors and other things related cannot be in good conscience be moved or disturbed.

We respectfully ask that you protect this sacred place—Oak Flat, Apache Leap, Gaan Canyon, and all that is part of it.

Mr. Chairman, we respectfully request that the Resolution 0209 of the Inter-Tribal Council of Arizona dated June 12, 2009, the statement made by Shan Lewis, President of ITCA to this Subcommittee on July 9, 2008, concerning S.3157, the predecessor to S.409, and the letter dated April 6, 2009, to the Honorable Nick J. Rahall from Shan Lewis, President of ITCA, which are attached to my statement today, be made part of the record and carefully considered by the Senate.

Thank you on behalf of all 20 Tribes of the Inter-Tribal Council of Arizona.

Senator WYDEN. Very good Governor, and we thank you and appreciate your views here today.

Mr. Chavez.

STATEMENT OF ROY C. CHAVEZ, CONCERNED CITIZENS AND RETIRED MINERS COALITION, SUPERIOR, AZ

Mr. CHAVEZ. Thank you, Senator, and thank you to the committee for this opportunity. I'd like to introduce to you at this time, Roger Featherstone—if you could stand—with the Arizona Miner Reform Coalition, and also——

Senator WYDEN. Welcome.

Mr. CHAVEZ [continuing]. Mike Bibey, Sierra Club, the Grand Canyon Chapter.

Senator WYDEN. Welcome to you, sir.

Mr. CHAVEZ. My name is Roy C. Chavez, I'm a member of the Concerned Citizens and Retired Miners Coalition, based in Superior, Arizona. On behalf of the Coalition and our partners, I would like to thank you, the committee, for this opportunity to express our views and voice our concerns about S. 409, that we believe will profoundly affect our community.

As a lifelong resident of Superior and a graduate of Arizona State University, I've served 3 terms as former mayor and worked 5 years as town manager for the community. I have several years of mining experience with 4 different Arizona copper companies, including the division in Superior.

As a community activist, I have been instrumental in local and regional planning and development, and I've also served as the past president of Superior Chamber of Commerce, along with several other civic and community organizations. For over 30 years, I have also operated and owned a local business in downtown Superior.

The Concerned Citizens and Retired Miners Coalition members include local residents, former miners, and friends of the town of Superior. The Coalition is not opposed to mining. In fact, we

strongly support responsible mining practices in and around our community.

However, we oppose S. 409, because it proposes to hand over Oak Flat Campground to Resolution Copper Company, a subsidiary of two foreign companies, without the necessary health, water, environmental, social, and cultural impacts analysis under the National Environmental Policy Act.

This is public land and the public needs to be heard openly and fairly under the NEPA process. Oak Flat and Devil's Canyon are recognized as some of the most unique, scenic, popular, and unspoiled areas of the State of Arizona. They are easily accessible to millions of visitors from the Phoenix and Tucson metropolitan areas.

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 from economic diversification in an ecotourism environment around our community.

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 are particularly concerned that this land exchange would bypass critical environmental impact studies that describe, at a minimum, where the massive amount of tailies will be dumped, how water pollution from mining activities will be prevented, how our water supply will react to this type of block cave mining methodology, to what extent the repairing habitat at Oak Flat and Devil's Canyon will be destroyed.

Queen Creek directly feeds into the main water supply for the town of Superior. Block cave mining extracts massive amounts of underground stable earth, which causes an uncontrolled shift in the water course and potentially could alter the water course to pull away from our Queen Creek, depleting and disrupting the natural flow.

In 1946, Clean Creek was called the perennial flowing stream. When the Magma Mine was in full production during the 1960s ad 1970s, we remember how the repairing areas of Oak Flat, Queen Creek, and the town of Superior dried up. Any analysis regarding the impact of a potential mine of this magnitude at Oak Flat to the water balance of the entire region, should be conducted before this bill is even considered by Congress. We are alarmed about the issue of subsidence from the mine's proposed block cave method, and its effect on Oak Flat, Apache Lead, U.S. Highway 60, and the town of Superior.

Underground mining, traditionally in Arizona, has been just that, underground. Until the 1940s and 1950s, the concept of block mining was initiated to go after low-grade oxide ore. These, ladies and gentlemen, are the results of what we have today in regards to open pit mining and the devastation of surface ground in the State of Arizona. The Superior Magma Copper Mine is one of the few or last mines that is underground. The surface subsidence does not occur and the waste by-product is minimal in this type of methodology, known as cut and fill.

Resolution Copper admits they chose block cave method because it's the least expensive and quickest method to approach this massive ore body. However, experts have demonstrated that there will

be irreparable destruction to the surface. I can testify to that as mayor, in discussing with Resolution when they first came to the community over 10 years ago, that they finally did admit that there could be surface subsidence.

The overburden of this mine on the surface is defined as a tough or verconic compressed dust, which is very unstable. Even after closure, the potential for destructive ground movement is extremely high and can continue for decades. Ground movement, especially after closure, is uncontrollable. How much more destruction will take place after the mine is gone?

Many members of our Coalition have lived through the boom and bust cycle of mining. Mining markets are volatile and unpredictable, as we have seen in recent areas close to our community, Pinto Valley, Safron, and the San Miguel areas. The loss of these natural recreation and already protected lands, compromise the potential for our community to foster, promote, and promote a more productive and diversified economy, based on tourism and outdoor activities.

We can no longer base our future on one single industry or employer. S. 409 does not represent a land exchange that is in the broader public interest. Both Republican Presidents, Eisenhower and Nixon, believed that they were protecting Oak Flat from big business interests——

Senator WYDEN. Mr. Chavez, I don't want to interrupt you—we've got a couple more witnesses and we're over our time. So, if you could summarize.

Mr. CHAVEZ [continuing]. In acquiring the lands for development and protection.

No other mining company in our area has been allowed to bypass the Federal permitting process of NEPA. It is simply a bad policy. NEPA specifically asked that the government look before you leap, and this special interest legislation we believe is nothing more than forgiveness before permission. It is for these reasons that we ask that you oppose and we oppose the bill as presented.

Thank you so much.

[The prepared statement of Mr. Chavez follows:]

PREPARED STATEMENT OF ROY C. CHAVEZ, CONCERNED CITIZENS AND RETIRED MINERS COALITION, SUPERIOR, AZ, ON S. 409

The Concerned Citizens and Retired Miners Coalition is a group of citizens who: 1) reside in Superior, Arizona, or do not reside in Superior, Arizona, but are affiliated with relatives who are residents; 2) are retired hard-rock miners who previously worked in the now non-operational mine in Superior, Arizona, and were displaced due to mine closure or personal disability; or 3) are individuals who are concerned that important U.S. public recreational land will be conveyed to a foreign mining company for private use.

The Concerned Citizens and Retired Miners Coalition realizes that Superior, Arizona, was born as a mining community and has lived through the mining booms and busts of the Silver King Mine, the Queen Mine, the Belmont Mine, the Magma Mine and the Broken Hill Proprietary Mine over the history of our 100 plus years. Because we recognize that mining is a large part of our history and will potentially be a larger part of our future, we are not opposed to mining. In fact, we strongly support responsible mining policies, and practices in and around our community. However, we believe that S. 409 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. We also believe that there is no need for a land exchange for the mine to move forward with their plans to mine this area.

We appreciate and thank you for the opportunity to express our views and voice our concerns about S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009 (Oak Flat Land Exchange) that will profoundly affect our community.

OAK FLAT LAND EXCHANGE AND LOSS OF IMPORTANT PUBLIC CAMPGROUND AND RECREATIONAL AREAS

Resolution Copper Mining, LLC, 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 (four) 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 neighbors, 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, PhD, 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 on March 18th of this year, The Concerned Citizens and Retired Miners Coalition joined in partnership with the San Carlos Apache Tribe in fighting to oppose S. 409.

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.

A decision regarding these public lands should be made with utmost knowledge and care. Once these lands are lost to the public, they can never be regained.

We are particularly concerned that this legislated land exchange of the Oak Flat Campground and surrounding area would bypass critical environmental impact studies. We fear that 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 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 de-

stroy 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 Oak Flat land exchange legislation.

WATER, THE ENVIRONMENT, AND DESTRUCTION OF LAND SURFACE

The Concerned Citizens and Retired Miners Coalition believes it is critical that Hydrology Surveys, Environmental Impact Studies, Subsidence Analyses and Transportation and Circulation Plans be conducted PRIOR to discussion of any land exchange and/or different use.

Resolution Copper Company's Environmental Impact Assessment Manager, Bruce Marsh, indicated to one of our Coalition Members that the new mine would utilize 40,000 acre feet of water per year. He further indicated that they would be buying excess water from the tribes and other sources, however, they are merely banking those water rights and the sources are not secured. This is a concern because: 1) Arizona is still in the grip of a 14-year drought with dwindling Central Arizona Project supplies, and we do not have any assurances that water will still be available when Resolution Copper Company begins mining in the next ten (10) years; 2) Superior is located in the Maricopa AMA rather than the Pinal AMA, and Phoenix metropolitan area water supplies depend upon the Queen Creek aquifers; 3) The close proximity of the Queen Creek aquifer to a massive mining operation will negatively disrupt the underground water flow and 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 the #9 shaft 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 members 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 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 Concerned Citizens and Retired Miners Coalition have been 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 finally 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 to the surface utilizing the block-cave method of mining. This is absolutely unacceptable.

Resolution Copper Company has not yet determined the manner in which the tailings will be accumulated. Since there will be a considerable volume of tailings that will be created by this method of mining, The Concerned Citizens and Retired Miners Coalition is concerned about the contamination associated with this activity. We are also concerned regarding reclamation of these tailings upon mine closure.

S. 409 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 Concerned Citizens and Retired Miners Coalition believes that Resolution Copper Company should not be exempt from the required national permitting studies and analyses that have been required of the other mines in the area by virtue of a land exchange. No other mining corporation in this area has been allowed to bypass the Federal 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 Oak Flat land exchange. We feel that if the land exchange

is of utmost importance, Resolution Copper Company should accelerate production of their plan NOW—before the Oak Flat land exchange.

PUBLIC RESPONSE OPPOSING THE FEDERAL LAND EXCHANGE OF OAK FLAT CAMPGROUND, AND SURROUNDING AREAS

The Concerned Citizens and Retired Miners Coalition began gathering signatures opposing the Federal Land Exchange of Oak Flat Campground and surrounding areas in March of 2007 and obtained 90 pages of hard-copy petitions from the public over a 4-month period. Of the 692 individuals who signed, 315 were Superior residents and 377 were concerned citizens residing outside of Superior, Arizona. Additionally, we initiated an on-line petition process and to date have gathered 4,047 signatures world-wide opposing the Oak Flat land exchange.

THREAT TO THE TOWN OF SUPERIOR'S ECONOMIC DIVERSIFICATION AND SUSTAINABILITY

Many members of our Coalition have lived through the boom and bust cycle of mining. After closure of the Magma/BHP mine in the 1990s, many people fled the community in search of jobs, medical treatment facilities and amenities that were not available in Superior. Voters taxed the political body to create a more diversified and sustainable economic basis for its residents. The Town received grants to develop an Industrial Park, a low-income housing subdivision, a new swimming pool, second fire station, airport, rest stop and numerous parks and trails. These projects were initiated to create jobs for our local residents, to increase state-shared revenue and local taxes and to encourage eco-tourism.

The Concerned Citizens and Retired Miners Coalition believes that in order to sustain growth and development, we cannot rely on any one industry to support us. Mining has an allure and historical ties in our community. However, just as in the past, mining has a short life. We cannot base our future on one single industry or employer.

While Resolution Copper Company has promised great hope for another "boom," they do not willingly embrace annexation into our town limits, they have purposely depreciated their land values in anticipation of the land exchange and they have strong-armed our government officials and management into accepting less than adequate compensation for future use of the Town's services and support.

Summary

Resolution Copper Company has divided this community by demanding that the Town Council speak for the residents of Superior in unwavering support of a land exchange that is not necessary in order for Resolution Copper Company to mine. Behind the scenes, their representatives have attempted to force the firing of individuals opposing the Land Exchange. Those individuals who question Resolution Copper Company in any fashion are deemed to be "anti-mine." Businesses deemed "anti-mine" are not supported by Resolution Copper Company, their employees or agents—in fact RCC employees are urged to boycott! These strong-arm tactics should not be allowed to pervade a community already distraught from previous "boom and bust" mining cycles.

S. 409 does not represent a land exchange that is in the broader public interest. It is clear to The Concerned Citizens and Retired Miners Coalition that Presidents Eisenhower and Nixon believed that they were protecting Oak Flat from big business interests in acquiring public lands for development, mining and transportation. Oak Flat has been important enough to protect from mining and other elements for over 50 years, and it should not be so easily conveyed to a foreign-owned mining interest. This land exchange would set a terrible precedent.

The Concerned Citizens and Retired Miners Coalition strongly urges the Public Lands and Forests Subcommittee of the Senate Energy and Natural Resources Committee to ensure that the concerns of all public interests are addressed prior to consideration of any Federal land exchange. We believe you should protect these public lands for the public's future use and preserve the unique opportunities for Arizonans—and especially Superiorites—that the Oak Flat area provides.

For these and many other reasons, we oppose S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009 and feel that it should be rejected.

Thank you for your time and consideration.

Senator WYDEN. Thank you very much for your testimony.

Mr. Salisbury.

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

Mr. SALISBURY. Mr. Chairman, and members of the committee, my name is David Salisbury and I'm President of Resolution Copper, based in Superior, Arizona. Thank you for the opportunity to testify and testify in support of S. 409.

This legislation represents an important step toward restarting a mine in Arizona's Historic Copper Triangle Mining District. We also thank our Arizona Senators, John McCain and John Kyl, for their long-standing support and leadership.

Upon completion of this land exchange, we propose to invest a considerable risk, tens of billions of dollars over 60 years, to develop and operate a deep underground mine. Innovative and proven technology will allow us to build a safe, economically stable, panel cave mine 7,000 feet below ground, with limited surface impact.

Mr. Chairman, there are 6 main reasons this exchange is in the public interest. First, S. 409 provides fair value to the American taxpayer. The appraisal will be done by the Forest Service using Department of Justice methodology to determine fair value. Additionally, it provides full cash equalization if the appraisal indicates that we owe money, we will pay the difference to equalize the value. If however, the valuation indicates the value of the land we are exchanging is higher than the land we receive, we donate the excess to the United States.

Importantly, this legislation also includes an unprecedented value adjustment payment, which ensures that the government will receive payment for any ore that—mine that was not included in the original valuation of the ore body.

Second, this legislation delivers significant environmental benefits and safeguards to the region. It includes language confirming that an Environmental Impact Statement will be completed before mining. Further, the parcels that Resolution Copper will exchange to the government are of high ecological value and were identified with the assistance of the Bureau of Land Management, the Forest Service, leading environmental NGO's like the Nature Conservancy and Audubon Arizona.

We also plan to use the tailings from our mine to reclaim an existing open pit mine in the region, by filling it with our tailings and restoring the landscape.

Third, we are listening and responding to suggestions and concerns from various stakeholders. Since the House hearing in November 2007, we have had more than 1,000 stakeholder meetings. S. 409 reflects changes suggested during those discussions. A few examples—the Forest Service indicated that additional time and money would be required to relocate the Oak Flat Campground. This legislation doubles the time and the money.

Senator Kyl has changed the bill to keep Apache Leap in public ownership, and to have us add 110 acres of our private lands to ensure that it is managed to protect its cultural, historic, educational, and recreational values. We have agreed to the climbing communities' request to transfer Resolution's 90-acre pond area to the Forest Service for future building—future climbing in the Oak Flat area. We continue to work closely with the climbing community to provide additional opportunities.

Fourth, the mine will produce 25 percent—up to 25 percent of the nation's anticipated copper demand. This is important more now than ever in an emerging green economy. Hybrid vehicles typically use—70 to 100 percent more copper than conventional cars. Additionally, wind generators, solar power stations, and transmission facilities will increase copper demand.

Fifth, the mine will create significant economic prosperity for Arizona and the Nation. We anticipate spending tens of billions of dollars, generating several thousand jobs in construction, 1,400 jobs in connection with mining operations, and approximately 4,400 additional indirect jobs. I have submitted, for the record, a study* which highlights the significant economic benefits this project will generate, totaling in excess of $46 billion in economic activity and approximately $11 billion in taxes to the various levels of government.

Finally, more important in our view, is—that this project is in the public's interest, many of Arizona's leaders, including Governors Napolitano and Brewer, a significant majority of the Arizona legislature, numerous mayors and city councils, including the Central Arizona Association of Governments, affirm support for this exchange. A unanimous resolution of support from all county supervisors in Arizona affirms that support, and the Arizona Republic and Arizona Daily Star have also endorsed this legislation.

In closing, we ask Congress to authorize this land exchange so that the promise of this project can be realized. We appreciate your consideration, and respectfully request your prompt action to enact this legislation this year.

Thank you.

[The prepared statement of Mr. Salisbury follows:]

PREPARED STATEMENT OF DAVID SALISBURY, PRESIDENT, RESOLUTION COPPER MINING, LLC, SUPERIOR AZ, ON S. 409

Mr. Chairman and Members of the Subcommittee:

My name is David Salisbury. I am the President of Resolution Copper Mining LLC ("Resolution Copper"), which is a company headquartered in Superior, Arizona and owned by subsidiaries of Rio Tinto plc and BHP-Billiton plc. I am here in support of S. 409, and to briefly describe the efforts we have made to address various issues subsequent to Subcommittee hearings on similar legislation over the past three years.

The Southeast Arizona Land Exchange and Conservation Act of 2009, S. 409, represents an important step toward the development of a large, underground copper mine in a historic mining district.

This legislation would allow us to acquire sufficient acreage of National Forest land, known as the Oak Flat parcel, where much of our new underground mine will be located. Most of the land needed is already blanketed by unpatented mining claims which we or our predecessors have owned and maintained for decades. As you can see from the map** attached to my testimony, the Oak Flat parcel abuts, or is intermingled with, private land we already own. That private land was the site of the Magma underground copper mine, which operated from 1912 to 1996, and produced 25 million tons of copper ore.

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

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* Document has been retained in subcommittee files.

** Map has been retained in subcommittee files.

Developing a mine a mile to a mile and a half beneath the surface, where the temperatures are up to 175 degrees Fahrenheit, is not only technologically difficult, but also an extremely expensive and financially risky proposition. An investment of approximately $1 billion is required to carry out exploration and feasibility study work with more that $410 million having already been spent. If the mine is economically and technically feasible, Resolution Copper will spend at least $4 billion toward capital investment before mine construction is finished and we ship our first load of copper. Resolution Copper has not made the final determination as to the economic and technological feasibility of mining this ore body. Despite a high level of confidence on the part of our engineering team, it will require an additional investment of approximately $530 million before we can make this determination.

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

We realize that our land exchange will result in the loss of a Forest Service campground and some other public recreation, but believe that this legislation more than compensates for those losses with the conveyance of high quality ecological and recreational land to the United States. Once operational this mine would provide approximately 25 percent of the Nation's annual needs for copper from a safe, domestic source for approximately 50 years.

Building upon the national interest I have just outlined, allow me to explain the significant economic and fiscal impact the mine will have. The ore body is located in a region with over 100 years of mining history known as the "Copper Triangle." This region has suffered with high unemployment for a number of years and our mine is expected to bring 1,400 permanent, high quality, technical jobs directly affiliated with the mine (1,200 direct jobs and 200 contract jobs) and a large number (4,400) of service related jobs to the region. Further, we anticipate the creation of several thousand jobs during the construction phase of the mine.

Included with my testimony I have submitted the executive summary of an economic and fiscal impact study prepared in April 2008 by Elliott D. Pollack & Company, and I would like to provide you with a few highlights directly from that report:

- The mine impact is estimated to last 66 years, with 16 years of feasibility planning and construction in preparation for 50 years of mining operations.
- The total economic impact of the 66 year project on the State of Arizona, including the additional development of residential, commercial, and industrial land in Superior, is estimated to be $46.4 billion. During the peak years of mine projection, the annual economic contribution of the mine itself is estimated to be $536.6 million. If the additional development of residential, commercial and industrial land is considered, the peak annual economic contribution to the State is projected to be $798.2 million. For a comparative perspective, studies have estimated the economic impact of an NFL Super Bowl type event to be approximately between $250 million and $500 million.
- In terms of fiscal impacts, the project is estimated to generate total federal, state, county, and local tax revenue in excess of $10.7 billion.

It is important to understand that all of the fiscal and economic impacts were based on the assumption that copper is priced at $1.30 per pound (which was based on the long term price as calculated by the Arizona Department of Revenue). Today, copper is trading at about $2.20 per pound, so the assumptions in this study are very conservative and the economic benefits to both the U. S. and Arizona could be greater.

As I indicated, the planned mine will be a very deep underground mine utilizing a proven method of mining called panel caving. Unlike an open pit mine, it will have minimal waste rock dumps. We plan to ship the ore from Oak Flat via underground tunnel to an existing open pit mine site in the area. We then expect to process the copper ore at that site and deposit the tailings to fill one or more existing open pits from closed mines, and then reclaim and re-vegetate those backfilled pits. We believe that undertaking will significantly benefit the environment. In addition, Senator Kyl has included subsection 5(c) in this legislation to expressly confirm that before we open the mine, as already required by existing law, the entire operation and its environmental impacts will be subject to full review under the National Environmental Policy Act.

In developing the land exchange proposal in S. 409, we have worked with the United States Forest Service, the Bureau of Land Management (BLM), the Arizona Game & Fish Department, and numerous Arizona conservation organizations to ensure that the lands we are conveying to the United States have greater environmental and other public values than the lands we are receiving at Oak Flat. In S. 409, Resolution Copper will convey ten parcels of land, totaling approximately 5,566 acres to the United States in return for the Oak Flat parcel. Whereas most of Oak Flat is relatively flat, and has no permanent water—the ten parcels we have assembled for exchange have exceptionally rich ecological, recreational and other values, and many of them have significant year-round water resources. I want to emphasize that these parcels were recommended to us by The Nature Conservancy, the Audubon Arizona , the Sonoran Institute and in consultation with the BLM and the US Forest Service. The attributes of these offered lands include:

1) A new rock climbing parcel near Oak Flat;
2) Seven miles of river bottom and riparian land along both sides of the free flowing San Pedro River, which is one of the most important migratory bird corridors in the United States. (As requested by the BLM at the November 2007 hearing on H.R. 3301 in the House Subcommittee on National Parks, Forests, and Public Lands, this parcel will be immediately added to the existing San Pedro Riparian National Conservation Area);
3) Two miles of trout stream and other fish and wildlife habitat along East Clear Creek in the Coconino National Forest;
4) Possibly the largest, and most ancient, mesquite forest (or bosque) in Arizona;
5) Nine hundred and fifty-six acres of extremely diverse grassland habitat in the Appleton-Whittell Research Ranch—an existing preserve jointly managed by the Forest Service, BLM and the Audubon Society inside the Las Cienegas National Conservation Area; and
6) Four in-holdings in the Tonto National Forest which have significant riparian, recreational, cultural, historic and ecological amenities including populations of the endangered Arizona hedgehog cactus.

S. 409 also provides that Resolution Copper must convey all ten parcels to the United States, regardless of value. If the ten parcels appraise at a higher value than the Oak Flat parcel, we will donate the excess value to the United States.

Accordingly, this land exchange will result in very significant net gains to the United States in: 1) river bottoms and riparian lands; 2) habitat, or potential habitat, for threatened, endangered and sensitive species; 3) public recreational opportunities; 4) habitat for innumerable species of flora and fauna; 5) important bird areas; and 6) year-round water resources—a rarity in many parts of Arizona. In light of this, we believe the exceptional quality and quantity of the non-federal lands that will be conveyed into Federal ownership more than off-set any expected surface impacts to the lands acquired by Resolution Copper.

Mr. Chairman, we have also agreed to several provisions in S. 409 that are designed to assure that the taxpayers receive full fair market value in this land exchange and that any facilities or activities we displace at Oak Flat land are adequately replaced, or improved upon. I will briefly describe these key provisions:

- S. 409 requires that the existing Forest Service campground at Oak Flat, which has 16 developed campsites, will be replaced with a new campground or campgrounds. Based on testimony presented at the hearing in the House in the fall of 2007 by the U.S. Forest Service, we have increased the amount we will pay for the replacement campground(s) from $500,000 to $1 million and increased the time for establishing the new campground from 2 years to 4 years. The bill now provides that the U.S. Forest Service will continue to own and operate the Oak Flat Campground for 4 years after bill enactment.
- Portions of the Oak Flat parcel and adjacent areas, including areas of our existing private land, are used for rock climbing. To accommodate these activities, we have agreed to several actions. First, as mentioned earlier, we have now added our 95 acre Pond parcel to the land exchange. Second, we have committed to keeping certain areas open for climbing for as long as it is safe to do so.
- Resolution Copper has committed to working with neighboring Native American communities. Resolution Copper also acknowledges the sovereignty of the San Carlos and respects their request for government-to-government discussions. As a result, S. 409 changes the previous legislation to leave the entirety of the Apache Leap in U.S. Forest Service ownership. Additionally we have added 110 acres of our own land at the south end of Apache Leap to the package of lands

that will be conveyed to the US Forest Service. Likewise, S. 409 requires that accommodations be made for the purpose of traditional acorn gathering in the area in and around the Oak Flat Campground upon request from the Apache or Yavapai Indian tribes.

- Finally, subsection 7(a) provides that all appraisals will be conducted in accordance with U.S. Department of Justice appraisal standards, which are used for all Federal land transactions. The Forest Service will write the appraisal instructions and all appraisals must be formally reviewed and approved by the agency. This means that the appraisal process will be under the government's complete supervision and control.

Finally, we are aware of the mining law reform legislation which passed the House last year and of Chairman Bingaman's bill in the Senate. While the Federal appraisal process to be used for this land exchange fully incorporates royalty considerations, as required by the Justice Department standards the lands and any cash equalization we convey to the United States in the exchange will constitute a full up-front royalty payment under the appraisal process, we have agreed to go a step further. Namely, section 12 of S. 409 now provides that if the cumulative production from our mine ever exceeds the production assumed by the appraiser, we will pay a value adjustment payment on any excess production. In doing that, the public will be protected in the event the appraiser errs in the mine production assumptions or if subsequent mining operations discover and produce more ore than originally assumed. We believe this is an eminently fair proposal which, by definition, fully protects against potential production errors in the appraisal process.

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

Senator WYDEN. Thank you.

Ms. SHEARER, welcome.

STATEMENT OF ROSEMARY SHEARER, EXECUTIVE DIRECTOR, SUPERSTITION AREA LAND TRUST (SALT), APACHE JUNCTION, AZ

Ms. SHEARER. Mr. Chairman, and members of the subcommittee, it is indeed an honor to be here before you today, and thank you for allowing me to provide my testimony.

My name is Rosemary Shearer, I'm a founding member and the Executive Director of the Superstition Area Land Trust. We are a 501.C.3 non-profit conservation organization, and we are known by our acronym, SALT. Some may ask, and quite frankly, many have, why would a conservation organization appear before the United States Senate panel in support of a copper mining operation?

A brief history—SALT was founded in 1993 by residents living near the Superstition Mountains, which truly are our back yard. Our primary mission is to protect our open spaces and educate the public on the Sonoran Desert. Our directors come from diverse backgrounds of academia, historical societies, artists, planners, ranchers, architects, businesses, and conservationists. Funding comes from individual members and grants, bequests, foundations, and 404 in lieu fees.

In our 16 years, SALT has built partnerships with government agencies and civic organizations, as we acquired lands for preservation and engaged in public projects. We participate in regional planning, education, and grassroots advocacy, all of which has underscored an awareness that a healthy economy is a vehicle for conservation efforts.

We are located in Pinal County, which historically has relied on copper, cotton, and cattle as an economic base. In recent years, Pinal County, which is the size of the State of Connecticut, has

morphed into a widespread series of urbanized bedroom communities where residents commute outside of the county to Phoenix and Tucson to go to work. Surrounded by hundreds of thousands of acres of some of the most scenic publicly owned lands in North America, recreation has recently been added to the economy. However, there are still very few local job opportunities. The vitality and future social well-being of the region is of major concern to all of us.

SALT's position on S. 409 was carefully considered, and not arrived at easily. As the definitive conservation organization in the area, affected by Resolution's proposed mining operation, we believe that we have the most to gain or lose from the provisions of this bill. Many of our members have hiked, camped, climbed, enjoyed the awe-inspiring landscapes of the 2,400 acres that will be effected by Resolution Copper's activities. This is a very complicated issue.

The land in the area of this project is unquestionably scenic and beautiful. However, a rich body of copper ore, perhaps one of the largest in America, if not the world, lies deep beneath the very ground so many have treasured for decades, and how ironic, a treasure on top of a treasure.

The sobering truth is that someone will go after it eventually. Therein lies the dilemma, who will that someone be? Will they employ the traditional mining methods, virtually unchanged over the last century, producing more waste dumps and tailing impoundments, to further deface the landscape of Eastern Pinal County, or will newly developing mining techniques, leaving the air clean and the surface of the land largely undisturbed be employed?

Either venture will employ men and women for decades in an economically depressed area. Either method would extract the ore, but what heritage would it leave behind? These are all very important questions and ones that we have sought answers to, and will continue to explore.

SALT considers Resolution Copper's current reclamation of the abandoned Magma Mine in Superior, along with their plan to backfill the abandoned Pinto Valley Mine, as it closes, as a demonstration of their commitment to adherence to the provisions of S. 409, and to remaining a vital partner in the region's future.

Members of our organization, including myself, have visited many of the properties in the exchange package. Among the 5,556 acres in the exchange, is the 7B Ranch, adding almost seven miles of protection to the San Pedro River Watershed. Also included are the Pond and Dripping Springs, both superb, spectacular hiking and climbing locations. The JI Ranch will provide a future scenic camping area, very near Oak Creek Campground, which Resolution has promised to keep open until the new one is built.

An additional 100 acres of their private land adjacent to Apache Leap has been added, guaranteeing conservation for this signature landscape, which towers above Superior. SALT stands ready to play a very significant role as management plans and easements are developed in the preserve areas.

So, in conclusion and after careful consideration of all the factors, we consider the passage of S. 409 beneficial to the region. Mr. Chairman, I appreciate the opportunity to testify before you today

on this legislation, and am prepared to answer questions the subcommittee may have.

