

**Statement of  
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Land & Minerals Management  
Department of the Interior  
Senate Energy & Natural Resources Committee  
Subcommittee on Public Lands and Forests  
S. 409, Southeast Arizona Land Exchange and Conservation Act  
June 17, 2009**

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 subsurface 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.