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111TH CONGRESS
2d Session

SENATE

REPORT
111-129

SOUTHEAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT

MARCH 2, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 409]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 409) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Southeast Arizona Land Exchange and Conservation Act of 2009”.

SEC. 2. DEFINITIONS.

In this Act:

(1) APACHE LEAP.—The term “Apache Leap” means the approximately 822 acres of land depicted on the map entitled “Apache Leap” and dated January 2009.

(2) FEDERAL LAND.—The term “Federal land” means the approximately 2,406 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009—Federal Parcel—Oak Flat” and dated January 2009.

(3) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) NON-FEDERAL LAND. The term “non-Federal land” means the parcels of land owned by Resolution Copper that are described in section 4(a).

(5) OAK FLAT WITHDRAWAL AREA.—The term “Oak Flat Withdrawal Area” means the approximately 760 acres of land depicted on the map entitled “Oak Flat Withdrawal Area” and dated January 2009.

(6) RESOLUTION COPPER.—The term “Resolution Copper” means Resolution Copper Mining, LLC, a Delaware limited liability company, including any successor, assign, affiliate, member, or joint venturer of Resolution Copper Mining, LLC.

(7) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(8) STATE.—The term “State” means the State of Arizona.

(9) TOWN.—The term “Town” means the town of Superior, Arizona.

SEC. 3. LAND EXCHANGE.

(a) IN GENERAL.—Subject to the provisions of this Act, if Resolution Copper offers to convey to the United States all right, title, and interest of Resolution Copper in and to the non-Federal land, and if the Secretary determines that the public interest would be well served by making the exchange, the Secretary shall convey to Resolution Copper, all right, title, and interest of the United States in and to the Federal land.

(b) COMPLIANCE WITH APPLICABLE LAW.—

(1) IN GENERAL.—Except as otherwise provided in this Act, the Secretary shall carry out the land exchange under this section in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) and other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—To the maximum extent practicable under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and Council on Environmental Quality regulations, the Secretary, in consultation with the Secretary of the Interior and other affected Federal agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions under Federal law related to the land exchange and connected agency decisions related to the proposed mine on the Federal land.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph precludes the Secretary from using separate environmental review documents prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable laws for exploration or other activities not involving—

(i) the land exchange; or

(ii) the extraction of minerals in commercial quantities by Resolution Copper on or under the Federal land.

(c) CONDITIONS ON ACCEPTANCE.—

(1) TITLE.—Title to any non-Federal land conveyed by Resolution Copper to the United States under this Act shall be in a form that is acceptable to—

(A) the Secretary, for land to be administered by the Forest Service; and

(B) the Secretary of the Interior, for land to be administered by the Bureau of Land Management.

(2) TERMS AND CONDITIONS.—The conveyance of the Federal land and non-Federal land under this Act shall be subject to such terms and conditions as the Secretary and the Secretary of the Interior may require.

(d) CONSULTATION WITH INDIAN TRIBES.—Prior to making a public interest determination under subsection (a), the Secretary shall engage in government-to-government consultation with affected Indian tribes concerning issues related to the exchange, in accordance with applicable laws (including regulations).

(e) APPRAISALS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary and Resolution Copper shall select an appraiser to conduct appraisals of the Federal land and non-Federal land.

(2) REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an appraisal prepared under paragraph (1) shall be conducted in accordance with nationally recognized appraisal standards, including—

(i) the Uniform Appraisal Standards for Federal Land Acquisitions;

and

(ii) the Uniform Standards of Professional Appraisal Practice.

(B) FINAL APPRAISED VALUE.—

(i) IN GENERAL.—After the final appraised value is determined and approved by the Secretary, the Secretary shall not be required to re-appraise or update the final appraised value for a period of 3 years be-

ginning on the date of the approval by the Secretary of the final appraised value.

(ii) REAPPRAISAL.—Nothing in this subparagraph precludes the Secretary, prior to entering into an exchange agreement with Resolution Copper, from requiring a reappraisal or update of the final appraisal if the Secretary determines that such reappraisal or update is necessary.

(iii) IMPROVEMENTS.—Any improvements made by Resolution Copper prior to entering into an exchange agreement shall not be included in the appraised value of the Federal land.

(C) PUBLIC REVIEW.—Before implementing the land exchange under this Act, the Secretary shall make the appraisals of the land to be exchanged (or a summary thereof) available for public review.

(3) ADDITIONAL APPRAISAL INFORMATION.—

(A) IN GENERAL.—The appraiser selected under this subsection shall prepare a detailed income capitalization approach analysis, in accordance with the appraisal requirements referred to in paragraph (2)(A), of the market value of the Federal land, even if the income capitalization approach analysis is not the appraisal approach relied on by the appraiser to determine the market value of the Federal land.