[The prepared statement of Ms. Shearer follows:]

PREPARED STATEMENT OF ROSEMARY SHEARER, EXECUTIVE DIRECTOR, SUPERSTITION AREA LAND TRUST, (SALT), APACHE JUNCTION, AZ, ON S. 409

Mr. Chairman and Members of the Subcommittee:

Thank you for allowing me to provide testimony. My name is Rosemary Shearer. I am a founding member and the Executive Director of the Superstition Area Land Trust, a 501(0(3) non-profit conservation organization. We are known by our acronym, SALT. Some may ask, and quite frankly a few have, why would a conservation organization appear before a Senate panel in support of a copper mining operation? A brief history:

SALT was founded 1993 by residents living near the Superstition Mountains. Our primary mission is to protect our open spaces and educate the public about the Sonoran Desert. Our directors come from the diverse backgrounds of academia, historical societies, artists, planners, ranchers, architects, businesses and conservationists. Funding comes from individual members. grants, bequests, foundations, and 404 in lieu fees.

In our sixteen years SALT has built partnerships with government agencies and civic organizations as we acquired lands for preservation and engaged in public projects. We participate in regional planning, education and grassroots advocacy, all of which has underscored an awareness that a healthy economy is a vehicle for conservation efforts,

We are located in Pinal County which historically has relied on copper, cotton and cattle as an economic base. In recent years Pinal County, the size of the state of Connecticut, has morphed into a widespread series of urbanized bedroom communities where residents commute to Phoenix and Tucson to work. Surrounded by hundreds of thousands of acres of some of the most scenic publicly owned lands in North America, recreation has been added to the economy. Still there are few local job opportunities. The vitality and future social wellbeing of the region is of major concern to all.

SALT' s position on S. 409 was carefully considered and not arrived at easily. As the definitive conservation organization in the area affected by Resolution's proposed mining operation, we believe that we have the most to gain or lose from the provisions of this bill. Many of our members have hiked, camped, climbed and enjoyed the awe-inspiring landscapes around the 2,400 acres that will be affected by Resolution Copper's activities.

This is a complicated issue. The land in the area of this project is unquestionably scenic and beautiful. However, a rich body of copper ore, perhaps one of the largest in the world, lays deep beneath the very ground so many have treasured for decades. How ironic—a treasure beneath a treasure. The sobering truth is that someone will go after it.

Therein lays the dilemma. Who will that someone be? Will they employ traditional mining methods, virtually unchanged over the last century, producing more waste dumps and tailings impoundments to further deface the landscape of Eastern Pinal County? Or will newly developing mining techniques, leaving the air clean and the surface of the land largely undisturbed be employed? Either venture will employ men and women for decades in an economically depressed area. Either method would extract the ore—but what heritage would it leave behind? These are all very important questions and ones that we have sought answers to and will continue to explore.

SALT considers Resolution Copper's current reclamation at the abandoned Magma Mine in Superior, along with their plan to backfill the abandoned Pinto Valley mine, as a demonstration of their commitment to adherence to the provisions of S. 409, and to remaining a vital partner in the region's future.

Members of our organization, including myself, have visited many of the properties in the exchange package. Among the 5,556 acres in the exchange is the 7B Ranch, adding almost seven miles of protection to the San Pedro River watershed. Also included are The Pond and Dripping Springs, both superb hiking and climbing locations; the JI Ranch which will provide a future scenic camping area near Oak Creek campground, which Resolution has promised to keep open until a new one is built. An additional 100 acres of their private land adjacent to Apache Leap has been added, guaranteeing conservation for this signature landscape which towers above Superior. SALT stands ready to play a significant role as management plans and easements are developed on the preserve areas.

And so, in conclusion, and after careful consideration of all the factors, we consider the passage of S. 409 beneficial to the region.

Mr. Chairman, I appreciate the opportunity to testify before you today on this legislation and am prepared to answer any questions the Subcommittee may have.

Senator WYDEN. Ms. Shearer, thank you very much.

My thanks to all of you, it's been very, very good, and if time was not so constrained this afternoon, I have plenty of questions for all four.

But there are two for you, Mr. Salisbury. I think that we need, with respect to making sure we have a complete record.

The Natural Resources Agencies have repeatedly advocated that the subcommittee add language to the bill, requiring Resolution Copper to provide the agencies with confidential access to all of the exploration and development data, and company analyses, in order to ensure that there would be an accurate appraisal and mineral report. Does the company object to adding this sort of provision to the legislation?

Mr. SALISBURY. Senator, I would say that that information is commercially, kind of, confidential. Under confidential requirements, we will certainly open that to the appraisal agency, and that information will be made available as a part of the appraisal process that is outlined by the Department of Justice procedure.

Senator WYDEN. That's not an answer to my question. My question was, does the company object to adding this sort of provision to the actual legislation?

Mr. SALISBURY. We will stipulate in the legislation that we will make all of that information available. Again, it is confidential business-related information that is important to our company.

Senator WYDEN. I don't want to try a third time.

Mr. SALISBURY. No, we won't put the detailed data in the legislation.

Senator WYDEN. OK. We're going to have to work with you and with the agencies to, sort of, unpack what that really means, because the agencies have felt strongly about that particular point.

One other question for you, Mr. Salisbury, at the hearing in the last Congress, you testified that you were confident that the mining operation would not adversely affect Apache Leap. The legislation includes provisions in section 8, to "permanently protect Apache Leap," but these provisions seem like they might be substantially undermined by a provision that states that nothing in the section imposes any restriction on any exploration or mining activity outside of Apache Leap. Is it your understanding that the intent of the bill is to permit or to prohibit mining activity that would adversely affect the structural integrity of Apache Leap?

Mr. SALISBURY. Senator, if I might, I'll add that—may I just take a moment to introduce some folks who are here, who are in support of our opportunity today. I'd like to recognize Mayor Hing from the town of Superior, Hank Gutierrez, who is the current President of the Chamber of Commerce and Council Member of Superior, Senator Rebecca Rios, State Senator from Arizona, and Mike Pastor, County Supervisor from Gila County. I appreciate their efforts to be with us today.

Senator WYDEN. We welcome all of you. It seems much of the Southwest has turned out for this hearing.

Mr. SALISBURY. Senator, to respond to your question regarding the structural integrity of Apache Leap. Our operations plan no activities that would be in close enough proximity to effect the structural integrity of that Leap. It is important for us to preserve that integrity, as our infrastructure lies between our operations and the Leap itself. So therefore, we have no intention, apart from a well to study the hydrology of the area, there would be no mining activities under the Leap or in close enough proximity to effect its structural integrity.

Senator WYDEN. So, at last year's hearing, you said—and I'll just quote here—as part of your response—part of your statement, you said, "We will protect the Leap." You're not going to change your position on that?

Mr. SALISBURY. No change in that position at all, Senator.

Senator WYDEN. OK.

We thank all four of you. Obviously there's a lot of—I think, Governor, you said it very well, when you talked about the desire for consultation, and this committee does a lot of things and we spend a lot of time consulting, so we're going to follow your very constructive suggestion.

We will have questions for all four of you and for our earlier witnesses, and with that, the Subcommittee on Public Lands is adjourned, and we thank you.

[Whereupon, at 2:54 p.m., hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSE OF JOEL HOLTROP TO QUESTION FROM SENATOR WYDEN

S. 1139

Question 1. As we discussed at the hearing, this property, built by the Civilian Conservation Corps in the 1930s, has high historical value, which the community intends to protect and restore. You indicated that the Forest Service intends to protect the unique architectural features and the important cultural and historic features of the property. Can you tell me how the Forest Service plans to ensure that these unique architectural, cultural and historic features of the property are maintained if it sells it under existing law?

Answer. The Forest Service is working with the Oregon State Historic Preservation Officer (SHPO) to determine the most appropriate means of either recording or protecting the site. Because there are other nearby sites with similar features from the same time period, the SHPO has determined that the site can be photographed and recorded and that existing buildings would not need to be maintained or retained. (The agency estimates that costs for deferred maintenance of the existing buildings approaches $300,000.) Therefore, if sold, the disposition of the buildings would be at the discretion of the new owners.

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. The Department of the Interior has testified that adding a provision requiring Resolution Copper to provide confidential access to the Secretaries of Agriculture and the Interior (and their representatives) to all exploration and development data and company analyses on the mineral deposits underlying the Federal land is essential in order to ensure an accurate appraisal. Is access to such data and analyses important to the Department in the context of completing appropriate analyses under NEPA and other environmental laws?

Answer. Subsurface information that would be part of the mining plan and mining operations documentation are essential in order to assess environmental impacts, including the hydrological conditions, subsidence, and other related issues. This information is critical in order to evaluate the mineral appraisal process. Without such documentation, it's impossible to assess impacts or to evaluate the ore body.

Question 2. The Tribes have testified repeatedly that they have been deeply concerned about the lack of consultation on a government-to-government basis regarding the Southeast Arizona Land Exchange and Conservation Act. In past testimony, the Department has not directly recognized the Tribes' interests in the proposal or addressed the Tribes' consultation concerns. In its testimony at our recent hearing, however, the Department did recognize that:

> Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area. We will continue to work with these Tribes as we move forward with the analysis.

Has the Forest Service consulted with the Tribes on a government-to-government basis on this proposal and, if not, does it plan to?

Answer. Although the U.S. Forest Service has conducted informal consultations with concerned Tribes over the course of the several years this exchange has been under discussion, the Secretary's letter to Senator Wyden on July 13, 2009, highlights the need for the Administration to conduct formal Government to Government consultation with concerned Tribes over S. 409 to discuss the concerns raised by Tribal Governments that the bill circumvents various laws, policies, and Executive Orders. As set forth in the 2004 Forest Service Manuel, the U.S. Forest Service seeks to ensure that it protects sites sacred to Native Americans located on the National Forest System lands and provides continued access to these sites. Further, under the 2004 Forest Service Manuel, the U.S. Forest Service seeks to ensure that it protects Native American burial and archeological resources located on National Forest System lands.

Question 3. Does the Forest Service have an understanding of whether the proposed mine will have any impact on local or regional water supplies and water quality? If so, please provide to the Committee with whatever information and analyses the Forest Service has considered.

Answer. At this time 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 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. 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.

Question 4a. A number of interested parties have advocated for the inclusion in the exchange of some land near San Miguel along the Lower San Pedro River that is owned by BHP-Billiton, which is the minority partner in the mining project. Apparently, the concern is that the development of that property would have a significant adverse affect on the riparian values of the other property along that river that the Federal government would acquire through the exchange. Has the Department evaluated the BHP-Billiton parcel and the potential impact of its development on the conservation values of the land the Federal government would acquire in the proposed exchange?

Answer. The lower San Pedro River and BHP-Billiton parcels are outside of the National Forest boundary. The lower San Pedro River parcel would likely be under the jurisdiction of the BLM. We would defer to the Department of Interior.

Question 4b. At the hearing on this proposal on July 9, 2008, Chairman Wyden asked Mr. Salisbury if lifting the Oak Flat withdrawal and conveying that land to Resolution Copper was essential to the development of the mine, and Mr. Salisbury responded that it was. See S. Hrg. 110-572 at 56-57. If Congress provided authorization to carry out the proposed 3-party exchange under existing law, please generally describe whether and, if so, how the Forest Service would evaluate the environmental impacts of conveying the Oak Flat parcel.

Answer. Under existing administrative procedures for land exchanges, it would be analyzed along with the other federal and private lands proposed for this exchange utilizing standard NEPA procedures. The first step is a feasibility analysis which would provide information on whether to proceed with the environmental analysis.

The next step in the process would then be to complete resource surveys and conduct public scoping of the proposal to determine the significance of potentially affected resources (e.g., subsidence, impact on water table), uses and social effects (e.g., heritage resources, loss of a campground, economic analysis) to determine the extent of any potential impacts to those resources, uses and social effects, describe possible mitigation measures for those impacts, and disclose the impacts for which no mitigation is possible. After documenting those findings a decision would be made by the line officer as to whether or not the proposed exchange is in the public interest and whether to approve it.

Question 5. Mr. Salisbury's testimony states that Resolution Copper estimates that it will have to invest approximately $600 million over the coming years on exploration and feasibility studies before it determines whether mining the ore is economically or technologically feasible. Given the substantial financial investment and the remaining uncertainty, my understanding is that Resolution Copper is concerned about waiting until the end of that process to conduct the environmental analyses associated with the land exchange.

Would it be possible for the Forest Service to conduct the environmental analyses that would be necessary to complete the exchange in accordance with existing law with the information that is currently available or reasonably obtainable, or would

the Forest Service be required under existing law to wait until Resolution Copper has completed its exploration and technological feasibility analyses? Please describe how the Forest Service would proceed under these circumstances.

Answer. The information now available or that which could be reasonably obtained would allow the Forest Service to conduct the needed environmental analysis. As a start and as described in company reports and information that has already been shared, the subject property is highly mineralized.

While a significant amount of information is available to begin the analysis, ecological evaluations such as hydrologic conditions of the area, geologic assessments, ESA assessments, or other environmental resources analysis have not been conducted. In addition, Resolution Copper Mining does not have a mining plan of operations. Without such studies, assessments, or documents, mining and post mining subsidence issues, water quality contamination concerns (including acid mine drainage and subsequent pollution), water quantity (including the dewatering of nearby surface water and water rights concerns), air quality compliance issues, tailings and overburden storage and placement cannot be assessed or determined at this time.

The NEPA process mandates analysis and disclosure of environmental impacts, including cumulative impacts, allowing all affected parties and decision-makers to review and comprehend the risk assessment.

The Council on Environmental Quality has made allowances for incomplete or unavailable information which are available when the overall costs of obtaining the information are exorbitant or the means to obtain the information are unknown. In such cases, 40 CFR 1502.22, states:

> When an agency is evaluating reasonably foreseeable significant adverse affects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking . . . 40 CFR 1502.22.

Question 6. If you followed the standard administrative land exchange authority under section 206 of the Federal Land Policy and Management Act, you would need to make a public interest determination. What factors would the agency consider in making that determination?

Answer. The Forest Service would follow the criteria outlined in 36 CFR 254.3. 36 CFR 254.3(b)(1) requires that an exchange be made only after a determination that "the public interest is well served." 36 CFR 254.3(b)(2) sets forth the factors to consider in making that determination.

When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split mineral estates; expansion of communities; accommodation of existing or planned land use authorizations (254.4(c)(4)); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

RESPONSES OF JOEL HOLTHROP TO QUESTIONS FROM SENATOR BARRASSO

S. 409—RESOLUTION COPPER LAND EXCHANGE

Question 1. Mr. Holtrop in the 110th Congress the Forest Service testified that they supported the exchange in S. 409 but then equivocated in answers to supplemental questions by saying once the exchange was directed by Congress that your responsibility to make such a determination ends and that it would be difficult to make such a finding until you understand the proposal for the mine better.

Given what you know about this bill, do you think this proposed exchange is likely to be in the public interest?

Answer. If the U.S. Forest Service concludes after careful analyses that the proposed mine that the land exchange would facilitate would not have unacceptable adverse environmental impacts and if the proposal takes into account and resolves the concerns of Indian Tribes and surrounding or affected communities, then the exchange may well be determined to be in the public interest. However, until the U.S. Forest Service can fully analyze environmental impacts as addressed through NEPA, formally consults with Tribes and the public through that process, including assessing the proposed land exchange in light of the U.S. Forest Service's respon-

sibilities under applicable laws, policies, and Executive Orders, it is too early to conclude that the proposed land exchange would be in the public interest.

Question 2. You also complained in your testimony during the 110th Congress that you had concerns about the cost of rebuilding a camp ground to replace the Oak Flats Campground. In your testimony in the hearing you suggested the Company just give the Forest Service the million dollars to spend on general camp ground upgrades and backlog maintenance. It seems to me the agency can't have it both ways. You can't complain about the loss of the camp ground at Oak Flats and then say you can't find a replacement, while also asking for a million dollars.

This legislation requires Resolution Copper Company to pay up to a million dollars to replace the Campground.

If the agency does not think that a million dollars is a sufficient sum would you provide the Committee with a list of the cost of the last ten new campgrounds it developed, along with a description of the facilities constructed at those campgrounds.

Answer. The agency is not seeking one million dollars in funding. If the bill provides one million dollars the agency would use those funds to increase capacity as well as quality at nearby sites as they have not been able to find a replacement site nearby. Current cost of campground development on the Tonto is $35,000 per camp unit. This includes everything from survey and design through opening day. Replacement of 21 units at the current standard ($35M/unit) would be $735,000. This cost does not include NEPA and other pre-design environmental analyses, archaeological site effects mitigation or site access roads, which depending upon location, could be a substantial cost.

Question 3. Please provide the subcommittee with your agency's rationale of why it thinks this company should make a million dollar donation to be used to take care of backlog maintenance of other campground?

Answer. The agency is not asking for funding. If the bill provides one million dollars the agency would use those funds to increase capacity as well as quality at nearby sites as they have not been able to find a replacement site nearby.

Question 4. Mr. Holtrop I know you are acutely aware of the issues that revolve around having to complete NEPA and/or a finding of public interest when it comes to land exchanges.

Those questions become even more complex when a land exchange involves a proposal for a major development, such as a mine.

Several Congresses ago the Yavapai Ranch land exchange passed and included both a Congressional directed exchange to be completed on a tight timeline, as well as a requirement that the exchange comply with Section 206 of the Federal Land Policy and Management Act (FLPMA).

What is the status of that exchange?

Answer. The Northern Arizona Land Exchange partnership has dissolved and we recently cancelled the original "Agreement to Initiate" document that outlined the responsibilities, timelines and costs for the various aspects of conducting the land exchange process. A new Agreement is being written with the remaining partner, Fred Ruskin.

S. 1139—CITY OF WALLOWA

Question 5. I generally think turning federal land over to non-federal entities should be seriously considered, but I am concerned about the precedent that S. 1139 and S. 1140 will set.

Mr. Holtrop how many other parcels of land does the Forest Service have that it would like to give to non-federal entities?

Answer. None. The agency seeks to receive consideration when conveying lands out of federal ownership. The intent is to preserve the value of the federal estate.

Question 6. How would you suggest Congress deal with a situation when multiple parties, including Indian tribes, have asked to be given the same parcel of land and/or buildings?

Answer. If a single municipality wishes to acquire federal property for the benefit of its constituents, under the Townsite Act, the agency can offer a direct sale at the appraised value. The hierarchy for offering these lands or facilities would be as follows a. other federal, b. tribes, c. state, d. county, e. city, f. public utility district (PUD. If multiple parties of same standing wish to acquire the same property; i.e., two different PUD's or two different tribes , a competitive bid process would be a preferred means for conveying the property.

Question 7. Would you provide this committee with a list of parcels that you would like Congress to give away?

Answer. We have no such list.

RESPONSES OF JOEL HOLTROP TO QUESTIONS FROM SENATOR MURKOWSKI

Both in your testimony and in answers to questions at the hearing you indicated it would take some time for the Administration to analyze S. 409 before the Administration could take a position on the bill. Yet, the agency didn't seem to have difficulty formulating a position on S. 1139. S. 1139 which were introduced May 21, 2009. S. 409 was introduced February 11, 2009 and nearly identical bills were introduced in both the 109th and 110th Congress. In fact, Mr. Holtrop testified at hearings on the earlier versions of the bills in those Congresses. Additionally, you committed to Subcommittee Chairman Senator Ron Wyden to have answers to questions within two weeks.

Question 1. While I understanding we are six months into a new Administration, I need to know how long you expect it will take your agency to analyze legislation before being able to provide competent testimony in the future? Should we hold off on hearings on new bills for 3 months after a bill is introduced or will you need more time than that?

Answer. This is a complex bill that took time to analyze. In addition to the Department of the Interior's testimony of June 17, 2009, Secretary Vilsack provided the Subcommittee with a letter detailing additional views and concerns on July 13, 2009.

Question 2. Please help us better understand how it is that the Administration found the ability to testify on S. 1139 and S. 1140 and S. 874, all which were introduced since the last week of April, 2009, while it struggled to formulate an opinion on legislation which has been before the Forest Service for the last two sessions of Congress and which your agency supported as recently as 11 months ago?

Answer. S409 is a much more complex bill than the conveyance bills noted in your question. The Administration has a number of concerns as noted in the Department of the Interior testimony of June 17, 2009 and the Secretary of Agriculture's letter of July 13, 2009.

S. 1139—CITY OF WALLOWA

Question 3. The Administration testified that it was already prepared to use its authority under the Forest Service Facility Realignment and Enhancement Act to dispose of the Wallowa Ranger Station.

Absent S. 1139 being signed into law, when will that sale take place?

Answer. It is scheduled to take place in the fall of 2009.

Question 4. You indicated that you had multiple parties interested in acquiring the property, including the Nez Perce Tribe. Would you provide the Committee with a list of all parties, individuals, or groups who have expressed an interest in acquiring the property?

Answer. A total of 24 responses were received from groups or individuals interested in acquiring the property, including the following (Ten of these responses were in support of the Forest giving the property to the Wallowa School District, in conjunction with the Maxville Project):

Individuals interested in possible purchase of the property:

Keith Kessler (Colorado)
Jim Soares (Enterprise, OR)
Gerald Schmeckpeper (Wallowa, OR)
Dick and Laura Parsons (Elgin, OR)
James Livingston (California)
Mike Young (Vale, OR)
Glen Foote (Baker City, OR)
Ben Deal (Enterprise, OR)
Ernie Josie (Wallowa, OR)
Dale Johnson (Wallowa, OR)
Four additional individuals who did not provide their name (neighbors, etc) also contacted the Forest with interest in possibly acquiring the compound.

Lower Valley Economic Development Team (to donate to Wallowa Resources) Supporters of Gwen Trice and the Maxville Project include the following (all supported giving the compound to the Wallowa School District):

Friends of the Joseph Branch
Wallowa County Board of Commissioners
Wallowa School District
City of Wallowa
Northeast Oregon Economic Development District

Lower Valley Economic Development Team
Friends of Wallowa County Museum
Wallowa Resources
Wallowa Band Nez Perce Trail Interpretive Center, Inc. (Nez Perce Homeland Project)

Question 5. Will you provide the Committee with your best estimate of the total value of the property if it were to be advertised for sale on the open market?

Answer. We have no appraisal information on this property. Any estimate would be without foundation.

RESPONSES OF JOEL HOLTHROP TO QUESTIONS FROM SENATOR MCCAIN

At the hearing, Mr. Holtrop, testifying on behalf of the U.S. Forest Service indicated that the Department had not completed its analysis of S. 409. He further indicated that the Administration will provide its views and concerns to the Committee upon completion of this work. The Forest Service has testified and provided its views and concerns regarding this land exchange on as many as three occasions prior to the hearing on June 17, 2009. On each of these occasions the Forest Service testified that it supported the exchange and that it was the Department's view that the exchange as a whole is in the public interest. In fact, in your "Responses to Additional Questions" you actually explained in detail why the Department believed the exchange was in the public interest. (see S. Hrg. 110-572 and S. Hrg. 109-582).

Question 1. Did the Administration review your prior testimony prior to this hearing? What has changed substantively with regard to this land exchange since you last testified on July 9, 2008 that warrants additional review?

Answer. It is the prerogative of the Administration to analyze S. 409 and provide its views and concerns to the Subcommittee.

Question 2. In 2006 (S. Hrg. 109-582) Mr. Holtrop testified that "the Department believes the acquisition of the non-Federal parcels to be managed by the Forest Service is in the public interest and would provide protection for riparian habitat and water rights, archeological sites, lands along permanently flowing stream, a year-round pond and an endangered cactus species. In this context, the Department supports the exchange." In 2008 (S. Hrg. 110-572), Mr. Holtrop testified that the non-Federal lands "have outstanding natural qualities" and that "the Department supports the exchange and believes that overall it is in the public interest." Is it the Forest Service's position that acquiring these non-Federal lands is no longer in the public interest?

Answer. In addition to the Department of the Interior's testimony of June 17, 2009, Secretary Vilsack's letter to Senator Wyden on July 13, 2009, describes additional views and concerns about S. 409. Several factors must be assessed prior to making a determination of whether or not the land exchange is in the public interest. Formal Government to Government consultations with Tribes along with other meaningful dialogue, environmental assessments including NEPA, and other analyses must be conducted in order to determine fully the impacts of mining operations on the National Forest System lands proposed for conveyance under S. 409, the adjacent areas of Apache Leap, Devil's Canyon and other areas.

Question 3. In your written statement submitted at the hearing, you indicate that "consistent with Administration policy, NEPA should be done before moving forward on the land exchange."

What "Administration policy" are you referring to? Please provide copies of the policy. This is not a written policy but the policy position of this Administration in land conveyance legislation. Is it the position of the Forest Service that this "Administration policy" applies to actions that are directed or mandated by Congress? If so, please explain the basis for that position. Again, this is the policy which this administration is adopting when testifying on land conveyance legislation. In your written statement submitted at the hearing, the Forest Service claims that the Environmental Impact Statement (EIS) required by Section 5(c) would not analyze impacts from mining activities on the land to be conveyed. Please explain why the impacts from mining activities on the land conveyed would not be part of the "cumulative effects" analysis in the EIS required by Section 5(c).

Answer. Section 5(c) of the bill would require the Secretary of Agriculture to prepare an environmental impact statement (EIS) under the National Environmental Policy of 1969 (NEPA) after the land exchange in section 4 is completed. It is the Administration's policy that the bill should be amended to require the preparation of an environmental impact statement before the land exchange is completed. NEPA is a forward looking statute setting out procedural obligations to be carried out before a Federal action is taken. It requires that, before making a discretionary decision, a Federal agency consider the environmental impacts of a proposed major Fed-

eral action and alternatives to such action. It is this Administration's policy that NEPA be fully complied with to address all federal decisions, including those necessary to implement Congressional direction. Furthermore, the effects of mining activities on the land to be conveyed will be considered in the NEPA analysis.

The purpose of a requirement in the bill 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. 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 were exercising its discretion in making a decision about the exchange. An EIS after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. The exchange would be a fait accompli. A reasonable range of alternatives and public comment would be superfluous.

Question 4. An EIS requires full disclosure to the public of all adverse environmental impacts so if the EIS required by Section 4(h) was conducted and it revealed that the mine would cause adverse environmental impacts would not the Forest Service disclose those adverse environmental impacts to the public? What other federal environmental laws would affect the permitting of the mining operations?

Answer. The Forest Service would disclose those adverse environmental impacts to the public. 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, As indicated in the previous answer, preparing an EIS after the exchange would preclude the agency's ability to recommend alternatives which would mitigate adverse environmental impacts since the land would already be in private ownership. There are many federal laws which apply to mining operations; e.g., Clean Water Act, Clean Air Act, the Endangered Species Act, the National Historic Preservation Act, etc.

Question 5. How many copper mines are in operation and located on National Forest System Lands? When was the last time the Forest Service approved a major mining plan of operations that resulted in active copper mine on National Forest System Lands in the lower 48 states where the U.S. remained the landowner during the permitting process? Please provide the name and location of the mine.

Answer. Most of the copper mines are of mixed ownership (private and U.S.) and mixed commodity (a variety of minerals.) Most major mines are not located on federal lands but some of the infrastructure is. In the Southwestern Region (R-3), where many of the large copper mines are located, most are on mixed ownership lands, including patented private lands which are directly adjacent to National Forest lands. In these instances, additional mine expansion, new waste rock or leach pads, and infrastructure needs often involve approvals and permits from the adjoining Forest unit for the benefit of the mine. BHP's Pinto Valley Mine in Globe, Arizona, and Freeport MacMoran Copper and Gold Inc.'s Miami mine, in Miami, Arizona, are examples of large copper mines, with complex landownership patterns, that include the Forest Service.

In some cases such as the Carlota Copper Mine in Globe, Arizona, the vast majority of the mine (greater than 75 percent) occupies Forest Service land (Tonto NF). The Carlota Copper Mine is one of the few copper mines that is primarily on Forest Service land. The Record of Decision for this mine was approved in 1997. The Mining Plan of Operation was approved in 1998. Mine construction began in 2007 and actual operations began in 2008.

Question 6. What kind of outreach has the Forest Service conducted with the San Carlos Apache tribe and other Arizona tribes concerning this proposal? Past Forest Service testimony indicates that government-to-government discussions have been occurring as far back as 2004.

Answer. Although the U.S. Forest Service has conducted informal discussions with concerned Tribes, including the San Carlos Apache Tribe, over the course of the several years this exchange has been under discussion, there is a need for formal Government to Government consultation with the concerned Tribes to discuss the obligations of the U.S. Forest Service to protect and preserve the Forest Service land that would be conveyed to Resolution Copper Mining under S. 409 as set forth in policies, Executive Orders and various laws. For example, NEPA requires the federal agency officials to consult with Indian Tribes concerning the effects of the proposed projects on their sacred sites.

Due to limited information, the U.S. Forest Service is unable at this time to provide its own proposed treatment plan to mitigate the adverse effects of the proposed land exchange on the archaeological, religious, historical, and cultural sites on the proposed National Forest System lands to be conveyed to Resolution Copper Mining

and the adjacent areas of Apache Leap, Devil's Canyon and other areas if mitigation is even possible. One of the formidable issues the U.S. Forest Service faces regarding mitigation planning is the lack of information on the mining plan of operations. In order to determine the effects of mining, such as land subsidence and dewatering of springs, it is essential to having mining operations plans. Thus, without such information, completing formal Government to Government consultations with Tribes will be difficult as potential impacts cannot be adequately analyzed by the affected parties. Initial contact with Tribes was made through the delivery of Resolution Copper Mining's pre-feasibility studies, but this is not a substitute for the plan of operations or mine planning. Formal consultation regarding the pre-feasibility has not occurred with Indian Tribes.

RESPONSES OF ROY C. CHAVEZ TO QUESTIONS FROM SENATOR MURKOWSKI

In searching for information on both your organization and the Superstition Area Land Trust we were unable to find much information on your group.

Question 1. Ms. Shearer made clear in her testimony what the Internal Revenue Service (IRS) tax status is of SALT. What is the IRS tax status of The Concerned Citizens and Retired Miners Coalition?

Answer. The Concerned Citizens and Retired Miners Coalition is a grassroots coalition concerned about mining properly based upon federal National Environmental Policy Act (NEPA) guidelines. We have no IRS tax status.

Question 2. Could you tell us if your Coalition is active in other resource issues or proposals or is the Resolution Copper exchange the primary focus of your coalition?

Answer. Currently, the Coalition is not active in other resource issues.

In searching the internet for information on your Coalition we did not find a lot of information on it, while we did find a web site that has some information on Ms. Shearer's organization.

Question 3. If your organization does have a website would you provide that web address to the Subcommittee?

Answer. The Coalition does not have a website.

We did find a number of press articles related to your organization and reporting on activities of a Mr. Roger Featherstone describing positions of your organization on the Resolution Copper proposal. Since Mr. Featherstone testified on behalf of EARTHWORKS and the Arizona Chapter of the Sierra Club to Congress on a similar bill in the 110th Session of Congress we would like to better understand the relationship your organization has with Mr. Featherstone, EARTHWORKS and the Sierra Club.

