

**Statement of
Ned Farquhar
Deputy Assistant Secretary
for
Land and Minerals Management
U.S. Department of the Interior
Senate Energy and Natural Resources Committee
Southeast Arizona Land Exchange and Conservation Act
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Thank you for the opportunity to present testimony on the Southeast Arizona Land Exchange and Conservation Act. At the Committee's request, we will address both H.R. 1904, as passed by the U.S. House of Representatives on October 26, 2011, and S. 409, as reported by the Senate Energy and Natural Resources Committee on March 2, 2010. Both bills provide for the exchange of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the U.S. Forest Service (FS) and the Bureau of Land Management (BLM). Three of the private parcels are identified for transfer to the Secretary of the Interior.

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

Conveyance of Parcels to the Bureau of Land Management

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

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

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. The bills provide for the lower San Pedro parcel to be managed as part of the BLM's existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the NCA, but it is at least 60 miles downstream (north) of the existing NCA and has substantially different resource issues and needs. If this parcel is conveyed to the Secretary of the Interior and incorporated into the NCA, the Department recommends that the existing 80 acres of adjacent BLM-managed public land likewise be included within the NCA to facilitate the efficient and effective management of this important riparian corridor.

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

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

General Concerns

The Administration has several concerns with the Southeast Arizona Land Exchange and Conservation Act and cannot support the bills as written. The Administration's principal concern with H.R. 1904 is the requirement for the Forest Service to prepare an environmental review document under the National Environmental Policy Act (NEPA) *after* the land exchange is completed rather than in advance of the exchange as provided in S. 409 as reported. It is this Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement congressional direction. In addition, concerns have been raised by Indian tribes that the legislation is contrary to laws and policies and Executive Orders that direct Federal land management agencies to engage in formal consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans.

Many of the lands to be exchanged in both bills 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. The Administration is concerned that any consultations under H.R. 1904 would not be meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," because the Secretary of Agriculture's discretion regarding the land exchange is limited. The tribal consultation provision in section 3(d) of S. 409 is significantly better than section 4(c) of H.R. 1904. The Senate bill requires government-to-government consultation prior to making a determination as to whether the exchange is in the public interest. The Administration believes that the timing of government-to-government consultation prior to the Secretary of Agriculture's public interest determination would allow for meaningful consultation and coordination with interested tribes. This Administration is committed to work with Tribes to ensure that views and values are seriously heard and considered.

Section 4(i) of H.R. 1904 expresses the intent of Congress that the exchange be completed within one year. This provision most notably differs from section 3(i) of S. 409, which provides for a three-year period to complete the environmental reviews and public interest determination on the land exchange. Based on our experience with exchanges, we believe the amount of time provided in H.R. 1904 is insufficient to review and finalize the necessary environmental documents, mineral report, and appraisals, as well as to conduct the final verification and prepare

title documents. We are also concerned that one year may not be sufficient to complete analysis of any historic and sacred sites in the exchange area as required by the Native American Graves Protection Act and the National Historic Preservation Act. The three-year completion period included in S. 409 provides a more reasonable timeframe for completing the necessary analyses and documentation.

Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides important information about the Federal mineral deposit. Neither H.R. 1904 nor S. 409 addresses access to confidential exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure a timely and accurate appraisal. Such information is essential for the mineral report, particularly in the context of this exchange, because of the size of the proposed mining operation and the proposed mining technique.

Section 6 of both H.R. 1904 and S. 409 provides for an annual value adjustment payment to the United States if the cumulative production of locatable minerals exceeds the projected production used in the appraisal required by section 4 and section 3, respectively. These provisions recognize that an accurate projection of future production as part of the appraisal process will be difficult to develop, and provide a mechanism for additional payments to the United States if the actual production exceeds the projected production. The Department generally defers to the FS on the specific provisions of section 6 of both bills. However, we note that section 6(d)(1) of H.R. 1904 creates a new fund in the U.S. Treasury for the deposit of these value adjustment payments. In contrast, section 6(d) of S. 409 requires that these payments be deposited into the account established under the Sisk Act (Public Law 90-171). The Department supports the Senate bill's approach for the use of these funds. We believe that these funds should be dedicated to Federal land acquisition in the same manner as the initial land equalization payments provided for in section 4(e)(2)(C) of H.R. 1904. Because these funds are to compensate for a possible initial inadvertent under-appraisal of land values, it is appropriate that the value when captured be used in the same manner as if it had been included in the initial appraisal.

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

Conclusion

Thank you for the opportunity to testify. The exchange proposed in H.R. 1904 and S. 409 is complex. The Departments of Agriculture and of the Interior seek to assure that the Federal Government's interest is appropriately protected in any final legislation.