Question 4. Is Mr. Featherstone a member of your Coalition? And if so is he a board member of your Coalition?

Answer. The Coalition is a member of the Arizona Mining Reform Coalition. As the Director of the Arizona Mining Reform Coalition, it is Mr. Featherstone's job to assist member groups in achieving their missions; and in that regard, he is a member of our group. However, Mr. Featherstone is not a board member.

Question 5. What is the relationship between your Coalition and EARTHWORK and or the Sierra Club?

Answer. The Coalition shares mutual concerns of EARTHWORKS and the Sierra Club regarding this legislation and mining project as well as our belief in supporting the NEPA process.

Question 6. Does your Coalition receive any financial support from either EARTHWORKS or the Sierra Club?

Answer. The Coalition does not receive financial support from either EARTHWORKS or the Sierra Club.

RESPONSE OF ROSEMARY SHEARER TO QUESTION FROM SENATOR BINGAMAN

Question 1. Ms Shearer, Mr. Chavez's testimony raised questions about the potential impact the mine would have on area water supplies. Do you have any information as to what effect development of the mine will have on water supplies and associated riparian areas?

Answer. Senator Bingaman, thank you for your question and your concerns regarding the effect on water supplies and riparian areas in the Resolution Copper Mine proposal. These are also of concern to our land trust, as we own a ranch near Top of the World just North of the proposed mine. As my personal knowledge of hydrology as it pertains to mining activities is not sufficient to answer this question,

I turned to Superintendent of Hydrology, Greg Ghidotti, of Rio Tinto, supervisor of test water well drilling for Resolution.

I spent the better part of an afternoon with Mr. Ghidotti, who through drawings and topographical maps of the locations of their current test wells, described the methodology and results of current data. Probably the most significant finding, at least in terms of the town of Superior about which Mr. Chavez seemed most concerned, is that a significant geological fault that created not only the upthrust called Apache Leap millions of years ago, but created an impermeable, solid rock barrier running well below the 7,000 feet deep level of the ore deposit which would permanently block any water exchange or gain/loss between the proposed mining site or any location west of the Leap. This is verified by current de-watering activities at the old Magma mine site which Resolution purchased for reclamation purposes. This includes all of the Town of Superior and all land lying to west toward Phoenix.

That leaves the land to the east of Apache Leap as the focus of concern. The most vulnerable points, at least to us, are Devil's Canyon, a pristine riparian area due east of the Leap and the small community of Top Of The World. This is the site of the JI Ranch, part of the exchange package that will supplant the controversial Oak Flats Campground. After meeting with Mr. Ghidotti, I feel even more confident that the mining activities, while not completely free of impact on these areas, are being carefully studied through current and future test wells, some of which cannot be drilled until the exchange takes place. The consequences of water drawdown and cross connections in the sub-surface rock structures are demonstrating what will or will not affect nearby water sources.

The test wells, drilled to between 1,000 and 7,000 feet deep are subjected to real time and computer modeling tests. At least three deep test wells are bored through a 3,000 feet thick solid barrier of conglomerate rock. This mass separates the shallower Apache Leap Tuff aquifer, 200-300 feet below ground level from another aquifer discovered through test drilling, called "Deep Aquifer." This lies nearly 2,500 feet beneath the surface and about 2,000 feet above the ore body. Testing suggests there is no water transference between it and the shallower Apache Leap aquifer. Test wells into the Deep Aquifer are limited to Resolution's surface land boundaries, so the extent of that aquifer is still under study. Up to six more test wells into the Deep Aquifer are planned once access to the land beneath Oak Flats is attained. On completion of Resolution Copper's hydrological studies, this data will provide the most extensive water study in Arizona.

The Superstition Area Land Trust continues to support S.409 which grants the land exchange for 5550 plus acres of riparian areas and recreational lands for the Forest Lands needed for Resolution's mining operation. The exchange will preserve these lands whether Resolution is able to mine the land or not. At what point in the process the NEPA and EI regulations take place should not be an overriding factor. These laws are there for a purpose. Essential testing that is needed cannot take place on the 2400 acres until Resolution has access to it.

RESPONSE OF ROSEMARY SHEARER TO QUESTION FROM SENATOR BARRASSO

Question 1. I understand that the Superstition Area Land Trust has been active in land conservation issues in Arizona for a very long time.

Could you share with the subcommittee your experience with Resolution Copper and how that stacks up with others in the past?

Answer. The Superstition Area Land Trust has been active since 1993. We are about 45 miles east of Phoenix on US 60 between Apache Junction and Superior, AZ at the foot of the Superstition Wilderness Area. We have worked with developers, businesses and governmental agencies on many projects and planning issues. Dotted with small, unincorporated communities such as Gold Canyon and Queen Valley, the population consists of many retired individuals and on the western side by commuters to Phoenix and Tucson. On the eastern side of our area, are the many small mining communities, most of which are shuttered due to mine closings.

Our first contact with Resolution Copper was in 2005 when Bruno Hegner, CEO, approached us as they were determining which lands in the area were important to conservationists for preservation. Mr Hegner took three of our board to several areas of interest, including the back side of Apache Leap, the primary drilling site about which we had expressed an interest in preserving. When Mr. Hegner left the Superior facility shortly thereafter, we were contacted by John Rickus, the new CEO, and met with him on several occasions as Resolution continued their exploration and community outreach. When David Salisbury came on board in 2008, we were immediately invited to meet with a large group of stakeholders, including US National Forest, Pinal and Gila County officials, other conservation organizations,

such as Audubon, Nature Conservancy, Sierra Club and others where staff briefed us on their progress on the mine and the status of the Land Exchange legislation.

In 2007 Superstition Area Land Trust partnered with Apache Junction Parks and Recreation on a reclamation project on Silly Mountain, a local landmark damaged by ORVs and fire. We sought advice on restoration procedures and our project managers and the city's Parks and Recreation staff were invited on a tour of their Magma Mine reclamation project in Superior.

RCM staff has always been willing to appear at our organization's meetings, providing us with maps, studies and staff time and expertise. At the suggestion of their public affairs representative, Jennifer Russo, we filed a request for a community development grant for the project, and were awarded $2500 toward restoration on the Silly Mountain Project, which is being funded by many other grants.

Our only other mining company experience has been on the receiving end of a 404 In Lieu Fee payment from another copper mine in the area, and since that was administered strictly through the Army Corps of Engineers, our contact with their personnel was very limited.

I cannot think of any developer or business that has been more cooperative and transparent with company information and involved in community outreach than Resolution. We have worked with several major developers in the area on joint projects associated with our trail systems and extensive planning issues. None have been any more open and accessible at all levels than Resolution Copper.

RESPONSES OF ROSEMARY SHEARER TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Could you tell us approximately how many members there are in the Superstition Area Land Trust?

Answer. The Superstition Area Land Trust is a 501(c)(3—non-profit charitable conservancy in 1993. We are a small organization serving a large Sonoran Desert foothills region lying south and west of the Superstition Wilderness Area. Our membership runs at about 350 members.

Question 2. Could you provide the Committee with a list of other conservation activities that your Trust has been involved in?

Answer. 1994-2000—Negotiated a perpetual lease with AZ State Land Department. In partnership with National Parks, Tonto National Forest, AZ State Parks and Pinal County we designed, acquired funding and built an 11.5 mile trail along the front of the Superstition Wilderness Boundary to maintain public access as development grew next to the boundary, funded by a US DOT ISTEA grant. We also acquired donations of land, materials and labor from local developers and individuals to finish the trail which opened in 2000.

1999-2001—Conducted and produced a land use study/plan for 110 square miles of land lying between US Highway 60 and the Superstition Wilderness which was adopted by Pinal County for this region's Comprehensive Plan.

2003—purchased a 5 acre tract of riparian area as our first 404 In Lieu Fee mitigation project. Now lease to local outfitter as a wilderness outpost camp site.

1993-2006—Raised funds and public awareness by holding Art For Lands Sake Art Tours of Artists of the Superstitions.

2007—Adopted Silly Mountain, a local landmark marred by fire and ORV overuse in the 1990s. Our volunteers built six miles of new trails, closed down a road where un-regulated public access had allowed major erosion damage to deface the mountain. We are currently engaged in a reclamation project to reseed the slopes and erosion area with indigenous plants to restore wildlife habitat and provide appropriate recreation to the community of about 75,000 in the area.

2008—Purchased historic private inholding homestead ranch in the Tonto National Forest with 404 In Lieu Fee funds. We are currently in Phase I of the baseline study to explore the cultural, ecological and historic value of this riparian area near active and inactive major mining facilities which abut the ranch.

2009—Obtained a grant to plan and construct a handicapped accessible interpretive trail at the base of Silly Mountain as part of a future environmental center.

Various board members regularly teach at local schools and community colleges in their areas of expertise. We also conduct activities for youth at a local museum and many other community affairs and speak at events. Several on our board also serve on state and national boards of directors.

2000-present—Continual involvement with statewide conservation groups to amend AZ state constitution to allow for conservation on State Trust Lands.

RESPONSES OF NORMAN COOEYATE TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Are there any changes you would want to make to this bill?
Answer. Yes.

A. Restructure the bill so that a comprehensive EIS can be completed on the entire proposed project, including without limitation, mine development, mining, processing, mine closure, reclamation and maintenance, and so that the Secretary could make an informed decision among reasonable alternatives, which alternatives would include the power and authority to make the decision to prohibit the development of the mine; and

B. Apache Leap, Gaan Canyon and Oak Flat would be held as property of the United States, and withheld from entry for any mining related purpose, with no mining activities allowed on or under these sites, including without limitation, exploration, drilling, tunneling or administrative activities, and standards and restrictions are established so that any proposed related activities in areas other than these would preserve necessary vertical and lateral natural geologic support, to assure that these sites would suffer no subsidence, structural or visual damage; and

C. Resolution Copper would be required to disclose the potential impact on local and regional surface and subsurface water supplies, and water quality resulting from mine development, mining activity, ore processing and mine closure and maintenance; and

D. Resolution Copper would be required to prove that it has present perfected legal rights and priorities for all water necessary to develop, mine, process ores, restore and maintain the proposed mine processing sites, prior to the initiation of any mine development, if allowed by the Secretary.

Question 2. If they were made, would those changes make the bill acceptable to the Tribes?
Answer. Yes.

RESPONSES OF NORMAN COOEYATE TO QUESTIONS FROM SENATOR MCCAIN

Question 1. I understand that the San Carlos Apache reservation has a 25% unemployment rate, according to the Arizona Department of Commerce. Has the ITCA or the San Carlos Apache Tribe conducted an analysis on the economic impact and job growth that a mine, if developed, would have on the reservation?

Answer. The information provided to the Senator from the Arizona Department of Commerce is not accurate. The Bureau of Indian Affairs (BIA) calculates unemployment on the San Carlos Apache Reservation to exceed 82% of the adult Reservation population of approximately 12,000 people on June 1, 2009. See the attached San Carlos Apache Tribe Population Labor Force Report and the Western Region Combined Totals Service Population on-or-near Reservation Report.

Neither ITCA nor the San Carlos Apache Tribe has conducted an analysis on the economic impact and job growth that the Resolution Copper mine, if developed, would have on the Reservation.

It appears that neither Congress, nor any other responsible federal agency has conduced such an analysis. In addition, neither Congress nor any other federal agency has taken any other concrete and responsible steps to remedy the profound poverty and persistent unemployment on the San Carlos Apache Reservation, or generally any other Reservation in Arizona or New Mexico. See the attached July 6, 2009 BIA Service Population on-or-near Reservation Report as of June 1, 2009.

The San Carlos Apache Tribe has determined for itself, that the permanent environmental consequences and public health risks of a copper mine proposed to be located within its Reservation by Rio Tinto would not be a reasonable and prudent trade off for temporary income to the Tribe and temporary jobs to be provided by a mine proposed to be developed on the Reservation.

The religious, spiritual and cultural values of Oak Flat, Apache Leap and Gaan Canyon to the twenty Arizona Tribes are not fungible. These areas cannot be traded for jobs or economic gain and the United States should neither condone nor enable any activities which are inconsistent with these Tribal values.

Question 2. In a letter dated April 6, 2009, to the House Resources Committee, the ITCA takes the position that either an EIS or National Academy of Sciences study be conducted prior to the exchange to evaluate the impacts of underground mining on the apache Leap. Wouldn't an EIS or NAS study be most accurate if Resolution Copper were first allowed to explore the Oak Flat parcel in order to develop a mining plan of operation?

Answer. The exploration, development, mining and alternation of Oak Flat is unacceptable. The EIS or NAS study proposed by ITCA should be conducted so that

an informed decision could be made concerning whether mining should be allowed on and under areas that do not include Apache Leap, Oak Flat and Gaan Canyon, and if so, under what restrictions, methodologies and recovery conditions could mine development, mining, processing, mine closure, reclamation and maintenance be safely conducted, if any.

Question 3. That same letter calls for deferring to the administrative process to provide an opportunity for government consultation on this matter. Is it the position of the ITCA that tribes cannot consult government-to-government with Congress?

Answer. No. Government-to-government consultation can and should be conducted with both Congress and the Executive Department. This process is not reasonably satisfied by the introduction and support of a bill which has if passed, would result in profound, permanent damaging impacts upon Tribal religious practices, sacred sites and areas, and enable mining related activities which impinge upon or terminate vital religious and cultural practices.

The allocation of five (5) minutes for a verbal presentation before a Senate or House subcommittee simply does not approach substantive and sincere exchange of ideas and concerns, before any major federal action is taken as proposed in S.409. The protection of American Indian religious, sacred, and cultural areas, and the related rights of our Tribal members to practice their religion is consistent with the most fundamental of the trust obligations of the United States to the Tribes under our Treaties and agreements, the Constitution of the United Sates and the core values of the Nation. There is no compelling National interest related to the proposed Resolution Copper mine to which these principles should be subordinate.

Question 4. The bill prohibits the surface disturbance of the Apache Leap escarpment (Section 4(d)(1)(B)), and, with respect to exploration activities, prohibits the surface disturbance of the entire Oak Flat withdrawal Area (Sec. 5(d)(1)). Do you have any specific concerns or suggestions about the language?

Answer. Yes. Although S.409 appears to prohibit surface disturbance of Apache Leap and the entire Oak Flat Withdrawal Area as suggested in the Senator's Question, the Bill does not in fact protect those areas.

Section 4(d)(1)(B) operates as the exception which swallows the rule. The language is superficial at best. Its function is specifically limited to surface disturbance. It does not include subsurface disturbances. The exception authorizes surface disturbances for [m]onitoring wells, or improvements as are necessary to monitor the public health and safety or achieve other appropriate administrative purposes, as determined by the Secretary, in consultation with Resolution Copper.

These activities and deference to Resolution Copper are inconsistent with the essence of this consecrated area. No surface or subsurface disturbance should be allowed.

Section 5(d)(1) operates in direct violation of the protections provided by the Presidential Executive Order 10355, dated May 26, 1952, Public Land Order (Arizona) dated September 27, 1955 and Public Land Order 512 [Arizona 05427] dated September 21, 1971 even while title to the Oak Flat Withdrawal Area remains in United States. Any protection it purports to provide, terminates upon mandatory transfer of Federal title under Section 4(b)(1) and 4(b)(2)(A). Section 4(d)(2) fails to protect Apache Leap before and after the proposed conveyance of the non-Federal land (Apache Leap) described in Section 49(c)(1)(G).

In addition, under Section 4(c)(1), the Secretary could refuse to accept any right, title, and interest which Resolution Copper may hold to Apache Leap, unless the Secretary determines it "to be acceptable."

As a matter of Arizona property law, and common law, S.409 operates merely as a quit-claim of non-Federal parcels by Resolution Copper to the United States. Conveyances of an interest in real property in Arizona must be by deed, signed by all parties to be bound, specifically describing the property being transferred.

A. Arizona Statutes provide these definitions:

i. "Real estate" includes leasehold-interest and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.
A.R.S. § 32-2101(46);

ii. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including the offering of the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.
A.R.S. § 32-2101(50).

B. The formal requirements of conveyance of real estate, or any interest in real estate are set forth in A.R.S. § 33-401.

C. The power of a person to disclaim an interest in or power over property is set forth in A.R.S. § 14-10005.

F. The Arizona Statute of Frauds requires a document in writing to convey an interest in real estate. Fargo v. McAlester Fuel Co., 532 F.2d 149 (9th Cir. 1976).

As to the protection of the Oak Flat Withdrawal Area, Section 5(d)(1) is also illusory and at best, transient. It operates only until Federal Title is conveyed to Resolution Copper to this Federal parcel, which is mandatory under Section 4(b)(1)(B).

From the date of the passage of S.409 until the transfer of Federal title to Resolution Copper, Section 5(d)(1) S.409 eviscerates the protections established by the Presidential withdrawal of the Oak Flat Withdrawal Area, which protections were intended to be permanent, by allowing Resolution Copper to "carry out mineral exploration activities under the Area . . . by directional drilling or any other method that will not disturb the surface of the land." This would allow tunnels, adits, and shafts to be excavated even prior to transfer of Federal title to the Oak Flat Withdrawal Area.

Section 5(d)(2), is an expression of the "Sense of Congress" which is in total disregard of the rule of law. Congress should not be used as a tool to erode, evade or even wink at the rule of law of this Nation.

RESPONSES OF DAVID SALISBURY TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. There seemed to be some confusion to one of the answers you made in response to a question Senator Wyden asked of you related to the protection of Apache Leap.

Is it your company's intention to protect Apache Leap during both mine exploration and development?

Answer. Resolution Copper is unequivocally committed to the protection of Apache Leap. S. 409 takes numerous steps to protect Apache Leap, including the addition of more than 110 acres of Resolution Copper's property along the Leap which will provide the Forest Service ownership of the entire Leap. Additionally, Section 8 of S. 409 calls for the management, preservation and protection of Apache Leap, and establishes a permanent withdrawal of the Leap from entry and/ or appropriation under existing public lands laws and the Geothermal Steam Act of 1970. Futhermore, S.409 requires a management plan for Apache Leap to be developed in consultation with government, tribal, and area stakeholders. These measures specifically address our commitment to protect Apache Leap throughout exploration and development of the project.

Question 2. Could you provide the Committee with a map and description of the area to be protected around Apache Leap and the potential subsidence zone that the mine, as currently conceived, might cause?

Answer. The attached map outlines the lands protected under S. 409, as well as the location of planned exploration and mining operation facilities. The potential subsidence zone will be wholly within the acquired land and will have no impact on Apache Leap and the surrounding buffer zone.

As part of our environmental assessment, we are gathering technical information about Apache Leap and putting in place a number of methods to monitor subsidence, including:

- Seismic monitoring: Used to monitor cave progression by tracking the seismic energy that is released around its perimeter as it expands.
- Displacement monitors: Installed down holes drilled from both surface and underground and used to sense any fracturing of the rock.
- Tilt meters: Highly sensitive instruments that will be installed down short holes near the surface and will measure any tilting caused by underground work.
- GPS, satellite imagery and laser scanning that monitors the surface and can sense movements as small as 0.08 inches (2 mm).

This information will allow us to identify and prevent any possible threat to Apache Leap well in advance of any potential impact, ensuring that the area is protected.

Finally, our mine infrastructure is located between the ore body and Apache Leap. Consequently, our infrastructure would be impacted and our mining operations compromised well before any impacts to Apache Leap.

Question 3. Could you provide the committee any non-proprietary information or data, your company has or is aware of, that will help us better understand the geologic data pertaining to the existence and flow of subsurface water in the area of

the mine or any areas that might be developed in relation to the mine proposed in S. 409?

Answer. Yes, we would be happy to provide the committee any non-proprietary data that would assist in understanding the geologic data pertaining to the existence and flow of subsurface water in the immediate mine area and extended surrounds. We are, however, continuing to gather infonnation as part of our baseline studies. We have pending additional wells under review with the US Forest Service through an Environmental Assessment that will assist us in gathering necessary information to complete the studies.

Using test wells up to 7,000 feet deep, Resolution Copper hydrologists are gaining an understanding of the groundwater surrounding the project. That data, along with longterm forecasts for precipitation and various mining scenarios, are used to run detailed simulations that can predict changes to the underground aquifer and the likely impacts of the project.

Everything we learn from these tests and studies will be applied toward meeting environmental regulations and designing mining operations that will safeguard the area's valuable water resources.

Furthermore, this information will be made available and subject to public review and comment as part of the NEPA EIS process.

Attached: Map*

RESPONSES OF DAVID SALISBURY TO QUESTIONS FROM SENATOR BARRASSO

Question 1. Mr. Salisbury your company has been trying to get this legislation passed for a long time. Do you have an estimate of how much money you have expended in this effort, including lobbying, up until this point?

Answer. Since 2004, we have invested more than $400 million dollars in the Resolution Project. While our investment is significant, we believe it will generate meaningful returns in the form of badly needed jobs in Arizona's Copper Triangle region, provide access to a significant copper resource and generate a total estimated economic impact of $46.4 billion over the life of the project.

S. 409 is necessary to gain access to the land we need to completed our $1 billion exploration and pre-feasibility effort and, ultimately, to reap the significant benefits of the project.

Question 2. It has become apparent, given the past drafts of this legislation, that your company has been willing to work to accommodate or mitigate just about every issue any individual or user group has come up with. What concerns are there that your company is unwilling to negotiate? Are there any?

Answer. We appreciate your question and the thought process that it evokes. At this point in time we are a process-driven, problem-solving organization that is seeking a way to build a great copper mine on American soil. We think that the project is important to a number of small communities, the State of Arizona, and the nation. We need your help and the help of the Congress.

While it's difficult to speculate on any specific issues that may arise, and our willingness to negotiate them, we remain firm in our commitment to forge an open dialogue with those who oppose the project as well as those who support it and, where possible, to find common ground. We understand that meeting our business goals, and achieving our aspirations for a strong and secure economy, will take partnership with our communities, our civic institutions, and the many stakeholders who represent the diverse views of our citizens. This commitment has been reflected in each one of over a thousand stakeholder meetings we have conducted.

Question 3. I note language in the bill that would force your company to pay a royalty like payment even if no mining law reform is passed. What, in your mind, does your company get in return for such a generous offer?

Answer. Based on meetings with Members, staff, and various stakeholders we believe that our offer to make such payments increases the likelihood of bill passage.

We recognize that Congress is currently considering legislation to modernize the mining law, including the application of a royalty on mining activity. Resolution Copper—and the National Mining Association—support a reasonable royalty as a mechanism to provide a fair return to the taxpayers.

The provision in S. 409 to provide a "value adjustment payment", Section 12, is consistent with this principle. Further, this provision, when coupled with the use of the Uniform Appraisal Standards for Federal Land Acquisitions pursuant to Forest Service appraisal instructions (Section 7(a)(2)(A)) and the one-way cash equalization of value (to the benefit of the U.S. Government) (Section 7(b)), provides a

*Map has been retained in subcommittee files.

framework that assures that this is a fair value exchange from the taxpayer standpoint.

RESPONSES OF DAVID SALISBURY TO QUESTIONS FROM SENATOR MCCAIN

Question 1. Please briefly describe the efforts made by Resolution Copper to open a constructive dialogue with Arizona tribes. How have tribes responded?

Answer. Resolution Copper Mining and Arizona's Native American tribes share many common interests, including sustainable employment, maintaining Arizona's unique cultural and preserving the natural environment. Throughout the pre-feasibility phase of the project, we have and will continue to reach out to the tribes to open dialog on these issues.

While we have had limited success to date, we remain optimistic and continue to pursue a mutually beneficial relationship with the tribes. In February 2009, we hired Lydelle Davies as our Native American advisor. Ms. Davies has more than 10 years of experience working with tribal governments, tribal corporations, private business entities, and tribal boards and commissions on a variety of land use, environmental protection and sustainable development issues. We are confident that Ms. Davies can help us open the dialog with Native Americans and help ensure that we understand and address the tribal perspective.

Attached are copies of correspondences that detail our attempts. Disappointingly, we gave received no response to these letters.*

The San Carlos Apache Tribal Council has requested government-to-government consultation. We respect this request and their tribal sovereignty. We will act in good faith as participants in any discussion (officially or unofficially) with any tribal body as requested.

Question 2. Has Resolution Copper offered to work with San Carlos Tribe and others to develop employment and job training programs specific to your project?

Answer. Resolution Copper sponsors a number of training and education programs, beginning at the grade school level. During the past five years, the company has awarded more than $144,000 in college scholarships to graduating high school seniors in areas that include San Carlos. We also sponsor San Carlos high schools students' participation in programs like Camp Anytown Arizona. In addition, we are working now with Arizona higher education institutions including Gila Community College, East Valley Institute of Technology and Cobre Valley Institute of Technology, among others statewide, to help build a strong pipeline for our future workforce. Each program, coupled with our approach to long-term education and training, is designed to benefit the community, including surrounding tribes, and also to educate and train a strong workforce for the project and for the future.

With more than 1,400 full time, high quality, technical jobs directly affiliated with the mine, we hope to employ many members of Arizona's Native American tribes. We have established successful, mutually beneficial relationships with Tribes worldwide and we are confident we can have similar success in Arizona.

Question 3. The bill prohibits the surface disturbance of the Apache Leap. What methods would you use to conduct exploration activities underneath Apache Leap and would they cause any discernable subsidence?

Answer. The exploration activities that will be conducted underneath Apache Leap are best characterized as monitoring activities. In fact we recommend that the title of Section 4(d)(2) be changed from "Exploration Activities" to "Monitoring Activities". Only subsurface activities such as transportation (tunnels, shafts), monitoring, or collecting geological information are permitted. Commercial mineral extraction under Apache Leap is prohibited.

In response to concerns regarding Apache Leap, S. 409 has been amended to leave the entirety of the Apache Leap in U.S. Forest Service ownership. In addition, we have added 110 acres of our own land at the south end of Apache Leap to the package of lands that will be conveyed to the US Forest Service. Resolution Copper is unequivocally committed to the protection of Apache Leap. Section 8 of S. 409 has numerous, specific provisions that ensure permanent protection of Apache Leap by the Forest Service. This section not only includes language that calls for the management, preservation and protection of Apache Leap, but also requests permanent withdrawal of the Leap from entry and/or appropriation under existing public lands laws and the Geothermal Steam Act of 1970. Futhermore, 5.409 requires the development of a management plan for Apache Leap to be developed in consultation with government, tribal, and area stakeholders. These measures specifically address our commitment to protect Apache Leap throughout exploration and development of the project.

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*Documents have been retained in subcommittee files.

As part of our environmental assessment, we are gathering technical information about Apache Leap and putting in place a number of methods to monitor subsidence, including:

- Seismic monitoring: Used to monitor cave progression by tracking the seismic energy that is released around its perimeter as it expands.
- Displacement monitors: Installed down holes drilled from both surface and underground and used to sense any fracturing of the rock.
- Tilt meters: Highly sensitive instruments that will be installed down short holes near the surface and will measure any tilting caused by underground work.
- GPS, satellite imagery and laser scanning that monitors the surface and can sense movements as small as 0.08 inches (2 mm).

This information will allow us to identify and assess the impact of the mining activities at a distance well away from Apache Leap and eliminate any possible threat to Apache Leap, ensuring that there is not physical impact on Apache Leap
Attached: Tribal Correspondence

RESPONSE OF DAVID SALISBURY TO QUESTION FROM SENATOR BINGAMAN

Question 1. Your testimony indicates that the company needs to gather additional information and conduct additional analyses before it can determine whether developing the mine is economic and feasible.

If the Oak Flat withdrawal were lifted in the near future to allow Resolution Copper to carry out exploration work, how long would you expect it to be before Resolution Copper made a final determination on the feasibility of the mine?

Answer. Passage of S.409 would give us access to land needed to complete our $1 billion exploration and pre-feasibility effort. With this access, we anticipate completing the pre-feasibility phase by 2013 if the legislation is passed this year. During this phase, we are gathering information about the ore deposit, crafting our environmental impact statement, creating project plans and developing long-term partnerships with the community.

With pre-feasibility complete, we would finalize the financial analysis and, if the project is deemed economically and technically feasible, commit capital, and complete the public review of our environmental impact statement before construction could begin in 2014 and continue for about six years. Such a schedule would allow us to achieve our target production date of 2020.

RESPONSES OF NED FARQUHAR TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. The Department's testimony indicates that it is essential for the agencies to have confidential access to the mining companies' data and analyses in order to develop an accurate mineral report and appraisal.

If the agencies were to negotiate an exchange such as this under its standard administrative procedure, would they have the authority to require confidential access to such information as a condition of proceeding with the exchange? If so, has this been done before?

Answer. Yes, in 2005 the BLM completed an administrative land exchange with the Phelps Dodge Corporation in the Safford, Arizona area. That exchange, frequently referred to as the Dos Pobres/San Juan Mine land exchange, was similar in some respects to the exchange proposed in S. 409. The BLM requested and received confidential access to the mining company's data and analyses to assist in preparing an accurate mineral report and appraisal.

Question 2. The Department's testimony mentions that tribal consultations are a concern for the Department, but it does not otherwise specifically address the issue. The tribes have testified repeatedly that they have been deeply concerned about the lack of consultation on a government-to-government basis.

Has the Department consulted with the Tribes on a government-to-government basis on this proposal and, if not, does it plan to?

Answer. The lands to be transferred out of Federal ownership are currently under Forest Service management, and the Department defers to the Forest Service on tribal consultations regarding these lands.

Question 3. One of the provisions in S. 409 authorizes the BLM to enter cooperative management agreements with non-profit organizations to administer portions of the San Pedro National Conservation Area.

Does the BLM typically delegate Federal management responsibilities to a private organization?

Answer. As you note section 4(e)(3) provides:

> "The Secretary of the Interior may enter into such cooperative management agreements with qualified organizations . . . as the Secretary of the Interior determines to be appropriate to administer portions of the San Pedro Riparian National Conservation Area."

We note that this language is discretionary and does not require any such agreements. The BLM does not have cooperative management agreements for the management of Federal land in any units of the National Landscape Conservation System. We do not delegate management authority. However, we have a variety of agreements with governmental and non-governmental entities to do a range of projects within NLCS units including interpretation, monitoring, restoration and research.

RESPONSES OF NED FARQUHAR TO QUESTIONS FROM SENATOR MURKOWSKI

On March 24, 2009, I wrote the Secretary asking that all testimony on any wilderness or other land set aside proposal answer a series of questions regarding energy production and infrastructure potential. On June 11, 2009, your staff provided some information on existing mineral and oil and gas claims in the area, as well as some information on roads and power lines within the proposed NCA. Given that S. 874 includes two new proposed Wilderness Areas (San Antonio Wilderness and the Cerro de Yuta Wilderness) and is a 236,000 National Conservation Area proposal, I do not believe your testimony or maps were fully responsive to all of the questions in my March 24th letter. I would like these questions answered at this time:

Question 1. The location and estimated amounts of all energy resources within or adjacent to a proposed set-aside, to which access could be impacted by the designation. This should include the potential for development of solar, wind, geothermal, hydro, biomass, wave, tidal, coal, oil, natural gas, oil shale, and coal-bed methane resources;

Answer. The BLM has not formally evaluated all energy resource potential on the BLM-managed lands in question. However, the BLM has estimates for potential for some of the energy resources you have requested. Specifically, the wind and geothermal energy potential for this area is low, and the solar energy potential is moderate. It is not within a known oil shale basin, nor is it within known coal fields. Finally, the potential for oil and gas is low.

Question 2. The locations of all existing, designated, or applied-for transmission lines or corridors for electric power as well as pipelines or corridors for geothermal steam, biofuels, carbon dioxide, oil, natural gas, or refined products. In addition, please indicate if these pass through, are adjacent to, or could be impeded by any of the aforementioned land set-aside designations;

Answer. The BLM provided a map to the Republican Committee staff, dated June 11, 2009, which shows the location of all existing transmission rights-of-way within the proposed NCA. There are no pending applications for pipelines or transmission lines.

Question 3. The locations of all existing designated, or applied-for solar farms, wind farms or other renewable energy facilities located in or adjacent to proposed set-aside.

Answer. There are no existing renewable energy projects within the proposed NCA, nor are there any applications for renewable energy projects within the proposed NCA.

Question 4. The location and estimated amounts of all known or suspected mineral deposits, hardrock or otherwise, within or adjacent to a proposed set-aside, to which access could be impacted by the designation and for which the United States is more than 15 percent reliant upon imports. Furthermore, please explain if these mineral resources are used, or could be used, in any 'green' or 'renewable' applications such as solar panels, wind turbines, geothermal facilities, wave or tidal generation, nuclear power plants, batteries, hybrid vehicles, plug-in vehicles, and fuel cells.

Answer. Definitive information on known or suspected amounts of mineral deposits on the Federal lands under discussion is not available. However, we are providing information that may be useful in this regard. First, attached is a chart, provided by the U.S. Geological Survey entitled "2008 U.S. Net Import Reliance for Selected Nonfuel Mineral Materials." Second, the USGS' Mineral Resources Data System, available on the web at: http://mrdata.usgs.gov/mineral-resources/mrds-us.html, is a good resource for considering current and past mineral activities on particular lands. Additionally, the USGS prepared a study entitled "The 1998 National Assessment of Undiscovered Deposits of Gold, Silver, Copper, Lead and Zinc in the United States." We are enclosing a copy of that report. Finally, the Department of the Inte-

rior does not have information on which mineral resources might be used in particular energy applications.

There are 10 unpatented mining claims on the western edge of the NCA, adjacent to existing perlite mining operations. Those claims are held by the owner of the existing mining operation. There has been no recent activity on the claims within the proposed NCA boundary.

Question 5. Whether or not a Wilderness Area proposed in legislation was recommended for designation in the most recent land management plan for the area; and if it was not, what the reasons were for withholding such recommendation.

Answer. The BLM may not include recommendations for wilderness designation in its Resource Management Plans (RMPs) or through the land use planning process.

Additionally, I would like to know a little more information concerning how the existing roads and power line corridors might be treated if the lands proposed for the NCA are legislated.

Question 6. There are a number of power lines within the NCA, would they be retained and will the permit-holder have the right to undertake whatever maintenance of the lines and right-of-way might be need?

Answer. Valid permits and rights to maintain those lines and rights-of-way will remain unchanged by an NCA designation.

Question 7. Several of the power lines appear to pass through the entire NCA, will those corridors be maintain and will they be able to service additional utilities if the need arises in the future?

Answer. Valid permits and rights to maintain those corridors will remain unchanged by an NCA designation.

Question 8. What grazing allotments exist in the proposed NCA and please describe any stock ponds or other water developments that might be located within the bounds of both the Wilderness Areas, as well as the proposed NCA? And the impact to those development and permit holders if this legislation is signed into law?

Answer. The proposed NCA covers all or part of 47 grazing allotments, to which 15,080 animal unit months (AUMs) are attributable. Five of the 47 allotments are within the proposed Rio San Antonio Wilderness and two are within the proposed Cerro del Yuta Wilderness. The attached spreadsheet lists the 90 water developments within the proposed NCA; three of those are within a proposed wilderness area. S. 874 allows for the continued maintenance of these water developments.

S. 1140

Given your testimony on this proposed conveyance please provide the Committee with a map of the boundary changes you recommend, along with those changes needed to accommodate the power lines, pipe lines, and the travel corridor for Elk along the Deschutes River. A map has been provided to the Committee staff which includes this information.

RESPONSES OF NED FARQUHAR TO QUESTIONS FROM SENATOR BARRASSO

S. 874

Question 1. Please list and explain the nature of each oil and gas leases that fall within the proposed boundaries of the proposed National Conservation Area?

Answer. There is one oil or gas lease within the boundaries of the proposed National Conservation Area (NCA). That lease will expire on December 1, 2009. Beyond that date, the lease could only be held by production. To date, there have been no applications for permits to drill on this lease.

Question 2. Exactly what mineral or minerals are involved in the claims, and how long have each of those claims existed?

Answer. There are 10 unpatented mining claims on the western edge of the NCA, adjacent to existing perlite mining operations. Those claims are held by the owner of the existing mining operation. There has been no recent activity on the claims within the proposed NCA boundary. The claims date from 1982 and cover an area of approximately 200 acres. When filing a mining claim in New Mexico the claimant is not required to identify those minerals for which they intend to develop the proposed mine.

Question 3. Is the BLM or Mineral Management Service aware of any other mineral potential in the proposed NCA? If so, what potential mineral resources might exist within the area?

Answer. Definitive information on potential mineral resources on the Federal lands under discussion is not available. However, the U.S. Geological Survey's Min-

eral Resources Data System is available on the web at: http://mrdata.usgs.gov/mineral-resources/mrds-us.html and is a good resource for considering current and past mineral activities on particular lands.

We note, because this area had past volcanic activity, there is potential for scoria and cinders (these are not locatable minerals, but rather are handled through discretionary sales of mineral materials).

I understand that there are also a number of power line permits within the proposed boundaries of the NCA.

Question 4. Could you describe how the designation of the NCA would or would not affect the permit holders of these power lines?

Answer. These rights-of-way are valid existing rights.

Question 5. Can you assure me that they will be able to maintain those rights-of-way and that the BLM will continue to allow those facilities to operate into the future?

Answer. Yes, I can assure you that the designation of the NCA would not affect valid existing rights.

Question 6. If someone new were to ask to put a power line or water pipeline across or within the El Rio Grande Norte National Conservation Area in the future, should this bill be signed into law, would the BLM allow that?

Answer. S. 874 does not expressly prohibit new rights-of-way within the proposed NCA. However, any new rights-of-way would need to further the protective purposes for which the NCA is established.

Question 7. If someone were to ask to put a new pipeline or power line along any of the existing power line right-of-ways, how would the BLM respond to such a request if S. 874 were signed into law as currently written?

Answer. Without seeing a specific application it is hard to predict. However, on the whole the BLM prefers to manage rights-of-way through consolidation. Furthermore, section 3(2)(E) of S. 874 specifically makes provision for upgrades to utility corridors.

S. 1140

I have to observe that these two conveyances are quite large when considering this is a town of less than 8,000 people.

Question 1. Mr. Farquhar how many other conveyances has your agency carried out in the last decade similar to this proposal?

Answer. During the ten years between 1999 and 2008, the BLM administratively issued approximately 228 patents for Recreation and Public Purposes (R&PP) applications according to BLM's Annual Public Land Statistics Report.

Question 2. Your testimony suggests the BLM does not believe that the City of La Pine needs the full 750 acres to site a waste water treatment plant, would you provide the committee with detailed map showing us the exact boundaries of this parcel that the BLM would support?

Answer. No specific concerns were raised regarding the size of Parcel B. The testimony only raised concerns about the boundaries of Parcel A.

For example, how many acres are utilized by similar facilities in Bend or Redmond, OR?

The BLM is not aware of the size of similar facilities in Bend or Redmond Oregon.

Is this proposed exchange providing an abnormally large acreage for this purpose?

The BLM has not determined if this is an abnormally large acreage, however, the size of proposed Parcel B is identical to the RP&P applications submitted by the city of La Pine.

Question 3. Your testimony suggests that BLM does not believe that the City of La Pine needs all the acres to develop an equestrian and rodeo site, would you provide the committee with detailed map showing us the exact boundaries of this parcel that the BLM would support?

Answer. We have provided a map to the Committee staff which indicates the modifications the BLM recommends to Parcel A. The new configuration would transfer 80 acres out of Federal ownership.

RESPONSE OF NED FARQUHAR TO QUESTION FROM SENATOR MCCAIN

Question 1. At the hearing, Ned Farquhar, testifying on behalf of the Bureau of Land Management indicated that the "Administration is continuing its analysis of the bill . . . and the Administration may have additional concerns as it works through its analysis." The Bureau of Land Management has testified and provided its views and concerns regarding this land exchange on as many as three occasions prior to the hearing on June 17, 2009. On each of these occasions the Bureau of Land Management testified that it supported the goals of the exchange." Did the

Administration review its past testimony prior to this hearing? What has changed substantively with regard to this land exchange since you last testified on July 9, 2008 that warrants additional review?

Answer. The Department of the Interior's concerns with S. 409, the Southeast Arizona Land Exchange and Conservation Act, are fully described in the Department's testimony from June 17, 2009. As noted in that testimony, the Department of the Interior defers to the Forest Service on those issues directly related to the Forest Service. It is in regard to Forest Service-related issues that we understand the Administration continued its analysis of S. 409, and that Agriculture Secretary Vilsack sent you a letter dated July 13, 2009 providing a detailed analysis of the Administration's concerns with S. 409.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF CLINTON M. PATTEA, PRESIDENT, FORT MCDOWELL YAVAPAI NATION, ON S. 409

Mr. Chairman and members of the Committee, on behalf of Fort McDowell Yavapai Nation, I wish to provide our serious concerns on the proposed Southeast Arizona Land Exchange legislation, Senate Bill 409, authorizing and directing the exchange and conveyance of National Forest and other land in central and southeast Arizona. The stated purposes of this bill is to "secure federal ownership and management of significant natural, scenic, and recreational resources, to provide for the protection of cultural resources, to facilitate the efficient extraction of mineral resources by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes". My comments specifically address and provide evidence as to why this proposed mining operation causes great concern to the People of the Fort McDowell Yavapai Nation.

Several years ago, the increasing global demand and the associated increase in copper prices resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. This includes a large undisturbed ore body beneath the original Magma Mine and about 7000 feet below Apache Leap (1000 ft below sea level), as well as Oak Flat and Devil's Canyon, just east of Superior, Arizona. Resolution Copper Company (RCC), a joint venture between foreign mining giants Rio Tinto and BHP Billiton, is exploring the feasibility of mining this deposit with a purported value of well over one hundred billion dollars. The proposed Senate (S. 409) and companion House bill (H.R. 2509), directs the Secretary of Agriculture to convey and dispose of 2406 acres of public lands within the Tonto National Forest (FS) including the federally Protected Oak Flat Campground, for the benefit of RCC. All of these lands were once inhabitant by the Yavapai People and these lands remain fundamentally important to the Yavapai.

Before I present Fort McDowell Yavapai Nation's grave concerns regarding the legislative land exchange proposed in S. 409, we ask one fundamental question. Why is this bill necessary?

RCC has failed to provide a meaningful answer to this question. Perhaps RCC does not want to invest foreign shareholders money to develop this mine without first obtaining a guarantee from the United States that they (RCC) will be given full ownership and exclusive control over these lands and the value of the resources they contain. We ask, is this great insecurity founded in a knowledge that the federal government does not currently hold? If uncertainty regarding risks is left unanswered by RCC then questions directly revert back to the federal government. Why not pull this bill and instead refer this land exchange and mining project through administrative processes mandated by Congress under the National Environmental Policy Act (NEPA) and other federal laws? We further ask, if mining is allowed (without the trade) but does not thrive while under federal control, the land could not be subject to future sale or other commercial or industrial endeavors and therefore RCC could not recoup any expenses through its sale. Is this a factor? Is it likely that federal analysis would determine that RCC's mining project simply posses too great of an environmental risk or undeniable cultural and religious desecration such that it can not be tolerated and therefore deemed unfeasible? Are these the primary considerations that RCC has deliberated in seeking to circumvent the administrative process through this legislative land exchange? In essence, it appears that S. 409 requests Congress to accept these incalculable risks in exchange for other private lands scattered throughout Arizona in an attempt to 'mitigate' damages resulting from RCC's mining of these federal lands near Superior. The Yavapai People do not and can not accept this rational.

Senate bill 409 does not provide the requisite transparency to address many of the fundamental concerns mining projects like these present, including, but not lim-

ited to, the lack of quantifiable royalties, the feasibility of the mine and mining operations, the equalization of the exchange, an unbiased analysis of the potential economic benefits, assessment and mitigation of environmental damages, untenable security and sustainability of Apache Leap, and incalculable cultural losses. Thus, basic questions have yet to be answered regarding the proposed exchange and the benefits to the public interest remain uncertain. However, questions regarding the extent of how this mining operation will affect the cultural and religious importance of the area must be fully and fairly appraised or analyzed through the administrative process prior to congressional action. Only through the administrative process can these serious concerns be adequately considered. Only through the administrative process would Fort McDowell Yavapai Nation be provided with an opportunity for a meaningful government-to government consultation (see below) that is required by the United States' trust responsibility to the Yavapai Nation and guaranteed under federal law. Examples of the specific deficiencies in S. 409 are described below. We again request that Fort McDowell be given opportunities afforded to them under federal laws for the requisite government-to-government consultation.

SUBSTANTIAL CONCERNS REMAIN REGARDING FINANCIAL AND EQUALIZATION OF THE EXCHANGE TO THE PUBLIC

It is well known that substantive royalty provisions have not been recouped on mined federal properties thereby significantly fleecing the American people. With the intent to rectify this situation, this year, both the Chair of the Natural Resources Committee, Congressman Rahall, and Senator Bingaman, Chair of this full Committee, introduced legislation to reform the 137 year old Mining Law of 1872. In reintroducing the legislation, Congressman Rahall stated: "Given our current economic crisis and the empty state of our national Treasury, it is ludicrous to be allowing this outmoded law to continue to exempt these lucrative mining activities from paying a fair return to the American people." Congressman Rahall also observed: "Nobody in their right mind would allow timber, oil, gas, coal or copper to be cut, drilled for, or mined on lands they own without receiving a payment in return for the disposition of their resources. And neither should the United States." Thus, his legislation is poised to change many of the financial aspects of the hard rock mining industry that are rightfully owed to the United States. However, under the terms of the legislative land exchange proposed in S. 409 (which would cede control of perhaps the largest copper deposit in North America to foreign interests), none of the financial benefits found in Congressman Rahall's legislation would be realized by the American public.

As presented by S. 409 sponsors, given the current economic conditions our country and the State of Arizona are facing, this type of hard rock mining, with the potential to generate additional tax revenues, royalties, etc. could (at first glance) be looked upon favorably. In reality, as S. 409 is proposed, unsubstantiated facts and unanswered questions remain regarding, among other things, the overall economic feasibility and benefit of this exchange to the American taxpayer. For example, RCC is a Delaware based Limited Liability Company (LLC) and a wholly owed subsidiary of Rio Tinto and BHP Billiton, both foreign owned companies. Notably, nine percent of Rio Tinto is owned by the state-controlled Aluminum Corporation of China, also known as Chinalco. In essence, nine percent of the federal lands to be exchanged, including the mineral and other natural resources, would be held by China through its Rio Tinto holdings. Without contradictory evidence, it is reasonable to assume that most of profits will be shipped off-shore and not held within the United States based on these companies mining operations, holdings, and performance. Furthermore, it can also be assumed that much mineral deposits will be shipped and utilized for other countries to exploit.

In examining the royalty provisions found in S. 409, it is highly likely that trading these federal lands into RCC's private ownership will result in unquantifiable, inequitable, and effectively zero royalties being provided to the United States taxpayer.

Suggestions on a valuation of the ore by multiplying an assumed quantity of mineral reserves by a unit price is almost universally disapproved by the courts [see *Cloverport Sand & Gravel Co., Inc.* v. *U.S., 6 Cl. Ct. 178, 188, (1984)*] and also not acceptable.

S. 409 calls for an appraisal report that would include a royalty income approach analysis, in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), of the market value of the Federal land. However, this approach often requires the appraiser to use a multitude of indicators, facts, and variables, the accuracy of which cannot clearly and easily be demonstrated by direct market data [See *Foster* v. *United States, 2 Cl. Ct. 426 (1983)*]. This is particularly

true when discounted cash flow (DCF) analysis or other forms of yield capitalization are employed in the analysis. Furthermore, within the UASFLA there are several specific requirements to assess values, including the need for a detailed mining plan for the property. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in similar operations. The annual amount of production and the number of years of production are more difficult (and speculative) to estimate, and require at a minimum, not only physical tests of the property to determine the quantity and quality of the mineral present, but also market studies to determine the volume and duration of the demand for the mineral in the subject property. However, it is unknown at this time what the true production estimates are as specific mining plan details have not been forthcoming from RCC. In addition, the true quality or quantity of the material is unknown and the extraction technology for this mining operation at a 7000 foot depth has not been developed and thus not currently available. This fact is further underscored by the lack of available information on production levels being consistent with an (unknown) mining plan's labor and equipment. Significantly, all of this information is required for a meaningful and accurate appraisal.

In further examining UASFLA, the royalty income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life-span of the project and a determination of the Net Present Value (NPV), including the NPV of the profit stream, based on a discount factor. The NPV of a future income is always lower than its current value because an income in the future assumes risk. The actual discount factor used depends on this assumed risk. A proven technology carries a lower risk of non-performance (thus, a lower discount rate) than a technology being applied for the first time.

Given the evaluation standards prescribed by the UASFLA, coupled with the lack of factual data and uncertainty of the technology described above, the final appraisal of this massive ore body could ultimately net zero, meaning that the valuation of the federal lands exchanged for the benefit of RCC would not reflect the value of the copper and other saleable minerals these lands contain. The American taxpayer would once again be short-changed.

Given the trade from federal to private holdings in S. 409, the inadequacies described above in this land trade remain regardless of whether or not the Senate and House hard rock legislation moves forward. RCC must be required to provide additional information and pay for additional research in order to generate an appraisal that is fair and equitable to the people of the United States.

Moreover, since the Federal government has yet to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to RCC, it is also impossible for the Congressional Budget Office (CBO) and /or Office of Management and Budget (OMB) to effectively evaluate S. 409. The public interest requires that a complete and fully informed appraisal and equalization of values be performed prior to Congressional passage of S. 409, not after. As of today, RCC asserts that there may be over 1.34 billion tons, containing 1.51 percent copper and 0.040 percent molybdenum to be removed over the 66 years of mine life. Although the current value of all minerals present on these federal lands are not provided by RCC, estimates have ranged from $100 to $200 billion. Thus, even RCC's own self evaluation of the ore body underlying these public lands is orders of magnitude greater in value than that of the nonfederal parcels offered in exchange by RCC to the public.

Section 5(a) of the legislation requires that the exchange and other critical documentation be completed within one year after congressional passage. Given the rationalizations above regarding the complexity of such analysis, it is incredulous that one year is sufficient time for the completion, and subsequent thorough examination, and to review of all reports and appraisals. Indeed, Michael Nedd, then Assistant Director, Minerals & Realty Management Bureau of Land Management, stated in his previous testimony on this matter that he and the Department did not believe a one year provision was 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. Yet, the sponsors of this bill have chosen not to heed the governments own experts advice and counsel on mineral appraisals. Why?

Once RCC has completed its evaluation and analysis, the Fort McDowell Yavapai Nation urges Congress to require an independent, third party review of the all reports, including the engineering report, for this operation. This must be accomplished in consultation with all affected parties, including between the Federal government and Fort McDowell Yavapai Nation, prior to this legislation moving forward. At this time, relying on the RCC current engineering and other reports or the Departments of Agriculture and Interior review of these reports is insufficient. On

a monetary level, one can clearly see that RCC financially recoups all mineral profits at the expense of the public making such an exchange grossly disproportionate.

SUBSTANTIAL FINANCIAL AND ENVIRONMENTAL CONCERNS REMAIN IN S. 409

In introducing his proposed hardrock mining and reclamation legislation, Senator Bingaman made clear that the "Secretary of Agriculture must take any action necessary to prevent unnecessary or undue degradation in administering mineral activities on National Forest System land." Senator Bingaman also warned that under the Mining Law of 1872 "billions of dollars of hardrock minerals can be mined from Federal lands without payment of a royalty. General land management and environmental laws apply, but there are no specific statutory provisions under the Mining Law setting surface management or environmental standards. Efforts to comprehensively reform the Mining Law have been ongoing literally for decades, but results have thus far been elusive." Yet, by virtue of the provisions set forth in this proposed land trade—that is before this very committee—the lack of governing regulations or policies leave the federal lands to be exchanged effectively with no protections. One of the overarching questions regarding RCC remains, how will RCC, as an LLC, be mandated to hold and provide significant and meaningful financial assurances (e.g. bonding) that would ordinarily be required from such an immense mining operation? The need for bonding assurances is obvious, particularly with the great uncertainty surrounding this massive undertaking (see below regarding Arizona mining laws). Yet, S. 409 does not adequately address this issue. Such financial assurances must be provided particularly in regard to environmental and cultural concerns.

Subsidence, water quality and quantity concerns, air quality concerns, tailings and overburden placement/storage, acid mine drainage and subsequent pollution, and a host of other damages yet to be determined as a result of this type of operation have not been sufficiently addressed in this bill. Furthermore, as discussed below, with only superficial legislative provisions to protect the sacred places of Apache Leap and Oak Flat and the important cultural resources these places provide, there is simply not a way to hold RCC responsible when mining destroys these areas.

Oak Flat is a major piece of this land exchange. In 1955, Oak Flat campground was recognized by President Eisenhower as an important place and critical resource of the United States. This area was specifically withdrawn from mining activity when he signed Public Land Order 1229. I will not expound on reversing President Eisenhower's decision as others before me have either testified or documented the significance of this region. However, the dangerous precedent set by S. 409 should not go without note. When lands like Oak Flat that have been legally protected from future anthropogenic disturbances, in this case mining activity, can have their protections congressionally reversed, negates assurances that other Federal lands (particularly those that are deemed culturally important or environmentally critical) can remain 'protected'. There is no valid reason to set such a dangerous precedent today.

As past stewards of this land, we are deeply concerned that the RCC mine will cause irreparable harm to the environment including, but not limited to, contaminating scarce water supplies, dewatering nearby surface water, decimating the land base directly through mining practices, mining and post mining subsidence, destroying habitat for endangered species, and causing massive surface damage. S. 409 does not specifically direct the Secretary of Agriculture to perform or have performed in-depth, critically needed environmental studies and analysis of the mining operation. It is likely that, RCC will he effectively exempt from NEPA and any opportunity for public involvement required by NEPA. The NEPA process mandates analysis and disclosure of environmental impacts, including cumulative impacts, allowing all affected parties and decision-makers to review and comprehend the risk assessment.

The current 'NEPA language' in the bill can not be supported or supervised by the Federal government particularly after the land trade is finalized and therefore, as currently drafted, is ineffectual. In this case, NEPA is merely pro forma and is perfunctory at best. As mentioned above, it will take significant time consuming operation to undertake such an in-depth analysis far longer than was provided for in this bill. This conclusion has also been supported by the administrations testimony at previous hearings on earlier versions of this bill. Joel Holtrop, Deputy Chief, U.S.D.A., Forest Service, stated in testimony regarding the house version of this bill that one year is insufficient time to complete all the necessary work to complete the exchange, including the development and review of a mineral report, completion of appraisals and surveys, verification of title documents, and the many environmental

clearances, reviews, as well as the consultation with Indian Tribes required under various laws, regulations, and policy.

Thus, the limited time will not yield analysis that will have true scientifically based findings and conclusions, yet the timing provisions have not changed. Why? If additional reports, examinations, scientific analysis, etc. come forward and they demonstrate significant impacts to the environment after the trade takes place and the land is privately held, the federal government can no longer exert its jurisdiction, can no longer mitigate, or provide guidance on how to remedy an environmental consequence.

Our paramount concern is where and how will the tailings be re-located? In consulting with geologists and geomorphologists, it does not appear that there are sufficient, previously abandoned surface mine pits that could either temporarily or permanently house the predicted hundred of thousands of tons of material generated per day for the 66 years of mining. Much of this material will contain an array of toxic substances. Will unspoiled canyons be sacrificed to store this material?

Furthermore, technologically enhanced naturally occurring radioactive materials (TENORM) are waste elements within stockpiles that release toxins into the environment. Subterranean toxic metals pose little harm to human health. However, when brought to the surface, stockpiled, exposed to the air, and subjected to various technological processes, there is a potential for adverse effects to humans. This is particularly true in Arizona where there are abundant deposits of radioactive metals and poisonous arsenic. The Surface Mining Control and Reclamation Act of 1977 is not applicable for copper mining. Thus, in the absence of truly meaningful Federal laws regulating copper mining, who will make determinations as to what lands will be sacrificed—lands that my People hold so sacred? We must be consulted and allowed to participate in the process.

It is also important to understand that once these public lands are conveyed, under the permissive mining and reclamation laws of the State of Arizona, RCC will probably not be required to expend cash to post a bond to underwrite either the cost of remediating toxic spills during its mining operations, or for its pollution 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 RCC's massive mining operations.

The impacts of sulfuric acid and other contaminants from leach solution are well documented and require no elaboration here. However, in Arizona, mining companies who declare bankruptcy leave behind a large burden for tax payers who are often left with the enormous clean-up obligations that should have rightfully fallen on the mining company. For example, Asarco, which owns many mines in Arizona, declared bankruptcy and was reported to have left hundreds on millions of dollars in clean-up costs. The Governor of Arizona only recently signed an agreement settling this case, but it is yet from over as taxpayers will provide millions toward environmental clean-up. It is therefore incumbent upon Congress to intercede now, before RCC undertakes its massive mining operations, to mandate a greater level of financial responsibility from RCC (beyond a cooperate assurances) for the multitude of risks associated with their project. (For additional information, see testimony of the Honorable Roy Chavez, former town manager and Mayor of Superior)

In regard to the environmental considerations, the Yavapai People are a critically affected party in this legislation. The Yavapai will not be provided an opportunity to engage in any activities to protect this land either before or after the exchange takes place. As such, the Secretary of Agriculture must direct RCC to provide full disclosure of all pertinent environmental information regarding the detailed mining operation, including a substantive mining, environmental, and reclamation plan prior to congressional markups.

APACHE LEAP REMAINS WITHOUT ANY REAL PROTECTIONS UNDER S. 409

Previous versions of the Southeast Arizona Land Exchange and Conservation Act contained provisions for a conservation easement for Apache Leap. This provision is noticeably absent in S. 409. In keeping the land as 'public', it does not protect it from mining activities. In fact, overall protections of Apache Leap are seriously undermined by language in Section 4 (d) of S. 409 that provides for substantial mining activities both on top of an under the Apache Leap that will result in its subsidence. Without any protection or funding assurances, such as substantial bonding, should damage to Apache Leap result from mining activities we ask, who is responsible for the damage? As written, both RCC and the Federal government appear to have circumvented any responsibility for injury to Apache Leap caused either directly or indirectly by RCC's mining activities or operation.

Moreover, any implications that Apache Leap will be protected through the development of a "management plan" as described in Section 8(b) is misplaced. A plain reading of this section reveals little in the way of specifics. Indeed, while S. 409 directs the Secretary of Interior to "initiate" and "implement" a management plan for this important and sacred place, the bill contains absolutely no requirements for the plan and provides no substantive direction to the Secretary as to what the plan should entail. The final terms of the plan are left to the discretion of the Secretary, without guidance from Congress. Thus, there is little assurance that a plan for the "permanent protection" of the cultural, historic, educational, and natural resource values of Apache Leap will be developed.

What is also evident, there is no connection or coordination in S. 409 between the development of a management plan for Apache Leap and RCC's overall plan for the conduct of mining activities throughout the larger mining area, including its subsurface activities below Apache Leap. In this case, the management plan of Apache Leap is separate and distinct from any operations or mining plans. Furthermore, while Section 8(b) calls for "consultation" with the Yavapai People regarding the management plan for Apache Leap, there are no provisions in the bill for consultation with the Yavapai Nation regarding RCC's unrestricted mining activities in the area surrounding Apache Leap as well as its operations and activities under the Leap. Yet, it is these activities, including the deep underground block caving operation itself, that present the greatest threat to the cultural, historic, educational, and natural resource values and continued integrity of Apache Leap.

Although a management plan is to be developed, as discussed below, the few "protections" intended to serve as preserving the natural character of Apache Leap are negated by several sections of this bill for example: Under section 4 (d), additional consideration to United States, affirms that Resolution Copper shall surrender to the United States, without compensation, the rights held by Resolution Copper under mining and other laws of the United States to commercially extract minerals under Apache Leap. However, upon further review of this subsection, under (2) exploration activities, it clearly states that mining activities will be allowed: "nothing in this Act prohibits Resolution Copper from using any existing mining claim held by Resolution Copper on Apache Leap, or from retaining any right held by Resolution Copper to the parcel described in subsection (c)(1)(G), to carry out any underground activities (emphasis added) under Apache Leap in a manner that the Secretary determines will not adversely impact the surface of Apache Leap (including drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information) that do not involve commercial mineral extraction under Apache Leap." In essence, the Act does not provide actual protection of the Leap against mining activities as Resolution Copper is afforded any and all mining operations other than commercial extraction. These mining activities will be granted by the administration without any consultation with the Yavapai people. Furthermore, there are no provisions as to how to evaluate, monitor or stop either short-or long term impacts of these mining activities to Apache Leap resulting from RCC's mining activities. If mining is to occur despite significant objections, when catastrophic disturbances, such as subsidence, fissures, etc., cause destruction on, under, or around Apache Leap to occur, detailed provisions must be in place as to the restoration or reclamation activities and who will be the responsible party to provide for those restoration activities. What's more, destruction of irreplaceable cultural and religious resources is not provided any consideration.

In addition to above, Section 4(d) of the bill permits surface disturbance to Apache Leap for the placement of fences, signs, monitoring wells, and other devices, instruments, or improvements as "are necessary to monitor the public health and safety or achieve other appropriate administrative purposes, as determined by the Secretary, in consultation with Resolution Copper." Here again, the Yavapai people are left out of this consultation process as this is part of the mining operations needed to carry out mining activities and not considered under the management plan. The Yavapai are also not consulted regarding if, and to what extent, any "disturbance" to the surface of Apache Leap is acceptable. Because S. 409 does not provide provision or other guidance in this matter, it can be truly said that this bill is silent on the true protection for Apache Leap.

S. 409 Fails to Protect the Water Supply of the Region

As related in previous public testimony on earlier versions of this bill, a major scientific concern relates to groundwater pumping as it will de-water this region. This area of concern is discussed in testimony provided to you today by other groups and organizations; however Fort McDowell addresses this issue in brief and poses

a number of questions that must be resolved through the administrative process prior to any consideration of legislative exchange.

Devil's Canyon, located in the Tonto National Forest and on State Trust Lands near RCC's mine is of great importance and of critical concern to the Yavapai people. Without providing sacred details of the area, Congress should be cognizant of the fact that the Yavapai perform and have performed numerous religious and cultural ceremonies at Devil's Canyon since time immemorial. The sacred significance of Devil's Canyon to the Yavapai People can not be described in words on a page. The loss of the area, as mentioned below, can not simply be 'mitigated away'.

As discussed in other testimony today and in written testimony by groups such as the Serria Club, the riparian areas and natural springs in and around Devil's Canyon are of hydrologic significance to the Yavapai People and to those people who rely on this water in the surrounding region. Water flows from these springs into Mineral Creek, a tributary of the Gila River. Devil's Canyon is also a critically important, though dwindling, riparian habitat for numerous species. Dewatering through groundwater pumping, mine dewatering, and other mining activities will cause these springs to be lost forever. This is an irrefutable scientific fact and not addressed within the proposed legislation. Moreover, as outlined in the aforementioned section, since there are no legislative provisions that provide protections to Apache Leap from disturbance, it is very likely that RCC's need to dewater its extensive and deep underground tunnel system used for its mining activities will cause a serious drawdown in the water table of the region and will result in subsidence in and around the Apache Leap.

While the water demands and consumptive use of RCC's mining project is not fully known, it has been estimated that 40,000 acre feet per year (AFY) of water will be required by RCC for its mining operations. This is equivalent annual water supply for a community of about 80,000 people. It has been expressed by many in the scientific community that there is insufficient groundwater to maintain yearly mining operations over the longevity of mine. Thus, RCC is seeking to obtain and store water through the Central Arizona Project (CAP). Currently, there are no long-term water leases available for RCC under CAP to meet their water demands. How RCC's water demand will be met has not been investigated by the Federal government and only spuriously explained by RCC. Given that water is the most critical natural resource to inhabitants of the State of Arizona, further compulsory investigations vis-a-vis water must also address:

- What empirical and realistic predictions are made for long-term water-use over the 66 years of mining? Has the long-term availability and sustainability of water use been assessed?
- How will dewatering of the mine be executed? Will water removed from the shafts, tunnels, and related areas be stored? If so where and how will this take place? How will water be replaced (or will it be replaced) in an environmentally safe and effective way after ore is removed?
- If during the course of mining operations, financial conditions prove this mine impracticable, what guarantees will be made to assure that water will be returned to the aquifer?
- What is the long-term certainty of water from the CAP that the mine is assuming to utilize for its operations? What will happen in cases of drought or where shortage provisions are placed along the Colorado River? These shortages are predicted to be in effect within the next decade. Within the seven basin states agreement, Arizona has a junior priority water status along the river and subsequently the CAP must 14 take shortage first. Will CAP municipal water be relied upon and or taken away in order to meet RCC long-term water demands?

In understanding the complex dynamic surrounded Arizona's water laws, policies, and availability as written S. 409, the Fort McDowell Yavapai Nation believe that water from Arizona residences, the environment, and cultural and religious areas will be ultimately scarified for the operations of the mine. Furthermore, by conveying the land from public ownership to a private entity, much of the permitting process, particularly regarding clean water, is effectively removed. For example, if one looks at federal court rulings concerning private property across the U.S., Sections 402 and 404 of the Clean Water Act have often been rendered unenforceable (Section 402—National Pollutant Discharge Elimination System; Section 404—regulates the discharge of dredged and fill material into waters of the United States, including wetlands). Thus, what safeguards will be congressionally mandated to prevent water contamination or a decrease in quality that will/may result due to either direct or indirect discharge or that will result from this type of mining technique?

In summary, water feasibility and water related economic provisions and studies have not been addressed. Furthermore, given future climate change and climate

warming predictions for this area, the on-going long-term drought and resulting potential water shortages within the State, including the Colorado River (see Bureau of Reclamation, Colorado River Water Shortage Criteria Documentation, 2006-7) it is imperative that long-term strategic projections and economic data substantiate that water for mining purposes is the most beneficial use for the State as a whole. Thus, before this legislation moves forward, we request that the Secretary of Agriculture be directed to commission an independent, third party analysis of the hydrologic and engineering reports that evaluate potential impacts on the entire area including Devil's Canyon and Apache Leap. This analysis must be in direct consultation with the Fort McDowell Yavapai Nation.

S. 409 Fails to Protect Cultural and Religious Concerns of the Yavapai People

Although Inter Tribal Council of Arizona has provided compelling testimony regarding the Native American cultural and religious concerns regarding S. 409, Fort McDowell has a number of concerns that must be addressed in this legislation and through the administrative process. Mining will impact lands that are tied to our cultural and religious heritage as this region is part of the Yavapai ancestral territory. As stated earlier, many federal protections will be removed from this land when it is conveyed to RCC. Hence, the Native American Graves Protection and Repatriation Act (Public Law 101-601) or any provision of the American Indian Religious Freedom Act (42 U.S.C. 1996), the National Historic Preservation Act (6 U.S.C. 4701 et seq.), and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) that are designated to protect areas important to Native American's may be inapplicable or unenforceable.

As stated above, dewatering, land subsidence, polluting of the land and water will desecrate this sacred area. I can not express in words how deeply felt this land is to the Yavapai—it simply transcends words. Damages resulting from this legislated land exchange and mining project can not be mitigated simply by placing a dollar value on it or by exchanging it for some other land that is far from the area of concern. The Tonto National Forest has discovered at least a dozen archeological sites in and around Oak Flat. Therefore, Fort McDowell Yavapai Nation requests the opportunity to evaluate all data in internal and external reports for the entire area, including data that were not included in the final version of these reports. Fort McDowell also request answers to the specific questions regarding how RCC and the Federal government will protect the religious and cultural resources of the area. The questions that must be addressed include, but are not limited to, the following:

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

To conclude our testimony, the language of S. 409, as currently drafted, does not adequately address: 1) the mineral report and appraisal of the Federal parcel to assure the parity of the land exchange; 2) the weakness of Federal and Arizona's current statutes or laws governing copper mining; 3) the lack of an extensive mining plan, reclamation protocol, or bonding assurances; 4) groundwater and surface water issues; 5) subsidence issues; 6) the need for a third party, independent Environmental Impact Statement on the entire mining operation; 7) Federal environmental and cultural protections afforded public lands are no longer applicable once the land is conveyed; and 8) meaningful consultation with a sovereign nation that is required by the United States' trust responsibility to the Yavapai Nation and guaranteed under federal law. We have additional concerns but many are addressed by others before you today, as well as in former Arizona Governor Napolitano's letter of Au-

gust 24, 2007 outlining very specific economic, environmental, and cultural omissions in the current bill. San Carlos Apache Tribe has also expressed many of these very same concerns. Other Arizona Tribes have also articulated their grave trepidations about this bill and provided documentation under separate cover. Thus, at this time, we believe there are too many unresolved serious issues that must be fully addressed prior to congressional approval.

Mr. Chairman, members of the Committee, on behalf of the Fort McDowell Yavapai People, I thank you for the opportunity to express our deep concerns regarding this proposed legislation.

ARIZONA HOUSE OF REPRESENTATIVES,
Phoenix, AZ, June 4, 2009.

Hon. ANN KIRKPATRICK,
U.S. House of Representatives, 1123 Longworth House Office Building, Washington, DC.

DEAR REPRESENTATIVE KIRKPATRICK: We'd like to take this opportunity to offer our insight on the legislation you recently introduced, HR 2509 the Southeastern Arizona Land Exchange Conservation Act.

We understand that land exchanges of the magnitude of the one proposed by Resolution Copper are extremely complex and can take years to complete. We have expressed concerns over previous versions of the legislation and continue to have significant issues with the current version. We appreciate the opportunity to provide you with the following suggested principles moving forward to shape legislation that take into account the needs and concerns of all interested parties.

A legislated land exchange should not be initiated until there have been adequate environmental reviews and analysis consistent with the National Environmental Policy Act (NEPA). The land exchange should only be consummated after the public and the interested parties—tribal entities, conservation organization, local communities, and others have had an opportunity to learn about the potential impacts to the air, water, and land as well as the cultural sites, examine and comment on alternatives, and seek measures to address the environmental impacts.

Conservation organizations have raised concerns about the environmental impacts of this exchange and the failure to do any real environmental analysis up front and prior to consummating the exchange, for example, how this mine will affect water resources, how it will impact Devil's Canyon and Queen Creek, how the ore will be processed, how moving it and processing it will affect the air, water and land in the area. These and many other questions about the impacts of this proposal should be answered to ascertain whether this exchange is in the public's best interest.

We want to see a measure that provides a fair and equitable return for taxpayers in Arizona and the rest of the United States. We want to see a land exchange that serves the public interest and not merely the interest of Resolution Copper, as HR 2509 currently does.

For the land exchange to occur, it must address the significant degradation of cultural and natural resources. There must be a fair return to the public—the offered lands do not come close to making up for the loss of Oak Flat or the loss of significant cultural resources to the San Carlos Apache and Ft. McDowell Yavapai peoples.

We respect the Arizona tribal nations' request to discuss their concerns at the federal government to tribal government level. The tribal nations have raised concerns about the impacts of block cave mining on the Apache Leap Escarpment and also about the loss of Oak Flats, an area where spiritual ceremonies are held as well as a traditional acorn gathering. Despite the tribal nations raising these issues repeatedly in various forums, there still is no real effort to address them.

Oak Flat also provides many recreational opportunities for Arizonans, including for those in the local communities, and for others from around the country. Recreational activities in the area include hiking, camping, rock climbing, birding, bouldering and more. Loss of Oak Flat would be a significant loss of public resources.

And finally, as you are aware, Rio Tinto is a stakeholder in the Resolution Copper venture with BHP as the minority partner. RCC has been unable to negotiate a deal with BHP to acquire even a portion of their holding in the land exchange. BHP's land holdings are so critical in creating a comprehensive Riparian National Conservation Area along the Lower San Pedro River that Representatives Grij alva, Giffords, and Mitchell and former Governor Janet Napolitano have all written previously to Resolution to ask for the inclusion of the BHP property in the exchange. We would like to see BHP come to the table independently of RCC, and request that you contact Linda Broughton from BHP to include them in discussions.

As the bill is currently drafted, we do not see it as a fair and equitable exchange. It does not account for the billions of dollars worth of copper Resolution Copper Company indicates is in this area. The public is receiving small parcels of land and a few other small incentives, but it is not even close to being equal.

We strongly support economic development opportunities for the people of this area and throughout the state, but considering the legacy of mining in the area, it is essential that any proposal be carefully evaluated before proceeding. It must ensure protection of the culture and concerns of native peoples. It must ensure a fair return to the public. A proposal must also minimize environmental impacts and ensure that any lost recreational opportunities are addressed.

Thank you for considering our comments.

Respectfully,

Steve Farley, *Arizona State Representative, Legislative District 28, Democratic Policy Leader*; David M. Lujan, *Arizona State Representative, Legislative District 15, House Democratic Leader*; Chad Campbell, *Arizona State Representative, Legislative District 14, House Democratic Whip*; Kyrsten Sinema, *Arizona State Representative, Legislative District 15, Assistant House Democratic Leader*; Paula Aboud, *Arizona State Senator, Legislative District 28*; Daniel Patterson, *Arizona State Representative, Legislative District 29*; Nancy Young Wright, *Arizona State Representative, Legislative District 26*; Phil Lopes, *Arizona State Representative, Legislative District 27*; Rae Waters, *Arizona State Representative, Legislative District 20;* Eric Meyer, *Arizona State Representative, Legislative District 11;* Matt Heinz, *Arizona State Representative, Legislative District 29*.

STATEMENT OF DIANA FRESHWATER, EXECUTIVE DIRECTOR, ARIZONA LAND AND WATER TRUST, TUCSON, AZ, ON S. 409

Arizona Land and Water Trust (Trust) was established in 1978 to protect southern Arizona's vanishing landscapes and wildlife habitat. We have worked for 30 years with agencies, elected officials and landowners to craft solutions to complex conservation issues and have permanently protected more than 30,000 acres. We are proponents of sound planning and policy that fairly and equitably address the needs of communities, economies, and our environment. Our primary area of operations is the six counties in southeast Arizona. In that area no single conservation target is more important than the San Pedro River from the Mexican border to the River's confluence with the Gila River. Our conservation priority on the San Pedro is shared by many organizations and agencies including National Audubon, Arizona Game and Fish, The Nature Conservancy and Defenders of Wildlife.

The Trust has no formal position on this legislation. Instead, this letter is meant to identify concerns we have about the proposal legislation and to describe the important conservation opportunity we have to protect 1,000 acres of the San Pedro River.

We believe the following matters need to be addressed by this legislation:

BHP-BILLITON (BHP)

BHP owns 26,000 acres that are vital to the protection of the San Pedro River in the area of San Manuel, Arizona. This 26,000 acres includes over 7,000 acres of prime cottonwood-willow habitat, good desert foothills habitat, as well as vitally important water rights. BHP's water rights are essential to sustaining the river system. BHP is the minority partner (45%) with Rio Tinto (55%) in the joint venture Resolution Copper Corporation. It continues to be critical to negotiate for absolute protection of the Lower San Pedro River at this time. The cottonwood-willow forest must be protected and included in the Land Exchange. Sufficient water to sustain the San Pedro River must be available.

ARIZONA LAND AND WATER TRUST'S PROTECTION EFFORTS

We consider this section of the San Pedro so important to the cultural and environmental resources in the area that we hold an option on 1,000 acres of land, stretching along four miles of the San Pedro River north and downstream of BHP's property. We would welcome this valuable area being acquired as part of S. 409.

MANAGEMENT AND MANAGEMENT FUNDING CONSIDERATIONS

A commonly overlooked component in the land protection process is the long-term management of the land acquired for permanent protection. Protected lands often lack a land management plan and funding to manage the property in perpetuity. Land on the San Pedro should be managed by the BLM through a Riparian National Conservation Area designation or by the U.S. Fish and Wildlife Service with clear management directives recognizing the international importance of the San Pedro River and its diverse habitat types. Long-term guaranteed funding should be assured through an endowment, royalty or some other dedicated funding source.

NEGATIVE IMPACT OF BHP'S PROPOSED DEVELOPMENT AT SAN MANUEL

A large-scale master-planned community is planned for BHP's properties at San Manuel, upstream from mitigation properties that have been purchased for their riparian habitat value. BHP has zoning authority from Pinal County to construct over 30,000 homes in that area plus associated commercial development which would severely impact the San Pedro River. The 7-B Ranch included in S. 409 is the largest piece of property put into the Land Exchange by Resolution Copper Corporation. It would be impacted by development on BHP's 26,000 acres at San Manuel. That development would potentially destroy the value of the cottonwood-willow forest owned by BHP that we are asking to be included in this Land Exchange and that development will also damage investments by Salt River Project, Bureau of Reclamation and The Nature Conservancy downstream.

Arizona Land and Water Trust urges full consideration of the issues above and inclusion of these considerations in a final draft of S. 409.

STATEMENT OF CHRISTINA RECORD MCVIE, CONSERVATION CHAIR, AND PAUL GREEN, EXECUTIVE DIRECTOR, TUCSON AUDUBON SOCIETY, TUCSON, AZ, ON S. 409

Tucson Audubon Society (TAS) has been active in southeastern Arizona since our formation in 1949. Through education, recreation, restoration, and conservation activities, we focus attention on the conservation of birds and their habitats upon which people and other species of wildlife depend. As a 501(c)(3) non-profit, non-governmental organization, we work with many agencies, governmental entities, private landowners, academics, and all citizens to achieve our mutual goals of developing strong communities and economies, maintaining our quality of life, and improving our ability to adapt to changing circumstances including climate change.

The loss of southwestern riparian habitats has long been recognized as a threat to life in the desert, most recently in 2007 by the American Bird Conservancy, which rates southwestern riparian habitats as the fifth most threatened bird habitat in the United States. Riparian habitats serve as a primary focus for the conservation activities of the Tucson Audubon Society.

The Sonoran desert upland and riparian parcels along the lower San Pedro River owned by BHP-Billiton (BHP) are crucial to the survival of the last free-flowing river in the desert southwestern United Stated. In 2005, The Arizona Republic reported that the Pinal County Board of Supervisors approved a master plan amendment that would allow for 23,234 acres of BHP's land to be rezoned for as many as 35,000 homes.

BHP owns more than 7000 acres of rare cottonwood-willow forest habitat upstream from the 7 B Ranch. BHP's riparian lands and associated uplands, must be included in S. 409 and protected, as well as the 7 B Ranch already included in the S. 409 proposal. BHP's proposed development would dewater the river, which feeds this vital habitat.

Other parcels likely to be impacted by this development include downstream lands owned and operated for conservation values by The Nature Conservancy (TNC), the Bureau of Reclamation (BOR), and the Salt River Project (SRP). The lands managed by SRP are held as mitigation for the development of the Roosevelt dam and lake, which provides water for the city of Phoenix. Dewatering the riparian forests of the lower San Pedro River threatens all of these mitigation measures. These BHP riparian lands, with their associated uplands and water rights, must be conserved, managed, and monitored to protect the lower San Pedro River in perpetuity, with sufficient designated funding to accomplish these activities. A piecemeal approach to river conservation will not work.

BHP is a 45% minority partner in the Resolution Copper Company (RCC) joint venture with Rio Tinto (55% majority partner). BHP must understand the pre-emi-

nent importance of its actions along the lower San Pedro and their linkage to the proposed mine at Superior. As the RCC ore body is world-class, so is the San Pedro River world-class in its international biological significance. In order for any mitigation for RCC's mine at Superior to be taken seriously, BHP must spell out exactly what its plans are and how they will assure the protection of the lower San Pedro River.

Arizona Representatives Grijalva, Giffords, and Mitchell have all written to RCC to advocate for the inclusion of the BHP property in the exchange as a means of enhancing the protection of the lower San Pedro River watershed through the establishment of a protected conservation area. The San Pedro River is of international importance and is considered a primary pollinator and migratory pathway that supports our nation's ability to feed itself while providing diverse habitats essential for almost 400 species of migratory birds, 80 species of mammals, and 40 species of reptiles and amphibians, some of which are listed as threatened and endangered species under the Endangered Species Act (ESA).

Tucson Audubon Society supports the designation of the lower San Pedro River as a National Wildlife Refuge as it is the purview of the US Fish and Wildlife Service to manage lands for the threatened and endangered species of our nation. No other agency or designation will achieve the conservation of these species and this valuable habitat as well. We believe the land exchange contemplated by S. 409 should be contingent upon inclusion of BHP's uplands, riparian lands, and water rights, and that monies must be designated for additional land purchases, management , and monitoring for the new conservation area in perpetuity.

While the entire San Pedro River is a conservation priority of our organization, the lower San Pedro is our focus because it has not enjoyed the protections afforded the upper San Pedro by its designation as the nation's first Riparian National Conservation Area in 1988. This legislative land exchange must address the lower San Pedro River in order to balance the profound environmental impacts of the proposed Resolution Copper Company mine at Superior, Arizona.

Currently, there is minimal support for this exchange in the conservation community in Arizona. RCC looks to generate vast sums of monies with their world-class mining venture at Superior, Arizona with its world-class ore body. The citizens of Arizona would have nothing of equal, truly world-class biological value without the inclusion of BHP's uplands, riparian lands, and water rights and the designation and protection of the lower San Pedro River.

We think that it is critical that the appraisal process be open and transparent so that the public can better evaluate whether they are getting a fair exchange from the companies.

We seek assurances that the National Environmental Policy Act (NEPA) will apply to all future mining-related activities should this exchange go forward. Royalties are another concern. We have numerous questions regarding the possible adverse consequences to the environment of the mining process as it evolves, especially to any riparian areas potentially impacted.

You can find more information on this issue at www.tucsonaudubon.org. We are available should you have any questions and thank you for the opportunity to provide comments. We respectfully request that these issues be resolved prior to your committee moving this item forward.

STATEMENT OF WENDSLER NOSIE, SR., TRIBAL CHAIRMAN, SAN CARLOS APACHE TRIBE, SAN CARLOS, AZ, ON S. 409

My name is Wendsler Nosie Sr. I am Chairman of the San Carlos Apache Tribe. Thank you for the opportunity to submit testimony to the Subcommittee on Public Lands and Forests concerning the Southeast Arizona Land Exchange and Conservation Act of 2009 (S. 409).

I previously testified before U.S. House Natural Resources Committee, Subcommittee on National Parks, Forests and Public Lands concerning the Southeast Arizona. Land Exchange and Conservation Act of 2007 (H.R. 3301). I request that my earlier testimony be made a part of the record here.

I present my testimony as an American, an Arizonan and as an Apache tribal leader. What is done here before this Subcommittee will be judged not only by those of us here today, but also by future generations of Americans, Arizonans and Apaches. It is in that context that I ask the Members of this Subcommittee and the Committee, as the stewards of our great lands, to consider my testimony.

In considering S. 409, 1 respectfully request that you question why there is such pressure to rush this bill through this Committee. S. 409 is a bill for a special interest, Resolution Copper Mining (RCM), a foreign owned, limited liability corporation

owned by Rio Tinto of the United Kingdom and BHP-Billiton of Australia. Through S. 409. RCM seeks to obtain title to a unique portion of the Tonto National Forest which was permanently withdrawn from mining a half century ago. While RCM touts job creation, there has been no credible cost benefit or other analysis of potential environmental impacts. RCM would be able to mine copper without any of the permitting, water quality requirements, cultural protections, or financial assurances required under the recently proposed Hardrock Mining and Reclamation Act of 2009. As a limited liability corporation, RCM could simply walk away from hundreds of millions, if not billions, of dollars in environmental and infrastructure damages. RCM will also benefit from a $7 billion bailout by avoiding royalties—a windfall at the expense of the American public. Most alarming is that RCM's proposed mine would certainly desecrate sites—Apache Leap, Gaan Canyon and Oak Flat, which represent key elements of the Apache religion. For these reasons, the San Carlos Apache Tribe has joined with other Tribes (Inter Tribal Council of Arizona, Jicarilla Apache Nation of New Mexico and others), mineworkers, residents of Superior, Miami, and Globe, who oppose this potential environmental disaster, and conservationists to oppose this bill. Our specific concerns follow.

RCM plans to utilize block and cave mining, a process that operates underground and involves the controlled collapse of ore from under its own weight into chutes or draw points using gravity. According to a recent study by Steve Blodgett (2002) which examined the subsidence impacts of the Molycorp Molybdenum Mine in Questa, New Mexico, "unintended impacts can occur for many years after the completion of mining. No evidence was found that subsidence effects at underground hardrock mines using block caving can be managed or mitigated short of not mining." Further, "no historic or existing underground hardrock mines have ever reclaimed andlor revegetated subsidence areas." Clearly, this type of block and cave mining in this location does not make sense other than for the self-interest of RCM.

S. 409 CIRCUMVENTS EXISTING LAW AND PROVIDES NO FINANCIAL ASSURANCES AGAINST FUTURE ENVIRONMENTAL CATASTROPHES

By engaging in a legislative land exchange at this time, RCM seeks to circumvent existing federal law and to avoid the consequences of future federal legislation. S. 409 would bypass the "hard look" required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA). S. 409 pays lip service to NEPA, but only after the exchange is complete. Section 5(c) of S. 409 requires the Secretary of Agriculture to undertake an environmental assessment only after the land exchange has occurred, and then only if RCM would require the use of additional federal land beyond what S. 409 already gives them.

Without going into detail, S. 409 also circumvents other important environmental and cultural resource protections afforded by the Federal Water Pollution Control Act, commonly known as the Clean Water Act, 33 U.S.C. § 1251 et seq.(CWA), the National Historic Preservation Act, 16 U.S.C. § 470 et seq. (NI-IPA), the Endangered Species Act, 16 U.S.C. § 1531 et seq. (ESA), the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq. (NAGPRA), the Archaeological Resources Protection Act, 16 U.S.C. § 470aa et seq. (ARPA), and the American Indian Religious Freedom Act 42 U.S.C. § 1996 et seq. (AlRFA). By circumventing the law, this is tantamount to slamming the barn door after the horse has escaped.

NEPA REVIEW MUST OCCUR BEFORE THE EXCHANGE, NOT AFTER

NEPA review must occur before the decision is made as to whether to authorize the exchange is completed for two critically important reasons. First, RCM's website admits that its mining methodology will cause significant land subsidence. The extent of the potential subsidence is unknown because RCM, for all of its claims of transparency, has not explained nor convinced with any degree of credibility how such a mining operation can avoid destruction of Oak Flat, Apache Leap and Gaan Canyon. The reason is that it can't.

Transparency requires that the critical fact of subsidence be examined in the NEPA before a decision is made about whether the land exchange would occur. Given where the mining companies intend to mine, it is virtual certainty that it would cause subsidence of significant natural geographic features which would affect the current Oak Flats Campground and the butte commonly known as Apache Leap. Indeed, the subsidence caused by RCM's proposed mining activities could also affect a national highway, US 60. NEPA review, if credibly conducted, before any decision to exchange the land is made, would provide the interdisciplinary analysis critical for making an informed decision. It would provide environmental information, if credibly conducted, about the consequences which are likely to occur from the proposed mining activities.

Second, an administrative mine permitting process exists in which the Secretary of Agriculture would be required to determine the effects of RCM's proposed mining activities on groundwater and surface water resources and water quality. RCM has no legal water rights necessary to develop and operate the mine being proposed or to process ore. Instead, RCM has been less then transparent in telling the public where it intends to secure the water necessary to operate its mine. RCM does tell us that the proposed mine will require 20,000 acre feet per annum. That is approximately one-thirds of the amount of water that sustains the City of Tempe for one whole year; a city with a population of approximately 167,000 people. Based upon the process suggested by RCM to remove the metals from the ore, it is more likely that 40,000 to 50,000 acre feet of water per year would be needed to mine and process the ore. RCM has not produced a credible rendering of where it intends to secure that massive quantity of water. Arizona does not have uncommitted water supplies to meet the minimum needs of this proposed mine.

So where will RCM get this water? Historically, mines just drill wells that are deeper than their surrounding neighbors' wells. Such deep water wells dry up neighboring wells, de-water surface waters and impact the entire region's water supply. As the members of this Subcommittee are aware, water is a critical resource in the State of Arizona. Only a complete NEPA review before the decision on whether to proceed with the land exchange is made would provide answers to the critical issues surrounding Central Eastern Arizona's water resources and the impact of the proposed Resolution Copper Mine.

The transfer and protection of riparian areas along the San Pedro River provided by S. 409, while desirable, are not by any stretch of the imagination acceptable tradeoffs to the destruction, pollution and other adverse effects of this proposal. Mines pollute groundwater and surface water. Acid and heavy metal mine drainage leaking into groundwater and surface waters are a common result of copper mining. Mines pollute surface water and groundwater with toxins and carcinogens, requiring more expensive surface reclamation and long-term water treatment. RCM is supposedly dewatering an old mining shaft that has flooded. The water in that shaft is contaminated and loaded with heavy metals. In order for that treated water to be reclaimed and re-used, it has to be diluted with 10 parts of Central Arizona Project water to each part of treated water prior to being transported to New Magma Irrigation District for use on crops.

Then there is the issue of mine tailings. The ore body is estimated by RCM to consist of "1.34 billion tons, containing 1.51 percent copper and 0.040 percent molybdenum." What is going to happen to the tailings from this mining operation? RCM neglects to inform on this issue. This "fast-track" land exchange without meaningful NEPA review will not answer this question and a host of others until it is too late.

S. 409 NEATLY AVOIDS CRITICAL LEGISLATION PROPOSED BY SENATOR BINGAMAN

We all understand that mines are necessary for steel, cables, cars, computers, and other needs of an industrial economy. Any mining must be carried out responsibly, but that is not what is proposed here using the highly destructive block and cave mining method. Senator Bingaman has introduced the Hardrock Mining and Reclamation Act of 2009 (S. 796), which would establish substantial reforms to the 1872 Mining Law. This bill would establish a permitting process, protections for water quality and cultural resources, and financial assurances. However, not only would S. 409 circumvent existing law, but the exchange would aviod the important reforms provided by the proposed Hardrock Mining and Reclamation Act.

We all have to ask ourselves how S. 409 will provide assurances that a future environmental catastrophe will be remediated. What if subsidence causes Highway 60 or the Queen Creek Tunnel to collapse? A few weeks ago, Arizona Governor Brewer executed a settlement agreement with bankrupt mining company, ASARCO. That agreement does not begin to solve the substantial, long-term costs of environmental damage. Neither does this bill—there are no financial assurances to address any potential environmental costs in S. 409. RCM, as a limited liability company not required to post any cash bond for mine cleanup, could "walk" away from hundreds of millions of dollars in cleanup costs if S. 409 passes.

S. 409 also attempts to avoid mining royalties—revenue to the American people and upon which this great county depends. Where the Hardrock Mining and Reclamation Act of 2009 would impose a royalty upon mine operators, RCM avoids that royalty under S. 409. That royalty, if calculated at the 8% royalty in HR 2509 (the House version of the 1872 Mining Law reform legislation), would result in a give away to two foreign mining companies of in excess of $7 billion dollars based upon RCM's own calculation of 1.34 billion tons of ore at a modest price of copper of $2.00 per pound and molybdenum at $10.00 per pound. The billions of dollars which RCM

and its foreign corporate parents would realize in royalty and environmental compliance avoidance by the hasty and premature passage of S. 409 mentioned here are staggering.

UNDER S. 409, 5% OF TONTO NATIONAL FOREST WILL BE CONTROLLED BY CHINA

You should also consider that 9% of Rio Tinto, RCM's controlling partner, is currently held by China, by and through its state-controlled Aluminum Corporation of China. known as Chinalco. If the exchange goes through, China will thus end up holding a 4.5% interest in our Tonto National Forest without paying for it. A legislative transfer of land in essence to a foreign government as presented by S. 409 is offensive to us and to many of the American people.

NO SIGNIFICANT JOB INCREASE UNTIL 2020

We all understrnd the necessity of developing new, well-paying jobs in Central Eastern Arizona region. New jobs will bring concomitant economic benefits in the for of tax revenues and even wages to members of the San Carlos Apache Tribe. However, those jobs are needed now. RCM admits that full employment will not occur until 2020 or later. And, any retirement benefit potential for those workers may be completed negated by the cyclical effects on mining and resultant job layoffs.

RCM currently employs 70 people with the employment estimate rising to only 200 employees by 2014. Those same jobs will continue to exist through 2014 even without the passage of S. 409 at this date. The administrative mine permitting process can go forward and answer the critical questions that the legislative land exchange process would circumvent. The RCM jobs will still be there. If RCM were required to use through the administrative mine peiiiiitting process, the American people, Arizonans and Native Americans would be afforded a proper means of evaluating the benefits and substantial liabilities of the proposed mine. By contrast, S. 409 presents a win-win situation solely for the benefit of a single foreign owned special interest, while the American people and their descendants would derive little benefit and great liabilities.

S. 409 DESTROYS RELIGIOUS SITES

I devoted a substantial part of my last testimony before the House Subcommittee in 2007 on H.R. 3301 to the cultural, spiritual, religious and historical significance to the Apache and Native American people of the lands to be exchanged. I will not repeat that testimony here, but I would be remiss if I did not mention these concerns in the context of our religion, because religion is at stake here. The difference in this new bill is that while there is an exchange of riparian areas along the San Pedro River, we lose three sacred, religious sites. Moreover, this bill took out the conservation easement that would have provided some minimal protection to Apache Leap. And even that was questionable since the mine itself still would pose a serious threat to the escarpment that no amount of promises will resolve.

Apache spiritual beings, our Gaan, exist within the three sacred sites of Oak Flat, Gaan Canyon and Apache Leap affected by S. 409. These sites become RCM property and subject to its proposed mine Yet, to Apache, the Gaan live and breathe in those sites. The Gaan are the very foundation of our religion; they are our creators, our saints, our saviors, our holy spirits. Imagine if this same type of mine as proposed by RCM lay 7,000 feet beneath the National Cathedral here in. Washington, D.C. Imagine further that the mine was affected by a major subsidence, one that shook and swallowed the National Cathedral or other temples and sacred places of other religions. Everyone would be outraged. Every person of every faith would fight to their last breath to prevent that mine from happening. Every American understands that the desecration of any one religion affects all religions, and that such an act even threatens the free exercise protections afforded under the First Amendment of the Constitution.

A member of the other chamber recently confronted me when discussing this legislation asking, what has Apache religion done for my people's alcoholism? How will our religion feed our people? HMI/ will our religion deal with the social ills faced by our people? How will our religion help our elders? These questions astounded and perplexed me and, of course, they are completely unrelated to the bill at hand. If I thought that this bill would rid Native American peoples of the disease of alcoholism, alleviate hunger or social ills, or help our elders, I would not be testifying against it. Instead, the issue is how can America stand by and allow RCM's mine to destroy such key parts of our religion—Apache Leap, Gaan Canyon and Oak Flat. Without such foundational underpinnings, our children will lose the benefit of our Gaan, our beliefs, our spirituality, our religion, our very being.

In retrospect, however, the religious significance of these lands and what this body does with this legislation is important not just to Apache religion, but to future generations of Apaches, to other Native Americans and to all Americans. Whatever supreme being we worship, whatever tributes we pay to our ancestors, we all have the obligation not to desecrate our religions or the future of our descendants.

HARM TO APACHE LEAP

While this version of the bill keeps Apache Leap in public ownership, it does not provide adequate protection for this important geological formation. The first issue is the likely subsidence and possible earth fissures that will occur as a result of mining activity in the area.

While SECTION 4 (d) (1) indicates that Resolution Copper Company will surrender rights to mine Apache Leap, it goes on to state in 4(d) (2) that mining activities will be allowed. This section reads:

> Nothing in this Act prohibits Resolution Copper from using any existing mining claim held by Resolution Copper on Apache Leap, or from retaining any right held by Resolution Copper to the parcel described in subsection (c)(1)(G), to carry out any underground activities under Apache Leap in a manner that the Secretary determines will not adversely impact the surface of Apache Leap (including drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information) that do not involve commercial mineral extraction under Apache Leap.

SECTION 8 of S.409 is titled APACHE LEAP PROTECTION AND MANAGEMENT. It contains language about management of Apache Leap and about "permanent protection" of its cultural, historic, natural, and other values. This management plan for Apache Leap is not part of the overall mining plans however and therefore its value in protecting the land is questionable. It also can place no restrictions on mining as is indicated in subsection (c) which states:

> MINING ACTIVITIES—Nothing in this section imposes any restriction on any exploration or mining activity carried out by Resolution Copper outside of Apache Leap after the date of enactment of this Act.

It is strains credulity for anyone to believe that the mining of the nearby Oak Flat parcel and the main ore body lying purportedly between Oak Flat and Apache Leap will not result in the collapse of at least a portion of Apache Leap or cause substantial subsidence in the area, especially with the quantity of ore to be removed and the method of mining—block cave—indicated by RCM. If mining can't be affected by the protection of Apache Leap, what good are these protections if it is determined that it will destroy this area. How will any potential impacts be monitored? How will they be mitigated, if mitigation is even possible? This conjures up the assurances that the financial sector made to regulators and to the nation about subprime mortgages and exotic financial instruments. They were destined to fail. So too here. The risks are simply too great to destroy both surface natural resources and the water and other natural and archeological resources to permit this type of mining in this location.

S. 409 IS IRRESPONSIBLE DEVELOPMENT

The results of S. 409 are to us are not prudent and would lead to irresponsible development. In the words of Theodore Roosevelt: "To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them." Theodore Roosevelt was a champion of Edmund Burke's ideal that a moral partnership exists between the living, the dead and those to be born. That view helped instruct his passion for conserving America's natural resources. That view is also parallels the Apache way of life. We should all honor this vision.

There are those who claim that our coalition who oppose this land exchange are radical environmentalists. We are not opposing business for the sake of doing so. As I stated at the beginning of my testimony, this is instead about our future generations of Americans, Arizonans and Apaches. Theodore Roosevelt also observed that: "Conservation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful means, the generations that come after us." That sentiment is reflected in the San Carlos Apache Tribe's opposition to this legislative land exchange. That sentiment

is shared by a substantial coalition of Americans. This proposed mine would waste natural resources and would rob generations yet to come. It should not be permitted to happen by those entrusted with the solemn responsibilities for Native Americans in the United States.

CONCLUSION

In summary, the language of S. 409 and its companion in the House, as currently drafted, do not adequately address: 1) the appraisal of the Federal parcel to assure the parity of the land exchange; 2) the weakness of Federal and Arizona's current statutes or laws governing copper mining and reclamation protocols; 3) the lack of an extensive mining plan, reclamation protocols, or bonding assurances; 4) groundwater and surface water issues; 5) subsidence issues; 6) Federal environmental and cultural protections afforded public lands are no longer applicable once the land is conveyed; 7) the desecration of key elements of our religion, and 8) the clear threat of destruction to Oak Flat, Gaan Canyon and to Apache Leap that would result from the block and cave mining method RCM seeks to utilize because it is cheaper than older methods that have less cataclysmic impacts on the Earth.

Earlier this year, in letters to the Natural Resources Committee in the U.S. House of Representatives, the President of the Inter Tribal Council of Arizona said——

> As we have stated in earlier testimony on the RT/BHP [Rio Tinto & BHP Billiton, Ltd.] mining proposal, the ITCA is not opposed to mining in general. We are, however, strongly opposed to block and cave raining in this location—the heart of an area rich in historical, archeological, cultural, spiritual, and religious significance to Arizona Native Americans. Block and cave mining here would collapse the surface of the Earth on public lands, endanger the historic terrain at Apache Leap, Oak Flat, and Gaan Canyon, and endanger the waters of Queen Creek, Queen Creek Canyon, and springs in the surrounding countryside for miles around. (emphasis added).

In 1871, the United States established our Reservation. Within just a few years, some of the most productive lands within the boundaries of the Reservation were taken away by the United States and conveyed to settlers and miners for their sole benefit. That was repeated 5 more times over the years. Our burial sites, living areas, and farmlands on our Reservation were flooded to make way for a federal dam of benefit to others. It is in part in this historical context that we assess the mining proposal adjacent to Oak Flat that is bounded on one side by Can bi koh ("Crowndancers Canyon"—Devil's Canyon) and on the other side by Gan daszin (Crowndancers Standing"—Queen Creek Canyon) and Apache Leap where many Apaches died rather than be captured, areas of major importance to our people culturally, spiritually, religiously.

With the above events in mind, this type of mining in this location is not only offensive to us, it is indefensible to us, particularly where it is facilitated and enabled by institutions of government or their successors that participated in those conveyances of Apache lands referenced above to others in our past. President Pattea of the Fort McDowell Yavapai Nation stated in his testimony to your subcommittee, "I cannot express in words how deeply felt this land is to the Yavapai—it simply transcends words." His words convey eloquently how our people also feel about this land.

Mr. Chairman—members of the subcommittee, on behalf of the San Carlos Apache People, thank you for the opportunity to express our deep concerns regarding this proposed legislation. I ask that this Subcommittee not aid and abet these two foreign mining conglomerates in exploiting public resources primarily for their benefit and to such great detriment of our people, culture, and religion. It is our hope that you will stand with us and oppose S. 409.

STATEMENT OF MICHAEL O. HING, MAYOR, TOWN OF SUPERIOR, SUPERIOR, AZ, ON S. 409

My name is Michael Hing, I am the Mayor of Superior, Arizona. Superior is a rural town in Pinal County located 65 miles east of Phoenix. I would like to address the committee in support of the Southeast Arizona Land Exchange and Conservation Act of 2009.

I was elected as the Mayor of Superior seven years ago. Upon being sworn in as Mayor I was briefed on the possibility of the mine reopening. The reopening of the mine excited me as I knew that it would be a positive economic driver for our community. I am disappointed that over the last seven years the land exchange has still not been approved by Congress. During my tenure as Mayor there has always been

overwhelming support for the land exchange and for the mine to reopen from our residents.

This spring I along with three other candidates were elected to a four year term on our Town Council in Superior. The four of us all ran with a platform of creating a diversified economy for our community while supporting our traditional economic mining base. The four of us won the election with an overwhelming majority. The voters were well aware that each of us supports the passage of the land exchange bill.

Although the opposition to this bill continues to make claims that the locals are against this exchange and the overall project, I come to you with the voice of the majority. The constituents in our community want the Land Exchange to pass so they may continue to prosper. The residents of my community want ample opportunities to live and work in Superior. They are tired of having to commute into the Phoenix metro area and other nearby towns to provide for their families.

Since 1982 Superior has lacked a stable employment base and that has taken a toll on each of our residents and our community as a whole. Families who have lived in Superior for generations are now looking to move closer to their current jobs largely due to the rising cost of fuel. This exodus of residents out of our community hurts our municipal and school budget as those funds come to us based on population and property tax.

I am a third generation native of Superior, I am aware of the cyclical booms and busts of the mining industry. As the Mayor l am excited to endorse and support Resolution Copper because of their commitment to the community, education, the environment and especially to the economic diversification of Superior and the surrounding areas.

Each year Resolution Copper provides countless dollars to charitable groups throughout Superior and the Copper Triangle area. Those charitable dollars have provided many things including lap top computers for honor roll students, an inflatable screen for community movie nights; the list goes on and on.

They are committed to the education of our local students. They have provided educational field trips, funding for our local elementary school nature club, scholarships to graduating seniors. They are involved with the local schools districts and job training programs. Through their commitment to communication and partnership efforts they are developing curriculum programs in our schools that will give local students a hand up as they graduate High School and enter college and the workforce.

They are committed to the environment. If you saw pictures of our mountain bluffs to the north and east of Superior five years ago you would have seen many eyesores on the horizon. Those eyesores were left from the decades of mining in our community. If you were to compare the pictures from then to now you would not believe the reclamation that has been completed. Native trees and shrubs are starting to grow on areas that once were piles of slag. Years of mining equipment in the area has been hauled off for recycling, and I must say that we are pleased they did keep and remodel many of the structures that were important to our community. Resolution spent over $50 million to rehabilitate these 1500 acres.

In addition to these local and visible commitments to the environment Resolution has also taken forward thinking approaches to water management and water procurement strategies. Resolution has close working partnerships with the Arizona Trail Association, Audubon Arizona, Boyce Thompson Arboretum and the Nature Conservancy.

The land exchange bill will transfer to the citizens of the United States thousands of acres of conservation properties. These properties offer permanent protection to endangered species, preservation of key riparian habitats, and conservation of some of Arizona's most valuable lands.

In a historic partnership the Town of Superior and Resolution Copper have entered into a landmark agreement that will provide funds to enhance our community. The funds will be given to the town to use for improving the quality of life for our residents and enhancing our business community. They have assisted our community in planning and strategizing for economic diversification. Through their support and commitment we have been able to bring high speed internet to our community; five years ago that was an expensive luxury for residents and business owners. This year we will designate a trail system that will interpret the history of Superior and create a tourist attraction. Passage of the land exchange will also allow Superior to acquire lands that are adjacent to our town limits.

The Southeast Arizona Land Exchange is a good deal not only for Superior, but also for the State of Arizona and our great nation. Every detail of this project and its total impact has been examined, researched, studied, strategized and debated in depth. I respectfully come to you honorable Congressmen and women to pass the

Southeast Arizona Land Exchange Bill. This bill provides you an excellent opportunity to provide an ideal balance of job creation, environmental protection and economic stability. It is a no-cost stimulus plan that will truly benefit everyone.

I appreciate your consideration of this very important bill.

STATEMENT OF VICKI SEARLES, EXECUTIVE DIRECTOR, WALLOWA COUNTY CHAMBER OF COMMERCE, ENTERPRISE, OR

Wallowa County Chamber of Commerce is a 501©6 non-profit organization established in 1978. The mission of the Chamber is to promote business development and tourism in the county. The Chamber is governed by a Board of Directors representing multiple industries and communities from across the County. The Chamber's brand is built around the concept, Wallowa County—It's more than a pretty place, it's a way of living! First, and always, the citizens of this beautiful region in Northeast Oregon truly value—culture, heritage, and a true sense of community.

The Maxville Heritage Interpretive Program is a prime example of these ideals, The hidden history in the community of Maxville tells a story of the people who lived and worked in the remote, old camp-styled communities in the Wallowa Mountain of Northeast Oregon. Logging, and the development of the railroad into the Wallowas, is the rich history of pioneer settlement. This story reveals how our towns either grew or were vacated and left to be vaguely remembered by only a few old-time residents and family members. The fallacy of these memories is that the early pioneers were always Europeans. The Maxville Heritage Interpretive Program re-tells an important segment of our history and sheds light on the multicultural pioneers of the region. If not for this program this history could be lost forever.

The Center provides a unique opportunity for us to restore the facts of our history and recognize the importance of our multicultural origin. The proposed conveyance of the Wallowa Compound to the City of Wallowa will provide a viable means to achieve this cause. The Center would be housed in the compound and will provide interpretive information, exhibits, and a place for people to re-learn history.

How will this proposal benefit the local economy and the public at large? Life has changed and Wallowa County is a much different place today. Logging is no longer the industry it once was; in fact, logging has been reduced to a fragment of its historic levels. All of our mills are closed. The Wallowa Forest Products Mill, located in the City of Wallowa, was the last mill to close in the fall of 2007. The results of such impacts have left Wallowa County consistently ranked at or near the bottom in statewide assessments, having unemployment rates as high as 19% during winter months. The April 2009 unemployment rate is currently 15.4%. The Interpretive Center provides new capacity to support the area's economic recovery.

A focus on tourism has picked up some slack in the transition of this economy and it has provided a semi-reprieve to the future vision of the region. Our tourism product is not "big box" attractions, such as ski resorts and metro-events. As seen through the eyes of the visitor, we are the gateway to the Eagle Cap Wilderness and the Hells Canyon Recreation Area; rich in heritage, culture and natural resources. This is our brand.

An example of how successful heritage programs and interpretive centers are to this region is the Nez Perce Interpretive Center. Visitors come from all around the world to seek information on the Nez Perce. We believe the Maxville Heritage Interpretive Center will be sought after just as rigorously.

To summarize our support of the Maxcille Heritage Interpretive Center and the conveyance of the Wallowa Compound: it is clear that the Center will add value to our economy and provide a unique visitor experience. The Center will bring dollars to the rural economy of Wallowa Oregon, as well as adjacent communities, and the Center will add to the quality experience of visitors coming to NE Oregon.

The Wallowa County Chamber of Commerce encourages the Public Lands and Forest Sub-Committee to support the conveyance of the Wallowa Compound for the purpose of providing a site for the Maxville Heritage Interpretive Center.

PREPARED STATEMENT OF BRIAN TAYLOR, DEAN SCHOOL OF OCEAN AND EARTH SCIENCE AND TECHNOLOGY, UNIVERSITY OF HAWAII AT MANOA

Mr. Chairman and Members of the Subcommittee, my name is Brian Taylor and I am the Dean of the School of Ocean and Earth Science and Technology at the University of Hawaii at Manoa. Thank you for this opportunity to provide testimony on Senate Bill 782, which is "to provide for the establishment of the National Volcano Early Warning and Monitoring System" (NVEWS). Our School has strong current and historical links to the USGS Volcano Hazard Program via the Hawaii Vol-

cano Observatory and research programs in Hawaii, Alaska, Washington and Oregon, Guam and the Commonwealth of the Northern Mariana Islands. Our scientists have worked together with USGS colleagues on advisory committees that drafted parts of the proposed system.

THE NEED FOR THE "NVEWS" PLAN

The United States faces threats from volcanic hazards on an annual basis. The ongoing eruption of Kilauea, Hawaii, which began on January 3, 1983 and continues today, after 26 years, demonstrates the long duration of some eruptions with respect to most other natural hazards. Relative to earthquakes and other natural hazards, eruptions also impact over large areas (sometimes in excess of 10,000 square miles) and typically a number of different types of hazards will result from a single volcanic eruption. Perhaps more importantly for emergency managers and Government officials, past eruptions have often been preceded by recognizable warning signs such as ground movement and earthquakes. These warning signs often give the opportunity to act promptly and reduce risk to the population but they also introduce higher levels of responsibility and public expectation of the officials; few expect accurate predictions or forecasts for earthquakes or landslides but during volcanic crises there is intense pressure from the media and the public.

The recent implementation of real-time 24/7 volcanic monitoring in this country has lagged behind other first world countries, such as Italy, Japan and New Zealand, that possess a similar level of exposure to volcanic threat. In many countries 24/7 watches have been instigated at all potentially active and active volcanoes. The current US program is predicated to "response mode" and currently 24/7 watches operate at US observatories only during an ongoing crisis. The inability to predict the onset of the 2003 Anatahan eruption in the Commonwealth of the Northern Mariana Islands, or the 2008 Okmok eruption in Alaska, which followed several hours of precursory seismic activity, demonstrates the need to remedy this situation.

COMMENTS ON THE ELEMENTS OF NVEWS

Reducing community vulnerability: Volcanic crises are complex social events where the weak point is often not within any organization, but the links between different Federal, State and local organizations and the interactions of these organizations and the public. For this reason, effective warning systems must also facilitate effective response of vulnerable populations. Pre-eruption education campaigns at active volcanoes are becoming increasingly sophisticated in recognizing the complex ways in which societies work, and are switching away from simple awareness programs to funding the processes that lead to better prepared, more resourceful communities.

Enhancing monitoring infrastructure:—A significant number of our active volcanoes are under-monitored by world standards. Addressing this issue will lead to an improvement in warning or "reaction time" e.g., the time period between the beginning of volcanic seismicity associated with magma moving underground and the surface eruption of the magma.

24/7 watch office:—Data from the Smithsonian Institution shows that once an eruption begins there is often less than 24 hours before it reaches a dangerous climax. Real-time response is a feature of all the most modern warning systems.

National data center:—This component would permit the free timely exchange of data before and during volcanic crises in the United States.

External grants program:—The National Science Foundation funds basic research by non-federal science institutions in volcanic processes. The application of this knowledge to applied and specific volcanic problems is the focus of this component of NVEWS.

THE PERSPECTIVE FOR HAWAII

A unique aspect with regard to Hawaii is the growth of volcano-tourism as a strong underpinning to the State's economy. The growth of adventure tourism on active volcanoes is a very recent phenomenon, which is uncommon for most other hazard events. Our two most active volcanoes, Kilauea and Mauna Loa, like Vesuvius and Etna in Italy and Ruapehu and Tongariro in New Zealand, are associated with a national park that is a focus for volcano tourism. Hawai'i Volcanoes National Park (HVNP), established in 1916, includes large portions of Kilauea and Mauna Loa (including the summits of both volcanoes). HVNP recorded 2.3 million visitors in 2003. It has a strong volcanology focus; for example, the most popular walking trail is through the deposits of the most recent high fountaining eruption from the summit vents of Kilauea.

Activity in 2008-2009 has shown that a delicate balance exists between the dependence of local communities on tourist revenues and civil protection of residents and visitors. Even very small eruptions in populated or frequently visited areas create significant issues, which are compounded by uncertainties in external factors such as weather patterns, which dictate the dispersal pattern of volcanic gas and ash into the community.

In Hawai'i, both positive (tourism, community resilience) and negative (health, infrastructural damage) impacts have increased in intensity with time, due to growth in the resident population and visitor numbers. For example, the entire Hawaii Volcanoes National Park has been evacuated twice during the new Kilauea summit eruption that began in March 2008, temporarily displacing more than 2000 people.

Management techniques have also evolved that now reflect greater focus on public safety and institutional liability. In 2008-2009, there was and is a far greater dependence on individual judgment to deal with the chronic health and economic problems related to vog (volcanic smog). In this, there is an increased need for timely and accurate information from observatory scientists.

NVEWS offers the potential to finely manage the process of volcano decision-making, minimizing negative social impacts and enhancing benefits to the community.

CONCLUSION

NVEWS offers an outstanding opportunity to enhance the connection between volcanic monitoring and research in the United States of America with the efforts of response officials and emergency managers. It is the most coherent and strategic advance yet proposed to minimize the impact of volcanic activity on our communities.

Mister Chairman, this ends my remarks.

Phoenix, Arizona, June 16, 2009.

Hon. RON WYDEN,
Chairman, Subcommittee on Public Lands & Forests, Washington, DC.

DEAR SENATOR WYDEN, Following please find concerns pertaining to SB 409, The Southeast Arizona Land Exchange and Conservation Act of 2009. In addition to the general deficiencies of the bill pertaining to overall environmental, cultural, and recreational activities, more specifically rock climbing as voiced by the Queen Creek Coalition, the Access Fund, and others, other more specific concerns are:

1. An overly broad definition of Apache Leap as a conservation and cultural area such that recreational activities, specifically rock climbing, may never be allowed. In fact, the legislation suggests and details "permanent" and/or "seasonal" closures which may preclude any recreational activities at all based on a TBD management plan for the area. Precedence for closing cultural areas to rock climbing is evident at Cave Rock on the shores of Lake Tahoe in Nevada. There are concerns that Apache Leap may be closed to this form of recreation if the bill goes through as written.
2. The retention of mining rights on portions, if not all, of the Leap. The mining company retains rights that necessitate the disturbance of the surface of "withdrawn" lands into perpetuity. This seems to be counter to the intent of the bill.
3. The lack of perpetual and reasonable public access to Apache Leap from any direction. There are no provisions for any such reasonable public access to the Leap from the west, east, etc., even though the legislation suggests it will be set aside as compensation for the recreational resource lost at and near Oak Flat. If no access, then no real compensation for other lands lost.
4. The lack of a clear definition of roads, parking, and trailheads to Apache Leap. Reasonable access and amenities such as at the BLM managed Shelf Road recreational area north of Canon City in Colorado may be appropriate.
5. "Access" to an area is not defined in the legislation and this is very important for obvious reasons. Most general public recreational users would consider 2 WD, well culverted, low % grade, gravel covered roads as minimums for reasonable access. This bill provides no such definition to ensure the public good, perpetual access. While some may argue that such specificity of definition for "access" for recreational use is unnecessary in the bill, without such a definition true perpetual public "access" becomes very unlikely due to lack of a clear understanding of the term, appropriate funding, etc.
6. Potentially insufficient funding in general for infrastructure such as roads, road maintenance, campgrounds, trails, etc., to "The Pond," The

"Inconceivables," "Chill Hill" etc., at all areas. Specifically, the bill does not address any of the needs for the implied items needed to provide reasonable access to Apache Leap.

Thank you and Sincerely,

FRED AMRHEIN.

STATEMENT OF MARY OBERST, FIRST LADY OF OREGON, OREGON ADVISOR TO THE NATIONAL TRUST, ON S. 1139

My name is Mary Oberst. I am the First Lady of Oregon and an Oregon advisor to the National Trust for Historic Preservation.

I call your favorable attention to S. 1139, "A bill to require the Secretary of Agriculture to enter into a property conveyance with the city of Wallowa, Oregon, and for other purposes."

The property conveyance will allow the City of Wallowa to use Wallowa Compound's historic structures (the "Structures") for a historic cultural center. Specifically, the Structures will house the Maxville Heritage Interpretive Center.

The tiny locale of Maxville was an Oregon anomaly: a community of African-America loggers, in rural NE Oregon, in the early part of the last century. The Maxville story was nearly lost until Ms. Gwendolyn Trice, of La Grande, Oregon, researched and collected critical oral first-hand accounts of this region and of the loggers. Ms. Trice has raised funds and donations to launch a professional website for the proposed interpretive center. Her groundwork helped persuade Oregon Public Broadcasting to produce a compelling documentary, based on Ms. Trice's research, entitled The Logger's Daughter.

The community of Wallowa has endorsed the Maxville Heritage Interpretive Center's mission to collect, preserve, and interpret the rich history of the former town of Maxville. Tourism is a large part of Oregon's economy, and heritage tourism, offering authentic experiences and education, tops the list. The Structures will be dedicated to providing interpretation of and education about this unique piece of Oregon history. Additionally, archeology field-school programs under development with local and regional universities will provide educational opportunities for college students who are interested in the often-hidden multicultural history of Oregon.

Your favorable vote on S. 1139 will help us preserve a vital and intriguing piece of multicultural history, and will provide the City of Wallowa with a tourism magnet unlike any other.

Thank you for your consideration.

THE NATURE CONSERVANCY
Phoenix, AZ, June 12, 2009.

Senate Committee on Energy and Natural Resources,
ATTN: David Brooks & Frank Gladics,
Washington, DC.

Re: S. 409 "Southeast Arizona Land Exchange and Conservation Act of 2009"

DEAR MR. BROOKS & MR. GLADICS: Thank you for the opportunity to comment on S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009 (hereinafter "bill"). At the present time, The Nature Conservancy has no formal position on this legislation. Instead, this letter is meant to outline the Conservancy's concerns and questions on the bill and also bring your attention to the important conservation value of "the approximately 3,073 acres of land located in Pinal County, Arizona", known as "Seven B", as part of the federal acquisition for conservation purposes.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses, and especially in the developing world, to address sustained human well-being.

In Arizona, The Nature Conservancy has created a dozen nature preserves and developed new funding sources for conservation throughout the state. One main focus of our work has been to protect one of the last few remaining undammed rivers in the State of Arizona, the San Pedro River. The "Seven B" property contains nearly 7 miles of the lower San Pedro River as well as over 800 acres of ancient intact mesquite bosque representing what is probably the largest oldgrowth mesquite forest remaining in Arizona. As early as 1974, an Arizona Academy of Science report called for preserving the bosque as a scientific and educational natural area, and subsequent analyses by The Nature Conservancy and others have affirmed its conservation value. In addition to the mesquite bosque and river corridor, the Seven B contains an artesian well that has the potential for providing a recovery site for endangered desert fish species. Therefore, we support the federal acquisition of this parcel for conservation purposes.

However, the conservation values of the Seven B property exist only in the context of an ability to maintain the natural functioning of the larger San Pedro River ecosystem. We have concerns which bear on the property's future viability:

(1) The Seven B property is downstream and immediately adjacent to a proposed land development on the San Pedro River by BHP Billiton in and around the Town of San Manuel, Arizona. This upstream and immediately adjacent land is not part of the legislation; however, water use and other effects of a large-scale development would likely impact the ecological integrity of the Seven B and hence its value as a federal acquisition for conservation purposes. Our concerns about these impacts would be minimized if BHP's riparian lands were included in the exchange package, or otherwise permanently set aside from development, and if a fair and reasonable cap on water use in the proposed development were negotiated.

We also would recommend consideration of other general issues related to this bill:

(1) We urge the parties to provide for a fair and transparent appraisal process.

(2) We seek certainty as to the water withdrawals from the activities associated with the bill so as to better understand the potential effects on other conservation areas in the vicinity of Superior. Without these certainties the conservation values and San Pedro Riparian National Conservation Area is threatened as to its viability and Federal tax dollars investment.

To help address our concerns on water withdrawals we have asked Resolution Copper to describe to us their plans for water usage with their proposed activities as part of an open and transparent process to have this information available to concerned parties. We are awaiting that discussion.

(3) We support the inclusion in Sec. 4(e)(1)(B) the ability to provide funding for the management and protection of lands acquired by the federal government by this legislation. We believe this is important for the lands provided to the federal government by this legislation to have an endowment to provide for their management. It is not uncommon to have such a practice in administrative transactions with the federal government.

(4) We would also like to see the language in Sec. 4(e)(1)(A) to be amended to allow for those lands purchased under this mechanism to also be included within the San Pedro Riparian National Conservation Area established by section 101(a) of the Arizona-Idaho Conservation Act of 1988 (16 USC 460xx(a).

We do want to thank Resolution Copper once again for opening a dialogue with BHP Billiton to discuss the future of the adjoining lands; however, the future of those lands is unknown. Therefore, the Conservancy will continue to monitor and reflect on our continuing support of the "Seven B" for federal acquisition for its conservation purposes.

Thank you again for the opportunity for us to discuss our concerns and conservation values associated with the legislation. We do have an open dialogue with Resolution Copper and Members of the Arizona Congressional Delegation. We look forward to continuing to discuss the items outlined in this letter as this important legislation is debated in the U.S. Congress.

Please do not hesitate to contact me if you have any questions.

Sincerely,

PATRICK GRAHAM,
State Director.

STATEMENT OF SANDY BAHR, SIERRA CLUB, GRAND CANYON (ARIZONA) CHAPTER, ON S. 409

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to provide information on S.409, the Southeast Arizona Land Exchange and Conservation Act of 2009. My comments will focus primarily on the problems with the exchange itself and the negative impacts of the mine the proposed exchange will facilitate. I will outline the concerns about this particular bill, why it is bad policy to avoid the National Environmental Policy Act review and analysis process, and also address some of the inherent problems with land exchanges themselves.

LOSS OF OAK FLAT CAMPGROUND

First, I would like to address the loss of the federally protected Oak Flat Picnic and Campground. S.409 will allow Resolution Copper Company (Rio Tinto—55% owner—headquartered in the United Kingdom, and Broken Hill Properties—45% owner—headquartered in Australia), which acquired the old Magma Mine near Superior, Arizona, to privatize Oak Flat Campground as part of the 2,406-acre parcel that will be conveyed should this bill be approved.

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

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

Oak Flat is an important part of our history and also has significant value for native peoples, including for acorn collection and many other cultural and religious ceremonies. The tribes' written and oral testimony outlines their concerns. Because of the environmental significance of Oak Flat, its history of providing a respite for travelers and those seeking relief from the hubbub of the urban environment, the significance of the area for Native American tribes, including, but not limited to the Fort McDowell Yavapai and the San Carlos Apache, and the important recreational opportunities it offers, the Sierra Club is strongly opposed to this land swap and to this specific bill, S.409.

In addition to privatizing this important area, S.409 also rescinds P.L.O. 1229. In Section 13 of the bill, titled "MISCELLANEOUS PROVISIONS," it revokes any public land order that withdraws Federal land (see (a) REVOCATION OF ORDERS). It is disturbing to see this withdrawal of the protection for Oak Flat. Considering all the pressures on our public lands, the important services—watershed, wildlife habitat, etc.—as well as the opportunities and the critical relief from increasing urbanization they provide, it is a bad precedent and a bad message for the Congress to give up—to two foreign mining companies—an area protected by President Eisenhower more than 50 years ago.

THREATS TO DEVIL'S CANYON

Devil's Canyon is located in the Tonto National Forest and on State Trust Lands near the proposed mine, just northeast of the town of Superior. It flows into Mineral Creek, which is a tributary of the Gila River. Devil's Canyon provides important and all too rare riparian habitat in a state where much of our riparian habitat has been degraded or destroyed—most estimates indicate that more than 90 percent has been lost to water diversions, groundwater pumping, and other activities.[1] Devil's Canyon is an area enjoyed by hikers and climbers and those seeking some relief from the heat. Sycamores and Arizona alders thrive on Devil's Canyon's water and also provide valuable habitat for wildlife (see exhibit C—photo of Devil's Canyon).

Considering its proximity to the proposed mine, the depth of the mine and the associated water pumping that will occur to dewater it, the risks of dewatering Devil's Canyon are significant. According the mining company, they will pump billions

[1] Biotic Communities of the Colorado Plateau, http://cpluhna.nau.edu/Biota/riparian—communities.htm

of gallons of water from the shaft.[2] Banking Central Arizona Project water at a remote location, as the company is currently doing, will not protect this important riparian area.

According to Resolution Copper Company (RCC), this mine will need as much as 20,000 acre-feet of water per year.[3] An acre-foot of water is roughly the amount of water a family of four uses in one year, so 20,000 acre-feet is enough water for 20,000 families or 80,000 people for one year. As there is insufficient groundwater to maintain yearly mining operations over the 40 years of the mine's operation, RCC proposes obtaining and storing Central Arizona Project (CAP) water. Has RCC secured any long-term leases of this water? If not, will they? Is this feasible? What if they revert to using groundwater? What will the impact of this be? Considering how important as water is in Arizona, the continued long-term droughts we experience, and the predictions of scientists that we are going to get hotter and drier due to the impacts of climate change, it would be irresponsible to move this bill without a thorough analysis and some strong assurances that the water will be there and will not risk riparian areas or drinking water supplies.

HARM TO APACHE LEAP

While this version of the bill keeps Apache Leap in public ownership, it does not provide adequate protection for this important geological formation. A key issue of concern is the likely subsidence and possible earth fissures that will occur as a result of mining activity in the area.

While SECTION 4 (d) (1) indicates that RCC will surrender rights to mine Apache Leap, it goes on to state in 4 (d) (2) that mining activities will be allowed. This section reads:

> "Nothing in this Act prohibits Resolution Copper from using any existing mining claim held by Resolution Copper on Apache Leap, or from retaining any right held by Resolution Copper to the parcel described in subsection (c)(1)(G), to carry out any underground activities under Apache Leap in a manner that the Secretary determines will not adversely impact the surface of Apache Leap (including drilling or locating any tunnels, shafts, or other facilities relating to mining, monitoring, or collecting geological or hydrological information) that do not involve commercial mineral extraction under Apache Leap."

SECTION 8 of S.409 is titled "APACHE LEAP PROTECTION AND MANAGEMENT." It contains language about management of Apache Leap and about "permanent protection" of its cultural, historic, natural, and other values. This management plan for Apache Leap is not part of the overall mining plans, however, and therefore its value in protecting the land is questionable. It also can place no restrictions on mining as is indicated in subsection (c), which states:

> "MINING ACTIVITIES—Nothing in this section imposes any restriction on any exploration or mining activity carried out by Resolution Copper outside of Apache Leap after the date of enactment of this Act."

It is difficult to believe that the mining around the nearby Oak Flat parcel will not affect Apache Leap or cause subsidence in the area, especially with the quantity of ore to be removed and the method of mining—block cave—indicated by RCC. According to a 2002 report which examined several case histories of block cave mines, "No evidence was found that subsidence effects at underground hardrock mines using block caving can be managed or mitigated short of not mining.[4]

If mining around Apache Leap cannot be affected by the so-called protections of Apache Leap outlined in the bill, then what good are these protections? If it is determined that mining activities are the key threats to Apache Leap and could destroy this area, how does this section help at all? How will any potential impacts be monitored?

RCC must be held accountable for any harm to Apache Leap and must pay damages if this area is significantly affected or destroyed. Provisions should be made for restoring and reclaiming the area if restoration and reclamation is even possible.

Surface disturbance of the area is supposed to be limited to fencing, monitoring wells, signs, etc. These activities have potential to disturb cultural resources. Con-

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[2] "Pinal farms will get reused water from mine," East Valley Tribune, March 14, 2009.

[3] Resolution Copper website, FAQs, under "Our Approach to Water Management," http://www.resolutioncopper.com/res/whoweare/4.html

[4] Subsidence Impacts at the Molycorp Molybdenum Mine Questa, New Mexico Prepared for Amigos Bravos By Steve Blodgett, M.S. Center for Science in Public Participation, February 2002.

sultation with the San Carlos Apache and Fort McDowell Yavapai tribes should occur early and consistently throughout any mining activities to properly ascertain potential impacts on cultural resources and to eliminate or at least minimize those impacts. This consultation is not provided for in this bill or in this section of the bill.

NO MEANINGFUL ENVIRONMENTAL ANALYSIS

S.409 allows RCC to bypass the National Environmental Policy Act (NEPA), as would be required if this land exchange was evaluated through the administrative process. An administrative exchange would require a NEPA Environmental Impact Statement on the exchange itself, including an examination of alternatives, the environmental and cultural impacts, the cumulative impacts (including past and anticipated impacts in the area), and possible mitigation of the impacts. This type of analysis helps the public better evaluate whether they are getting a fair exchange and also evaluate the true environmental impacts of such an exchange. A NEPA analysis can identify a less environmentally harmful alternative as well. It is clear that RCC will benefit enormously from this exchange. It is less clear that the public is getting a fair return on the loss of Oak Flat, the possible damage to Devil's Canyon, and the threats to Apache Leap and Pinto Creek. It should be stated that two major land exchanges involving mining in Arizona—the Ray Mine and the Safford land exchanges, both conducted Environmental Impact Statements prior to consummating the land exchanges.

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

There are key questions outstanding on this proposal, which make it impossible to say the exchange is in the larger public's interest. Where is all the mining waste going to go? What are they going to do with the tailings? Is this a sulfide ore, which is often the case for ore that is below the water table? If it is, how are they going to address the acid mine drainage from the rock dumps? How are they going to process the ore? At one point, RCC suggested using the leach pad at Pinto Valley, but if their estimates on the amount of ore are accurate, they could only process a fraction of the ore at that leach pad, and they have no agreement to process the ore there. Are they going to smelt the ore? If so, where? Clearly there are significant air quality issues associated with smelting, not to mention considerable energy use.

The bill indicates that there is to be an Environmental Impact Statement, but that is a post-exchange study. If done properly and with a solid open public process, an environmental analysis can inform the proposed action. A study after the fact does not allow that, plus there will be no opportunity to choose the no-action alternative or a less environmentally damaging alternative. A less damaging alternative might include mining of a smaller amount of ore that would not cause subsidence, dewater Devil's Canyon, or damage Apache Leap. As this bill is written, we will not know the effects of this proposed mine until after the fact. We will not know until after the deal is done if it is really necessary for the public to give up Oak Flat in the exchange or if they can mine this ore body without it. The study after the fact might make people feel better about the deal, but its value is negligible, at best, as it will not change the outcome.

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

VALUE OF THE LAND AND THE ORE

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

RCC has indicated that this is a large rich ore body. According to the Rio Tinto website, the "inferred resource" of this mine is 1.34 billion tons with a concentration of copper of about 1.51 percent and 0.04 percent Molybdenum.[5] Assuming that the ore body produces about 600,000 tons of copper per year over the 40-year life of the mine as Resolution Copper has indicated, and assuming a value of approximately three dollars per pound, the ore body RCC is seeking to mine would be worth $144 billion. If a Net Smelter Royalty of only three percent was applied for purposes of placing a value on the minerals, RCC should be giving the public $4.32 billion in exchange lands. What they are offering is a tiny fraction of that.

WEAK RECLAMATION REQUIREMENTS

Another concern with the mine is its ultimate reclamation. Once the land exchange is consummated, the State of Arizona will then have oversight of any reclamation on RCC's private lands. Arizona has weak reclamation requirements and has seen the negative impacts of mining for decades. Our state contains over 100,000 abandoned mines and, while there is a fund for addressing abandoned mines, there is little money allocated to it. We have many contaminated sites that are directly attributable to mining, including the Pinal Creek site, east of this proposed mine, and the Iron King Mine, which was recently listed on the federal Superfund National Priority List.

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

INHERENT PROBLEMS WITH LAND EXCHANGES

While land exchanges can be a tool for conservation, it is a limited tool and the pitfalls are many. It should be used very judiciously. Even with an administrative exchange that would include examination of alternatives and would look at the environmental impacts, it is difficult to determine if the public's interest is really being served. Even though the federal land management agencies are required to do thorough reviews and ensure that a trade is in the public interest, there are significant problems. The General Accounting Office (GAO) issued a report in June 2000 where it examined a total of 51 land exchanges, most of which occurred in the west[6]. The GAO auditors found that often the public lands were being undervalued while the private lands were being overvalued, resulting in significant losses to taxpayers. The agency also found that many of these exchanges had questionable public benefit.

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

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

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

[5] Rio Tinto website, "Resolution Copper Mining LLC reports an Inferred Resource of over 1 billion tonnes at its property in Arizona, USA," May 29, 2008, http://www.riotinto.com/media/5157—7821.asp

[6] BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June 2000

> them unique or because the real-estate market is rapidly developing—as was the case in several exchanges we reviewed. Both agencies want to retain land exchanges as a means to acquire land, but in most circumstances, cash-based transactions would be simpler and less costly.

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

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

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

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

One land swap resulted in an ethics violation investigation of Kathleen Clarke, the BLM Director at the time. The proposed San Rafael Swell land exchange would have cost federal taxpayers $100 million because the BLM lands were so undervalued. The Office of Inspector General's Report on the San Rafael Land Exchange found that several BLM employees devalued the public lands and kept information from Congress (Page 23 of Report).

SUMMARY OF CONCERNS ABOUT S.409

S.409 does not represent a land exchange that is in the broader public interest. A large contiguous parcel of public land—2,406 acres—that includes Oak Flat Campground is conveyed to Resolution Copper Company. Approximately 5,566 acres is conveyed to the public, some of it in rather small parcels, but even the larger parcel by the San Pedro is significantly threatened by future nearby development.

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

There is no real environmental analysis or significant public involvement process prior to the exchange. What we have instead is a mining company using its considerable wealth to garner support and curry favor with various interest groups. What will this do to Devil's Canyon? Will it destroy Apache Leap? Where will the ore be processed? What about the rock waste? How will the concerns of the native peoples be addressed? And most of all, what is the rush? Why does this proposal not include adequate time for public review, analysis, and appraisal? Even if RCC started moving forward with plans to mine today, it is unlikely they would be ready to mine this copper for several years. There is plenty of time to do a thorough analysis and look at the alternatives, the costs, the values of the lands—including environmental and cultural—and to consider the public's concerns.

For these reasons and more, we oppose S.409.

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

STATEMENT OF SYLVIA DELGADO-BARRETT, QUEEN CREEK, AZ, ON S. 409

My comments follow for S409, the Southeast Arizona Land Exchange and Conservation Act of 2009 scheduled to be heard on June 17, 2009.

There have been 4 generations of Delgado's who have worked for Magma Copper Co. over the years . . . My grandfather, father & uncles, myself and my eldest son. I am proud to say I was one of the first 7 women to be hired to work underground. Mining is not new to our family and I am not against mining as long as all issues are on the table.

I have a problem with the transparency that Resolution Copper (RCC) claims to have and with the style of mining (block cave) that they propose to do.

We, Americans, are expected to give up Federally Protected Forest Service Land used for recreation . . . Land used by Native Americans for religious reasons as well as for gathering medicinal herbs and acorns . . . all without first completing NEPA.

Morally . . . there is no justification for the land swap bill (S409) as it now reads.

Here are my concerns:

1.) Amount of jobs.—With the style of mining they are using (block cave), they will require fewer workers and will be mining robotically. Using the "cut & fill" method would require more workers and would keep the ground from subsiding & perhaps save our water aquifers and campground. I believe their job figures have been way over-inflated. Their literature said 400 jobs in Aug. 2008 and now it is over 5,000 jobs in 2009. This doesn't make sense.

2.) Amount of Subsidence.—There will be subsidence and RCC's conservative measurement is over 2 miles wide x 200 ft. deep. Those 2 miles, as the crow flies, will impact Apache Leap and 200 ft. in depth is the depth of Niagara Falls. NEPA should give us figures closer to the truth. Also, once subsidence starts you can't stop it just because you wish it or are monitoring it & then cease mining. Ground movement can continue up to 15+ years!

3.) Tailings.—I want to know the EXACT location of their tailings. Enough of this "We are working on it and have a couple of plans." Verbally RCC promised the tailings would not be in Superior. So where will they be exactly???

4.) Mill & Smelter.—I have attended many meetings and I have never heard where they are going to mill and smelt the ore. Now I want to know . . . where will these processes take place? How does RCC plan to move the ore out of the area . . . by truck, by rail . . . how???

5.) US 60 is being re-routed.—So who is going to shop in Superior? That means the mine will be the only industry . . . and we know how reliable mines are with their boom & bust cycles. Superior will need to depend on something else . . . Tourism or another industry . . . but with the scenic highway closed through the mountain what is left?

6.) Traded Lands.—The lands being acquired in the trade come with problems. They are overgrazed parcels with stock ponds and will require decades of time and money to bring them back from despair. Who is paying for this? The Oak Flat Campground is pristine land used by many including the Native Americans, Boy Scouts, church groups, campers, rock climbers, naturists and people out for a picnic with their families.

7.) Water Usage.—Arizona is still in a drought. The mine will require at least 20,000 acre ft. of water per year and RCC mentioned once that the figure could be as high as 40,000 acre ft . . . 20,000 ac. ft. sustains roughly 100,000 people. Where will the water come from? Yes, they claim to be using some CAP water, but they haven't banked enough to make a dent in their requirements. Will the water have to come from underground wells? If yes, what does the populous do for its water needs? The "block cave" style of mining could poison and / or destroy water aquifers in that region and we all know "that whatever happens upstream affects those downstream". Phoenix and the East Valley lie downstream as well as Florence and Queen Creek.

8.) Religious Freedom.—I feel the Apache people have every right to continue to practice their religion in this area.

9.) Flora and Fauna.—This region is also home to some endangered native species of plants and animals. Some of them are on watch lists and need protection.

10) Bonding and CleanUp.—As I read the bill I saw nothing about this subject. Do we leave the cleanup of potential superfund sites to the next generation?

If I can find the answers to all my questions in a legitimate signed document then please direct me to it . . .

But if all these answers are not in a signed document then this land swap should not move forward until NEPA has been completed and ALL stakeholders, not just a few, have had their say.

Mayor Hing, and Resolution's CEO David Salisbury and his people talk about the community needing jobs and money and the schools needing money.

They say the mine will take care of these problems.

I would like for them to tell me . . .

A.) Why does Superior's Mayor Hing not have his children enrolled in Superior Public Schools? Why are some of Superior's children bussed to schools in Kearny, Az?

STOP the bussing and give Superior schools that money!

The Mayor is not setting a very good example.

B.) Why doesn't President and CEO of RCC, David Salisbury, live in Superior? Is he too good for the town? Superior is where he needs to leave his tax dollars.

C.) How many people that work for RCC actually LIVE in Superior? If not . . . why not? There is a big new subdivision in Superior and their tax dollars would help the town.

D.) Why do so many Canadians work for RCC instead of Arizonans? Being as RCC wants to pillage and plunder America's Protected Federal Lands . . . shouldn't they employ more Superiorites & Americans? How many of these Canadians and other foreigners live in Superior? Superior needs them to live, work & leave their tax dollars there.

E.) Doesn't China have an 18% investment in Rio Tinto already? Will China eventually own Resolution Copper or will it just have a larger market piece of this pie?

I would like to see . . .

Complete NEPA studies done BEFORE the land exchange goes through. That is the only way to get at the truth.

This should have been an "administrative" land swap instead of trying to get some members of Congress to do Resolution's dirty work by making this a "congressional" land swap.

Transparent people & companies don't try to circumvent the process.

Everything needs to be in writing . . . no more of this squirmy language and false promises.

EVERYONE should know the exact price for taking this beautiful pristine recreational land and weigh it against the 400-500 permanent mining jobs that will be left when all is said and done.

I do not think the 400-500 jobs are more important than clean drinking water.

I do not think the 400-500 jobs are worth the price of damaging or destroying the landmark that could be the salvation for Superior the next time the price of copper goes down and they have to close their doors. This cycle repeats itself every few years like clockwork! Resolution Copper cannot stop this cycle.

Please give us answers, before you agree to the land swap . . . complete NEPA first.

Thank you for your time.

STATEMENT OF BILL MEADOWS, THE WILDERNESS SOCIETY, ON S. 874

On behalf of our 450,000 members and supporters across the country, The Wilderness Society and the Campaign for America's Wilderness write in support of S. 874, the El Rio Grande Del Norte National Conservation Area Establishment Act. We fully support this legislation and applaud your efforts to protect this magnificent landscape.

Please find attached a copy of our written testimony for inclusion in the official hearing record on S. 874.

Again, we congratulate you on your leadership and dedication to protect these important lands. We look forward to continuing to work with you and your staff to ensure this important legislation is enacted into law as soon as possible.

ATTACHMENT.—STATEMENT OF THE WILDERNESS SOCIETY/CAMPAIGN FOR AMERICA'S WILDERNESS, ON S. 874

The Wilderness Society and the Campaign for America's Wilderness submit the following written testimony in support of S. 874, the El Rio Grande Del Norte National Conservation Area Establishment Act.

Collectively, our organizations represent more than 450,000 members and supporters across the country, including many in New Mexico, who are deeply interested in protecting the last remaining wildlands in the "Land of Enchantment." We believe this legislation represents a well-thought-out, far-sighted conservation policy that will not only protect the unique natural areas within its scope, but also serve to maintain the cultural heritage of the El Rio Grande Del Norte region.

We thank Chairman Bingaman, as well as Senator Tom Udall, and their staffs, for all the hard work that has gone into developing this special legislation. The proc-

ess has been fair, and the sponsors have listened to the concerns and recommendations from a broad array of interested parties—including local citizens, businesses, the land grants community, elected officials, hunters and anglers, ranchers, and conservation organizations. The legislation that the Committee is considering today is a better product as a result of the diligent work of the sponsors. Of particular note is the extraordinary efforts made by the staffs of both Senators Bingaman and Udall through their many visits to Taos and Rio Arriba Counties over the past several years as the legislation to designate this new National Conservation Area and two new wilderness Areas took shape.

S. 874 is a bill built upon many years of local citizen efforts that addresses a variety of issues in Taos and Rio Arriba Counties. First and foremost, the legislation takes into consideration and protects a number of important traditional uses on public lands, such as the collection of firewood and pinyon nuts. The bill is a product of a true collaborative effort and genuine concern for the needs, practices, and history of the local citizenry. The wide array of support this measure has received-including that of affected land grant communities, local elected officials and the business community-is testament to the rigorous outreach process that was used in developing this significant legislation.

Creation of the National Conservation Area (NCA) and wilderness areas within this proposal will ensure local communities will have a natural resource as part of a long-term sustainable economic development plan. As local communities work to strengthen their natural resource recreation-based economies, the designation of the NCA, as well as the new wilderness areas it will encompass, will serve to further broaden the appeal of this part of northern New Mexico to outdoor enthusiasts who will be able to use and enjoy these special places for generations to come.

The land contained in the NCA is some of the most remarkable country in New Mexico. The Rio Grande cuts down through the Servilleta lava flows that comprise the Taos Plateau near the Colorado border, forming one of the most impressive chasms on the entire continent. Protected by these designations will be world class recreational opportunities including hunting for elk and antelope, and angling for native trout. The area is also part of the Rio Grande Migratory Flyway-one of the great migratory routes in the world. Eagles, falcons and hawks make the basalt walls of the Gorge their nesting homes. Ospreys, scaups, hummingbirds, herons, avocets, merlins and willits all make their way across the Gorge.

Cerro del Yuta, known as Ute Mountain, is a regional icon and will make an excellent addition to the National Wilderness Preservation System. This volcanic cone rises over 10,000 feet above the plateau with slopes covered in pinyon at the base, as well as pockets of ponderosa, aspen, white pine and Douglas fir in the higher elevations. Designating the Rio San Antonio Wilderness Study Area as wilderness will ensure lasting protection for another national treasure, where yet another gorge cuts through a landscape of rolling grasslands and sage brush plains. The cliffs formed by the gorge contain critical habitat for nesting raptors.

In conclusion, The Wilderness Society and the Campaign for America's Wilderness fully support S. 874, the El Rio Grande Del Norte National Conservation Area Establishment Act. We applaud Chairman Bingaman for his leadership and commitment to safeguarding this land, and Senator Udall for cosponsoring the bill and working with Senator Bingaman to protect this special region, which is truly a national treasure containing a wide and important array of cultural, recreational, ecological and scenic resources.

STATEMENT OF NILS D. CHRISTOFFERSEN, EXECUTIVE DIRECTOR, WALLOWA RESOURCES, ENTERPRISE, OR, ON S. 409, S. 782, S. 874, S. 1139 AND S. 1140

Wallowa Resources was established in 1996 and is a grassroots 501(c) 3 non-profit organization committed to: Promoting Land and Community Stewardship: The Idea, the Practice and the Jobs. We develop, promote, and implement innovative solutions to help the people of Wallowa County and the Intermountain West sustain and improve their communities and their lands. Located in rural Wallowa County, Oregon, residents have enjoyed a long, rich, and varied history connected to the local landscape and the many issues that surround its stewardship. The 12-member Board of Directors, representative of community diversity, includes timber managers, tribal members, artists, ranchers, outfitters, builders, contractors, realtors, retired university professor/educator and the County Commission chair. Wallowa Resources has eight staff that implements watershed restoration and invasive plant projects, serve as naturalist guides in the youth and adult education programs, and support new and existing natural resource related businesses.

The proposed conveyance of the USFS Wallowa Compound for use by the Maxville Heritage Interpretive Center culminates a long-standing local effort to develop meaningful and appropriate attractions to capture visitors to the County in the "gateway" city of Wallowa. The plans for the Maxville Heritage Interpretive Center include permanent exhibits of the historical forestry, logging and railroad industry.

While we appreciate the importance of securing tax payer value from federal assets, we believe restoring and utilizing the Wallowa Compound for this unique multicultural heritage center generates compelling value to the USFS, the city of Wallowa, Wallowa County and the public at large. Hard hit by the economic down turn, Wallowa's mill closed in 2007 and one of two long standing grocery stores closed in 2008. The proposed Interpretive Center provides an important new element supporting this area's economic diversification and recovery.

In Wallowa County, nonfarm employment fell nearly 2 percent in 2008, following four years of job growth. As in much of the rest of Eastern Oregon, Wallowa County's 2008 downtrend was felt most harshly by manufacturing businesses, where job counts retreated to multiyear lows. Unemployment averaged 7.5 percent in 2008, a three-year high. Jobless rates in early 2009 crossed 15 percent, a level not seen in more than 10 years.

This legislation also ensures the Wallowa Compound's historic architectural structure will be restored. The Civilian Conservation Corp built the Wallowa Compound in the 1930's. The State Oregon Preservation Office is holding a public hearing June 24th, 2009 to consider its listing on the National Registry. Regionally it is under consideration to be added to the Hells Canyon Scenic Byway Implementation Plan.

Statewide support of the cultural center has grown in the last year, launched in part by the OPB production "The Loggers Daughter" summarizing the search by Gwen Trice for relatives and friends of her father, one of 50-60 African American's that lived in the temporary logging town of Maxville. The Wallowa Compound structures provide a natural projection of this past while providing exhibit and interpretive and educational space relevant to everyone.

Archeology field school study programs under development with local and regional universities will provide a conduit of educational opportunities for undergraduate and graduate students across the nation. Local school district's support and encourage incorporation of this local history in their school curriculum.

We encourage your support of the conveyance of the Wallowa Compound.

Thanks for your consideration.

STATEMENT OF CAROLINA CASTILLO BUTLER, SCOTTSDALE, AZ, ON S. 409

Please include this in your official record of public comment on the subject hearing. Thank you. I am a many-generations Arizonan, an individual and not part of any organized group, and I am strongly opposed to the USFS land exchange enabling the Resolution Copper Mining Company to dig a massive copper mine in one of the most special places in Arizona.

After the disastrous economic shakedown that Americans have been going through, the one thing we all are demanding is transparency in government. So it is incredible that the proposed legislation before you exempts the copper mine from the scrutiny of NEPA (National Environmental Policy Act), the law which gives citizens access. Exemption shuts us out. Why would you do that? Our government would fail us again.

The Arizona land in question is land for which two U.S. presidents, Dwight Eisenhower and Richard Nixon, signed Executive Orders because the place is so special and worth preserving. Handing this land over for a copper mine would be an immoral betrayal. It would be an outrage, and that would be your shameful legacy. Let's instead emulate these past presidents and their courage and let us too be visionaries.

And let's remember Arizona's late, beloved U.S. Senator Barry Goldwater who said that the vote he regretted most was when he voted for the construction of the Glen Canyon Dam because beautiful, sprawling, Glen Canyon—the place no one knew—was destroyed. Let us not regret another fateful vote which would destroy a special place in Arizona that again not too many people know.

It's said by some they are for the proposed copper mine because it comes down to jobs. That's like saying let's allow construction of condominiums along the edge of the Grand Canyon so we can have jobs. We don't have to destroy our nation's natural wonders to get jobs. Just simply building more jails provides longer term jobs than a copper mine. Every day I read in the paper how people are coming up with new ideas; starting new businesses; etc., which will provide jobs. Those who

band together in the old way and rush to destroy our public lands for jobs, show their little faith in the American people's ingenuity, initiative and creativity.

For far too long here in Arizona our natural resources have been used for the benefit of a relatively small group, and the vast majority pay the economic, environmental and social costs. It has been a longtime, self-serving myth to describe the Arizona economy as the four C's—copper, cattle, cotton, citrus. In fact the four C's characterization of the Arizona economy was relatively accurate eighty years ago in 1929 but Arizona now has and has had a much different economy.

For many years now, mining in Arizona has been barely a blip on the chart. Mining's peak year was 1929 when it contributed 16.5% to the economy of the state, today it is less than 1%. See the enclosed chart showing the decline of agriculture and mining (the lower line) in a 2-page excerpt of ASU's (AZ State Univ.) annual report, "Arizona Economic Profile, Nov. 1995."

I've also enclosed an 8-page excerpt from ASU's same annual report of Dec. 2000, which shows the continued decline in mining. Page 81 shows the shift in all of Arizona's industrial structure. Those are the facts, not the myth.

The great influx of people into Arizona has brought huge economic change. Recreation is big. Another self-serving myth is that Arizona golfing (which uses huge amounts of water on its grass) is the big tourist draw. Wrong. Bird-watching is Arizona's most lucrative tourist activity. See enclosed 5-4-07 AZ REPUBLIC article, "Bird-watching adds wings to state economy."

As wise investors of the nation's public lands, isn't it better to invest in something that gives us a big return? Like long-term recreation amidst scenic and wildlife values? As opposed to investing the public's natural wonders, destroying these special places, for copper mining which returns barely 0.8% to Arizona's economy? What is the benefit/cost ratio of the proposed copper mine? What are the tradeoffs?

And what of the mineral wealth on our public land that (English) Resolution Copper Co. wants to get, will there be a fair return to the American public? After being taken to the cleaners by the greed of Wall St. and failure of our government to protect us this past year, it would be unconscionable to allow this proposed legislation, S. 409, to go forward. Americans have been knocked down on their knees. This is the time to stop this raping and pillaging of our public lands and giving away our nation's mineral wealth. For 137 years, since the 1872 Mining Law was enacted, mining has extracted billions of dollars of minerals from the public's land and there has never been a fair return to the public.

In a 1990 Washington hearing, consumer advocate Ralph Nader testified that each year at least $4 billion worth of federally owned minerals passes into private hands while taxpayers get nothing. See attached 9-7-90 clip. Since 1872 what is the total dollars that taxpayers have been cheated out of?

Other questions regarding S.409 proposed legislation are many of the same objectives listed in the attached preface by Charles Warren, then chairman of the Council on Environmental Quality, in its report, "Hard Rock Mining on the Public Land-1977."

And what if (English) Resolution Copper Mining Co. gets what it wants? What can we expect in the aftermath? In a 1993 report, the Mineral Policy Center said there are more than 50 billion tons of untreated mine waste, much of it on public land, in 32 states and that it would cost $32.7 billion to $71.5 billion to clean up. The Arizona Mine Inspector's office estimated 17,000 abandoned and unmarked mines in Arizona. See attached 7-20-93 clip. Vote NO to continuing this abuse of the American landscape and its people and their health.

Please give your utmost attention to the pleas against this proposed copper mining operation given to you by our Native Americans, Arizona's Apache people. Thank you.

Growing up in Arizona I went to high school with kids (Mexican-Americans) who lived in Arizona mining towns of Superior, Globe, Miami, Hayden, Winkelman, etc., and whose parents worked in the mines and smelters. The workers and their families suffered deaths, injuries, danger, strikes, shutdowns, discrimination, etc. The kids' parents urged them to leave, to get an education for a better future.

Lastly, I bring to your attention an award-winning book, "The New Economy of Nature: The Quest to make Conservation Profitable," by Stanford Univ. Professor Gretchen C. Daily. See 6-18-08 attached news clip. She explains the economic value of our natural resources and the potential profits of protecting them. We don't have to destroy our public lands' scenic and wildlife values, she and many others point us towards better long-term solutions.

Thank you.

STATEMENT OF ROBERT A. WITZEMAN, MARICOPA AUDUBON SOCIETY, PHOENIX, AZ

The proposed Resolution Copper Company land exchange HR 2509 short-circuits and sabotages one of the most important and basic environmental and cultural protection laws in the U.S., namely the National Environmental Policy Act (NEPA). The newly drafted bill only applies NEPA to the land exchange swap properties, but not to the actual mine or its structure and its plans of operation. Hence, under this proposed legislation the entire mine will be exempted outright from citizen oversight and scrutiny under the NEPA law. NEPA is a law which would enable the public to comment upon and to obtain information from the USFS about the significant environmental, cultural and human rights impacts and harms caused by this mine.

Exempting the mine's structure and plan of operation from NEPA is like taking away the Magna Carta, or being exempt from the U.S. Constitution or taking away the U.S. Bill of Rights.

Hence, the Resolution Copper mining company will not have to reveal or provide the public the benefit of NEPA oversight and transparency as would be normally made public, available and apparent under NEPA. The U.S. Forest Service would be required by federal law to describe all of the potential impacts and harms and pollution and human and cultural and historical harms of the mine in the so-called Environmental Impact Statement. Under the law now being sent to the senate there would be no public oversight, review or discussions of what efforts the mining company will have to make to protect the priceless cultural, historical, Native American, riparian, recreational and environmental values at stake here.

This bill has a misleading "270-day time frame" clause allowed to complete NEPA on only on the swap properties, but this is not a real NEPA oversight on the mine itself. It was put in by backers of the mine to deceive the public into thinking they would receive the transparency and oversight of a normal and customary NEPA review. Under the bill being introduced there would be no NEPA oversight or discussion or addressing of the mine's air and land and water pollutions, or of its destructive riparian impacts, or its harm to Native American cultural, historical and traditional values, etc.

These two foreign mining companies, BHP-Billiton and Rio Tinto have horrendous environmental and human rights records at their third world mine sites but also at their U.S. and other non-third world mining properties.

This proposed-to-be NEPA-exempt mine would destroy a USFS campground officially protected by two presidential Executive Orders to be permanently free from Copper Mining. They were decreed by Presidents Eisenhower and Nixon. The Apache Leap historic and cultural site would become entirely vulnerable to obliteration outright as the plan of operation of the mine would never have to face NEPA scrutiny and oversight by the American public. Without NEPA the mine could go ahead and dewater and destroy the critical groundwater aquifer vital to maintaining the plant and animal life of the priceless Devil's Canyon riparian wetlands and culturally significant area. Devil's Canyon is one of the most ecologically diverse and unique Sonoran Desert riparian wetlands in Arizona.

STATEMENT OF GWENDOLYN TRICE, EXECUTIVE DIRECTOR, MAXVILLE HERITAGE INTERPRETIVE CENTER, ENTERPRISE, OR, ON S. 409, S. 782, S. 874, S. 1139 AND S. 1140

We believe the value to this community in restoring and utilizing Wallowa Compound's historic structures for a historic public accessible hub, assisting Wallowa toward economic sustainability in ownership and dedication of the public structures and landscape poses a compelling value to the USFS, the City of Wallowa and Wallowa County.

The Wallowa Compound is a unique property, and the relevance to the Maxville Heritage Interpretive Center proposed to reside within it's historic structure is unlike any heritage multicultural themed Interpretive Center.

Our cultural history, it's oral accounts, artifacts, were broadcast as part of a Oregon Public Broadcast segment February 9th, 2009, little known to most, 40 -60 African Americans railroad loggers lived and raised families here as well.

Other groups migrated, homesteaded or moved here as well for a better opportunity and thrived.

This legislation ensures the Wallowa Compound's historic architectural structure will be restored. The State Oregon Historic National Registry is holding a public hearing June 24th to consider it's significance.

Regionally it is under consideration to be added to the Hells Canyon scenic byway implementation plan with the Maxville Cultural Heritage Center to include panels focused on it's historical significance.

Proposed permanent exhibits of historical forestry, logging and railroad industry. Public access for visitors and tourists make a foundation investment in Wallowa's economic and tourism attraction.

Hard hit by the economic down turn, Wallowa's mill closed in 2007 and one of it's long standing grocery stores closed in 2008, today the City of Wallowa with renewed community commitment, County and regional support, request this unique site be dedicated to attract tourists, visitors, and historians. Provide interpretation and education.

Through presentation, public television and educational networking, statewide support of the cultural center has grown in the last year, the Wallowa Compound structures will provide a natural projection of our past while providing exhibit and interpretive and educational space for our present and future.

Archeology field school study programs under development with local and regional universities provide a conduit of educational opportunities for multicultural college students.

Local school district support and encourage incorporation of local history presentations in school curriculum.

Local history distinct to this region include Federal forestry service structures.

Wallowa Compound's location off the highway in Wallowa brings all visitors to the County directly to the first stop of the valley's rich historical byway.

Just in time this vital part of our history is being preserved, studied and oral histories written. Our past informs the present and future.

The Civilian Corp build the Wallowa Compound in the early 1900's, again, we ask to preserve, study and celebrate the relevance it brings to our community's collective resources and economic sustainability.

A remarkable setting for a compelling interpretive center.

STATEMENT OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY, ON S. 409

The Society for American Archaeology (SAA) thanks the subcommittee for this opportunity to express its concerns about S. 409, the Southeast Arizona Land Exchange Act. In particular, we believe that the legislation lacks adequate protections for cultural resources in the affected federal lands.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

S. 409 would direct the Department of Agriculture to accept certain parcels of nonfederal land in five counties in Arizona from Resolution Copper in exchange for federal land in Pinal County, Arizona, including Apache Leap and the Oak Flat Campground area, the latter in which mining activity is prohibited. It is our understanding that under the legislation Resolution Copper could then conduct mineral exploration and "blockcave" extraction activities beneath the surface of the Oak Flat and Apache Leap areas.

These places are of great cultural and historic significance to several Native American tribes, including the San Carlos Apache, and the nation as a whole. Since well before recorded history, tribal groups were living in and around these lands, which play important cultural and religious roles in the lives of their descendants today. In addition, the areas that S. 409 would transfer out of federal ownership contain numerous known archaeological sites and resources, from both the pre-and post-contact eras, with a high probability of as-yet undiscovered additional sites. As of today, these lands and the cultural and historic resources they contain are protected by numerous federal statutes, including the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act, among others. By transferring these lands out of federal ownership, S. 409 would remove these protections.

The bill contains provisions ostensibly designed to mitigate these concerns. These include requiring the preparation of an Environmental Impact Statement under the National Environmental Policy Act prior to the start of commercially-viable mineral extraction activities, easements preventing the surface disturbance of Apache Leap and Oak Flat, and management plans to preserve the cultural resources of the affected areas. SAA, however, believes these provisions to be wholly inadequate, especially when compared to the protections the resources have today. The above-mentioned EIS would be carried out only after the transfer and subsequent mineral exploration has taken place, presenting the federal government with a powerful dis-

incentive to delay extraction. Numerous archaeological sites and resources exist beneath the surface of the earth—protecting the surface of sensitive areas such as Apache Leap and Oak Flat, while useful, does nothing to ensure the preservation of sites, both known and unknown, that lie well under the top layers of ground. At the very least, S. 409 should be amended to provide for a thorough review under Section 106 of the NHPA, prior to or as a condition of the land exchange, to determine if the cultural resources in and on the land would be adversely affected by mining activity and if so, what mitigation strategies are needed to resolve those adverse effects before mining activities are initiated. The section of the bill providing for the creation of a management agreement between Resolution Copper and tribal stakeholders to allow for traditional acorn gathering at Oak Flat is not binding on the company, and even if such an agreement were created the bill allows the company to suspend tribal activities if they were to impede mineral exploration and extraction. S. 409 simply does not provide enough consideration for the traditional activities of the Apache people at Apache Leap and Oak Flat.

SAA recognizes that difficult economic conditions are facing the residents and communities of south-east Arizona, and indeed the nation. There is no doubt that goodpaying jobs are needed everywhere, and SAA does not oppose any and all economic development activities on federal land out of hand. Nevertheless, cultural and historic resources are non-renewable. Once they are destroyed, they are lost forever. Ever since the Antiquities Act of 1906, federal law has recognized the need to preserve and protect the resources that reside within federal boundaries, including safeguards to prevent or mitigate damage to such resources when other activities are going on. This federal responsibility should not be jettisoned in the interests of a land transfer. In fact, these safeguards should be carefully observed prior to any such transfer taking place. As currently written, S. 409 would short-circuit this process, to the detriment of the archaeological record and cultural heritage of the nation.

Thank you very much for your consideration of this important matter.

STATEMENT OF CHRISTOPHER KRUPP, STAFF ATTORNEY, WESTERN LANDS PROJECT, ON S. 409

The Western Lands Project is a non-profit, membership organization founded in 1997 to conduct research, outreach, and advocacy for reform in federal land exchange policy. We also scrutinize a broad range of projects that propose to sell, give away, or relinquish public control of public lands. We have submitted testimony to this committee and corresponded with individual members many times regarding congressional land exchange and conveyance proposals, including an earlier version of the Southeast Arizona Land Exchange and Conservation Act.

We thank you for the opportunity to submit to the record our concerns regarding S. 409.

The primary concern with S. 409, as with previous versions of the bill, is that the exchanges and conveyances are not motivated by any larger concern for the public good. Rather, the bill's purpose is to give Resolution Copper sole title to Oak Flats, a much-loved piece of public land, and other federal lands so that it can more easily realize the profits from its mineral rights. The rest of the bill is mostly window dressing, designed to divert attention from this fact.

The importance of Oak Flats as a recreation area, as well as the need to safeguard it from harm, was recognized in 1955 with PLO 1229, an executive order protecting Oak Flats from future mining activity. S. 409 would effectively repeal that order, nullifying the foresight shown more than fifty years ago. As too often happens with legislated land exchanges and conveyances, yet another piece of public land "permanently" protected is being put on the market because a private interest has discovered the profits that can be wrung from it.

It is not clear whether the typical National Environmental Policy Act (NEPA) analysis process would apply to this exchange. On one hand, NEPA is not overtly waived in the bill, and the one-year deadline for completion allows time for NEPA implementation. However, the bill's language does not clearly require compliance with NEPA either, and if the process were followed it would lack much of its value—the bill mandates that the exchange occur and thus the outcome would be predetermined.

In the case of mining activity facilitated by the exchange, an analysis would have to look at possible groundwater depletion, wastewater disposal, surface impacts, and many other direct and indirect effects. Instead, S. 409 provides bland assurances by Resolution that it will minimize impacts. Congress is clearly out of step with the public's wishes and interests by considering bypassing analysis, disclosure, and the

deliberative decision process for a project that privatizes a treasured piece of public land and has such great likelihood to do harm to the environment.

S. 409 also directs several sales of federal land to the Town of Superior, none of which can be said to serve any broader public interest. One sale is of a 30-acre cemetery, but it is not clear whether the parcel is entirely occupied by a cemetery or whether other future uses might be anticipated on some of the land. A second sale is of a reversionary interest covering 265 acres of land at the Superior airport. The airport land was originally conveyed by the Forest Service under an old statute aimed exclusively at providing land for community airports. Now, the reversionary clause—a mechanism designed to protect the public interest—would be bought out or possibly even given away, providing the town free rein to sell or develop the land for private economic development. A third sale would allow Superior to obtain up to 250 additional acres of federal land contiguous to the airport. Superior may not even have to pay for the land it has requested: if the appraised value of the Resolution Copper lands exchanged exceeds the value of the Federal lands traded, the difference in value will be subtracted from the price of the lands conveyed to Superior. To add insult to injury, S. 409's 90-day deadline for the Superior parcels' conveyance means there will be no NEPA analysis of this portion of the bill.

We urge the committee to stop further consideration of this bill. S. 409 provides Resolution Copper with environmentally and culturally important public lands from which the company stands to profit outrageously. The public benefits of this bill are comparatively trifling.

Thank you for considering these comments.

STATEMENT OF RODGER SCHLICKEISEN, PRESIDENT & CHIEF EXECUTIVE OFFICER, DEFENDERS OF WILDLIFE, NATIONAL HEADQUARTERS, ON S. 409

Defenders of Wildlife is a national conservation organization that focuses on protecting native plants and animals in their natural. habitats. We have approximately 1 million members and supporters nationwide and maintain offices in 10 states, including Arizona and New Mexico. We recently learned about deliberations on 5.409 and are submitting the following for your consideration.

The San Pedro River and its surrounding watershed is an internationally significant ecological resource. Any legislation pertaining to land use decisions within the watershed should further conservation of this national treasure.

In addition, there are already administrative processes for addressing federal land exchanges that are designed to protect the public interest, comply with environmental laws, ensure public input, and ensure equal value exchanges. Any legislation mandating an exchange should at least meet these minimum standards.

Changes to this bill since the 2008 version are mostly cosmetic, and so we continue to have additional specific concerns.

The Exchange Should be Predicated on the Outcome of Environmental Review No thorough environmental review of the proposed exchange has been made. The bill says that the Secretary "may" decide to apply the National Environmental Policy Act (N-.EPA) and then states that the parties may agree that the Secretary of Agriculture take the lead. The legislation should make clear that NEPA review is required before any exchanges take place, including analysis through an Environmental impact Statement, to fully understand the effects of the proposal and any alternatives. The Department of Interior, not USDA, should lead this effort.

The Legislation Should Respect Tribal Concerns and Truly Protect Apache Leap

The language in the current bill describing the protection of the Apache Leap site is unclear. Although the bill appears to "protect" 822 acres rather than the 695 listed by its predecessor, it is not clear whether only the surface is protected. There are significant concerns on the part of the Apache and others about both undermining and subsidence, and these issues must be clarified, and potentially mitigated, before any land exchange occurs

The Legislation Should Include Exchange of the BHP Property Near San Manuel

BHP, a corporate partner in the Resolution mine project, is planning a massive (35,000 home) housing development project that would likely have profound impacts on the water quantity and quality of the San Pedro River, including potentially dewatering the lower San Pedro River. To ensure that previous conservation investments by federal, state, and private partners are not severely impacted, and to protect the San Pedro ecosystem, the legislation should include these and other BHP lands along the San Pedro in the land exchanged to the government.

The Appraisal Process Needs to be Improved

There is a long history of federal lands not being appraised at fair market values, resulting in significant losses to U.S. taxpayers. The legislation should ensure that taxpayers are receiving fair market value for the property.

An Operations and Reclamation Plan Should be Included

The land exchange should be contingent on the mining companies' submitting a plan of operations and a reclamation plan for the site. Substantive criteria for reclamation of the site should be included in the legislation.

The Legislation Should Address the Impacts of Climate Change

As deliberations move forward on this legislation, we want to emphasize the importance of understanding how climate change will, in future years, affect water resources in the areas under discussion. Scientists estimate globally that between 20 percent and 40 percent of existing species are likely to go extinct in the next century if global warming continues at its current rate.

Unfortunately, little is currently understood regarding how climate change will specifically affect areas under discussion here, the impacts on species, or any projections on regional extinction rates. This concern becomes even more compelling as the emerging scientific evidence asserts that the coming decades of climate change will leave Southwest water levels significantly below historical levels. Some of the modeling shows dramatically less water in the coming years due to both increased heat and decreased precipitation. It is highly likely therefore, that if historical data are used to suggest future availability of water, data projections will far exceed actual future resources.

Water is an essential component to the thriving diversity of life that lives in the San Pedro watershed as well as the human communities that share water along the San Pedro and Gila watersheds, and taxpayers' dollars have heavily invested in mitigation along the lower San Pedro so that the residents of the city of Phoenix could have an assured water supply. Obviously, this legislation has the potential to dramatically affect water allocations in all areas under consideration. Water allocation decisions based on historical data as opposed to future projections could leave shortfalls well below promised amounts. This could be disastrous to both natural and human communities in .Arizona and the Southwest.

Thank you for your consideration.

STATEMENT OF HERBERT S. FIBEL, PRESIDENT, MARICOPA AUDUBON SOCIETY, TEMPE, AZ, ON S. 409

- The proposed Resolution Copper Company (RCC) congressional land exchange legislation is designed to exempt two foreign mining companies from U.S. environmental protection law. Your conferring of NEPA exemption in this land exchange eliminates (1) citizen transparency guarantees under the law and the full disclosure process of the Environmental Impact Statement (EIS). It removes that all important "look before you leap" law on what would be one of the largest, most riparian-destructive mines now being proposed in the U.S. (2) S.409 also circumvents Native American historical and cultural protection provided under the National Historic Protection Act-NHPA, and (3) the Endangered Species Act (ESA). This legislation would transfer to the Resolution Copper Company (RCC) which is owned in turn by the British-owned Rio Tinto and the Australian owned Broken Hill Proprietary (BHP), some 2400 acres of U.S. Forest Service public land near Superior, AZ. Both of these companies have scandalous pollution and human rights violations on a global scale. They stand on a record of companies circumventing public oversight as guaranteed to U.S. citizens by our oversight laws such as NEPA, ESA, and NHPA. Furthermore, ESA and NHPA are greatly weakened without NEPA oversight.
- S. 409 would privatize those thousands of acres of environmentally, culturally, and historically unique lands surrounding the Oak Flat Campground of the Tonto National Forest located near Superior, Arizona. RCC would offer (1) historically abused, overgrazed USFS inholdings (LX Bar, 6L, JI, Clear Creek, 7B) as exchange properties. The acceptance of the circa 1,000 acre ($7.5 million) largesse to the National Audubon Society property near Elgin, AZ, along with the tens and hundreds of thousands of dollars BHP, and Rio Tinto have "donated" to the National Audubon Society office in Phoenix (Audubon Arizona), besmirches the good name of our conservation organization.
- The RCC-proffered 3,073-acre, 7B Ranch exchange property on the San Pedro River is not on a river at all but along a sandy, dried-up portion of the river.

It is seven miles of a dry, non-flowing, riverbed portion of that river. It is devoid of the forest galleries of those broad-leaved deciduous cottonwoods, willows, sycamores, etc. so essential for the diverse riparian habitat for those federally endangered Western Yellow-billed Cuckoos and Southwestern Willow Flycatchers and the other flagship nesting and migratory birds usually associated with this riparian treasure trove known as the San Pedro River. The in-stream flow of the Lower San Pedro River is currently in the process of being degraded by a BHP real estate development just upstream at San Manuel, AZ. In BHP's San Manuel real estate enterprise (some 35,000 homesites) BHP will dewater and destroy thousands of acres of irreplaceable San Pedro riparian mitigation properties of the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, the Salt River Project and the Nature Conservancy, and will further degrade the water table of their already dried, sandy, treeless riverbed of their 7B swap property. The net result of the San Manuel BHP real estate development will be the futher dewatering and destruction of some of the most irreplaceable Sonoran Desert riparian habitats in Arizona.

- The RCC mine will dewater outright the unique underground aquifer supplying precious water to many miles of priceless cottonwood, willow, sycamore, alder, ash, walnut and other broad-leaved tree and plant vegetation in Devil's Canyon. It is located a mile or so immediately west of the proposed RCC Oak Flat block-cave implosion pit site (which would be wider and deeper than Niagara Falls). RCC would dewater the aquifer flooding their block-cave mine and eliminate that vital, life-giving aquifer which currently supplies water to this unsurpassed riparian treasure. In its outstanding botanic and avian species diversity it parallels the San Pedro and also has the added diversity of a somewhat higher (chaparral) life zone and altitude. The severe riparian dewatering harms of this block-cave mine and its instant dewatering of the aquifer supplying Devil's Canyon are unstudied, and unaccounted for because the U.S. public will receive no NEPA oversight regarding this severe river and aquifer destroying RCC mine. This is an ecologic disaster and an inexcusable tragedy for one of the most unique and species-diverse riparian Sonoran Desert ecosystems of the Southwest.
- It will be ten or fifteen years before RCC is ready to remove any ore from their 7000 foot deep mine. So why are these foreign mining companies justified in circumventing NEPA oversight and our Native American cultural values and traditions and sacred places? The cultural, historic (Apache Leap) and environmental concerns could be addressed in that more-than-ample ten, or fifteen-year time frame it will take before mining can commence. RCC admits it will not be ready in less than 15 years. So this should allow American citizens to look before they leap into this massive environmental and cultural mining travesty?
- The proposed land swap, by removing NEPA oversight conceals the mine's potential harms to the mine area's beautiful, highly localized, federally endangered, Arizona Hedgehog Cactus (Echinocereus triglochidiatus, var. arizonicus). Also to be lost are BHP's real estate development plans which would dry up the TNC, SRP, and BuRec Lower San Pedro River wildlife mitigation properties.
- The absence of any maps and engineering consultation and testimony and oversight fails to address the mine's severe implosion of the Apache Leap sacred site escarpment, the collapse of Oak Flats, and the dewatering of the irreplaceable riparian jewel that is the adjacent Devil's Canyon. At Apache Leap 70-some Apaches leaped to their death to avoid capture by the attacking U.S. Cavalry in the 19th century. On June 19, 2007 six of the surrounding Native American tribes assembled and signed a strongly worded resolution at a prayer and ceremonial event at the Oak Flat USFS Campground opposing the land swap's desecration and destruction of the cultural, historical, sacred and religious sites at this area. All Arizona tribes have subsequently signed on through the Arizona Intertribal Council. This is holy and sacred land as described in their resolution. Would Americans allow a copper mine to pollute and desecrate Gettysburg or Antietam battlefields, or Ft. McHenry of Star Spangled Banner fame?
- This mine will consume huge, unknown quantities of water annually from Arizona's vulnerable, dwindling Colorado River supplies, perhaps much more than 20,000 acre-feet/yr. (that figure being enough for a city of 100,000). But if this proposed legislation allows a short-circuited NEPA process, the mine's water demands, aquifer pollutions, and riparian harms will remain unknown to Arizona and U.S. citizens.

In summary this lack of NEPA transparency and oversight conceals from the Arizona and U.S. public:

- The location and/or scale of the air pollution impacts of the mine's copper smelter(s), and which of Arizona's air, land and watersheds will be polluted or contaminated.
- Disclosure of the mine's air, acid mine waste, and aquifer pollutions.
- The specific depletions and pollutions of the surrounding aquifers and water tables including Devil's Canyon,
- The harms and threats to Native American cultural, religious, and historical sites by the mine.
- The dewatering of the unique and irreplaceable riparian areas and their aquifers impacted by the mine including Devil's Canyon, Lower San Pedro River, Queen Creek, Superior, AZ and the adjacent Pima and Maricopa County aquifers and streams.
- The amount of Central Arizona Project water consumed in (a) operating the mine, and (b) involved in RCC's c. proposed 10-to-1 dilution of the two billion gallons of the polluted water to be removed from the existing, old Magma mine. There will be prolonged and continuous pumping of the aquifer at the mine site and dewatering the entire area including the Devil's Canyon riparian aquifer.
- The San Carlos Apache Tribe has pointed out that the legislation lacks any engineering study or map depicting the area RCC claims they can protect from "block-cave" implosion. RCC seems to not want to reveal to the public what full NEPA oversight would reveal as to where the mine will collapse the area.

STATEMENT OF JAY WILSON, HAZARD MITIGATION COORDINATOR, CLACKAMAS COUNTY EMERGENCY MANAGEMENT, OREGON CITY, OR, ON S. 782

On behalf of Clackamas County Emergency Management, I support the establishment of the National Volcano Early Warning System (NVEWS). Clackamas County Emergency Management recognizes Mount Hood as one of the County's worst-case natural hazards and, therefore, is in need of increased instrumentation. NVEWS will add value to emergency management planning by offering early signs of renewed activity, understanding long-term trends in background seismicity and gas emissions and, most importantly, provide the most immediate and accurate detection of imminent activity that would require warning and public action.

The U.S. Geological Survey (NVEWS, Open File Report 2005-1164) designates Mount Hood as a very-high-threat volcano; their highest threat level. Mount Hood is one of four very-high-threat volcanoes in the Oregon Cascades (others are Crater Lake, Newberry and South Sister) and each is insufficiently monitored in relation to their threat level. For context, the report characterizes 18 volcanoes as very-high-threat and 37 volcanoes as a high-threat out of a total of 169 volcanoes under the United States' volcano monitoring authority.

Like many volcanoes in the Cascade Range, Mount Hood is situated on federal lands and is a year-round recreational destination. Clackamas County's, as well as the Mount Hood region's, economy is based on these activities and the dramatic setting provides a playground for residents and visitors alike who may have no idea of the potential threats posed from a sleeping volcano. The Village of Government Camp (elevation 3,950 feet) and the Timberline Lodge (elevation 5,960 feet) are located in the shadow of Mount Hood's remnant lava dome, Crater Rock, and they sit atop pyroclastic flows from the most recent 200-year old eruptions. Local and County officials have the safety of residents and visitors to consider throughout the year when taking into account the near field hazards of Mount Hood and the advantages of having a national 24/7 early warning system.

Therefore, any type of restricted access due to potential volcanic activity must be carefully considered due to economic impacts from road closures, business interruption and limited or mass evacuations. These types of decisions require better long-term data collection for careful analysis of each volcano's signatures of activity changes so scientists can explain uncertainty in their volcano alert levels and public officials can best manage expectations of the public and the media.

Like many snow and ice covered volcanoes, Mount Hood sometimes disappears into the clouds for long periods of time during the winter season, when recreational activity is high and traffic on the Mountain is often difficult. Strong winter storms and cloud cover prevent any visual or satellite verification of seismic activity. Current monitoring is dependent on very limited local and regional seismometers to detect activity. Should a situation occur similar to Mount Saint Helens in 2004, winter would be the most challenging time to have to get instruments up on the mountain and operating. This is one of the strongest reasons for volcanoes to be instrumented commensurate with their threat level.

Clackamas County continues to work closely with the U.S. Geological Survey, along with other federal and state partners, on Volcano Coordination Planning. But this level of planning can not replace the need for ongoing data that establishes a timeline of activity and a profile of behavior to support emergency management decisions for immediate action and ultimately for approaching recovery planning following the next inevitable eruption on Mount Hood.

In conclusion, I support the establishment of a National Volcano Early Warning System as proposed in Senate Bill 782 and encourage increased investment in understanding the social and economic vulnerability to volcano hazards and the need for sustained public education and outreach.

STATEMENT OF NANCY FREEMAN, EXECUTIVE DIRECTOR GROUNDWATER AWARENESS LEAGUE, GREEN VALLEY, AZ, ON S. 409

I am contacting you because you are a member of the Public Lands and Forest sub-committee, which will be hearing Bill S.409 on Wednesday, June 17. As a resident of Arizona, I am concerned that the U.S. Government is giving away beautiful, scenic, recreational land that also has a historical and cultural significance for the local Native Americans.

Land exchanges were created for the purpose of serving the public good, such as consolidating endangered species habitat, acquiring environmentally sensitive areas, or preventing undesirable development. Another reason has been to give up plots of land that are isolated and thereby hard to manage and to consolidate other plots. However, this practice does not forego the basic purpose of "for the public good." None of items on Bill S.409 meet any of the above criteria. Further, we have to question why Resolution Copper is taking the legislature route rather than the standard administrative public process by which 99% of land exchanges occur. We have never been told the true purpose behind this land exchange.

The progenitors of this Bill have contacted or met any of the local Nations. Neither have they visited any of the sites that are being considered in the exchange—for none of them are significant. They are useless, over-grazed ranches that were sold to the mining company at fire sale prices (one of them actually was burned out).

I am requesting that Senator McCain disclose how much of the $210,813 political contributions from mining companies in his 2008 campaign was received from Resolution Copper, BHP and Rio Tinto, or any of their subsidiaries. Further, I am requesting that Senator Kyl disclose how much of the $82,823 political donations in his 2006 campaign was received from Resolution Copper, BHP and Rio Tinto, or any of their subsidiaries.

The records show that Rio Tinto and BHP (with their subsidiaries) are two of the worst polluters on the planet. Near the Salt Lake in Utah, Kennecott (Rio Tinto subsidiary) has one Superfund site and one that was just moved from the potential Superfund list. In Arizona BHP has the equivalent of a superfund site at Pinto Creek, in the region of the proposed Resolution Copper mine.

Here in Arizona, we value these special places, for recreation and for wildlife. Oak Flat is a special place for bird watchers; the campground billboard warns that it is bear territory. Nearby Devil's Canyon is also a unique treasure for rock climbers and birders.

The Oak Flat site is in the Tonto National Forest, which has only 1% of riparian area to give water to the wildlife. In fact, a special Riparian Area Program has been created to protect, enhance and restore riparian areas there. If this land exchange occurs, the crucial riparian region of Devil's Canyon will be dewatered, while the public will be paying for riparian restoration elsewhere. The mining operations will have to pump water out a region a mile in diameter. This pumping is sure to rob the trees and vegetation in the whole region of water to sustain themselves. See attached report for hydrological details. (Attachment One)*

Most of you have no idea of the impacts of mining: high water usage, waste piles 100's of feet high, sulfuric acid leach facilities, dust control, and the converting of a scenic highway into a haul road for huge trucks to carry ore to the smelter. However, they are a reality in polluting air, water and soil. The mining company and some Arizona legislators think that it is worth it for the money brought in for jobs. However, the jobs formula does not hold up when one analyses the small percentage

*Report has been retained in subcommittee files.

that the jobs represent in comparison to the overall profits to the corporation. (See Attachment Two)*

President Eisenhower was wise in protecting this area. The local story is that Mamie Eisenhower went on a picnic there during a Presidential visit to Arizona and twisted his arm to protect it. The area has been protected for some 50 years now. Successfully, for the campground billboard warns that it is bear country. It's always some 20 degrees cooler than Phoenix, which is only an hour away, so it's also a cool haven in the summertime for city dwellers.

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*Attachment Two has been retained in subcommittee files.