(B) INCLUSION IN FINAL APPRAISAL REPORT.—The income capitalization approach analysis under subparagraph (A) shall be included in the final appraisal report of the Federal land.

(f) EQUAL VALUE LAND EXCHANGE.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land to be exchanged under this Act shall be equal or shall be equalized in accordance with this subsection.

(2) SURPLUS OF FEDERAL LAND VALUE.—

(A) IN GENERAL.—If the final appraised value of the Federal land exceeds the value of the non-Federal land, Resolution Copper shall—

(i) convey additional non-Federal land in the State to the Secretary or the Secretary of the Interior, consistent with the requirements of this Act and subject to the approval of the applicable Secretary;

(ii) make a cash payment to the United States; or

(iii) use a combination of the methods described in clauses (i) and (ii), as agreed to by Resolution Copper, the Secretary, and the Secretary of the Interior.

(B) AMOUNT OF PAYMENT.—The Secretary may accept a payment in excess of 25 percent of the total value of the land or interests conveyed, notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(C) DISPOSITION AND USE OF PROCEEDS.—Any amounts received by the United States under this paragraph shall be deposited in the fund established under Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) and shall be made available to the Secretary, without further appropriation, for the acquisition of land for addition to the National Forest System in the State.

(3) SURPLUS OF NON-FEDERAL LAND.—If the final appraised value of the non-Federal land exceeds the value of the Federal land—

(A) the United States shall not make a payment to Resolution Copper to equalize the value; and

(B) except as provided in section 9, the surplus value of the non-Federal land shall be considered to be a donation by Resolution Copper to the United States.

(g) OAK FLAT WITHDRAWAL AREA.—

(1) IN GENERAL.—Subject to the provisions of this subsection and notwithstanding any withdrawal of the Oak Flat Withdrawal Area from the mining, mineral leasing, or public land laws, the Secretary may authorize Resolution Copper to carry out mineral exploration activities—

(A) under the Oak Flat Withdrawal Area, so long as such activities would not disturb the surface of the area; and

(B) on the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), so long as such activities are conducted from a single exploratory drill pad.

(2) CONDITIONS.—Any activities undertaken in accordance with this subsection shall be subject to such terms and conditions as the Secretary may require.

(3) **TERMINATION.**—The authorization for Resolution Copper to undertake mineral exploration activities under this subsection shall terminate on the earlier of—

(A) the date the land is conveyed to Resolution Copper in accordance with this Act; or

(B) the date that is 3 years after the date a special use permit is issued in accordance with this subsection.

(h) **COSTS.**—As a condition of the land exchange, Resolution Copper shall agree to pay, without compensation, any costs that are—

(1) associated with the land exchange; and

(2) agreed to by the Secretary.

(i) **INTENT OF CONGRESS.**—

(1) **IN GENERAL.**—It is the intent of Congress that the Secretary shall complete any necessary environmental reviews and public interest determination on the land exchange not later than 3 years after the date Resolution Copper submits a mining plan of operation to the Secretary.

(2) **AGREEMENT.**—If the Secretary determines that the public interest would be well served by making the land exchange, it is the intent of Congress that the Secretary seek to enter into an exchange agreement not later than 90 days after the date of the public interest determination.

SEC. 4. CONVEYANCE AND MANAGEMENT OF NON-FEDERAL LAND.

(a) **CONVEYANCE.**—On receipt of title to the Federal land, Resolution Copper shall simultaneously convey—

(1) to the Secretary of Agriculture, all right, title, and interest that the Secretary determines to be acceptable in and to—

(A) the approximately 147 acres of land located in Gila County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009—Non-Federal Parcel—Turkey Creek” and dated January 2009;

(B) the approximately 148 acres of land located in Yavapai County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009—Non-Federal Parcel—Tangle Creek” and dated January 2009;

(C) the approximately 149 acres of land located in Maricopa County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009—Non-Federal Parcel—Cave Creek” and dated January 2009;

(D) the approximately 640 acres of land located in Coconino County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009—Non-Federal Parcel—East Clear Creek” and dated January 2009;

(E) the approximately 95 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009—Non-Federal Parcel—The Pond” and dated January 2009; and

(F) the approximately 110 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009—Non-Federal Parcel—Apache Leap South End” and dated January 2009, subject to the retained right of Resolution Copper to conduct underground activities that—

(i) the Secretary determines would not disturb the surface of Apache Leap; and

(ii) do not involve commercial mineral extraction under Apache Leap; and

(2) to the Secretary of the Interior, all right, title, and interest that the Secretary of the Interior determines to be acceptable in and to—

(A) the approximately 3,050 acres of land located in Pinal County, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Lower San Pedro River” and dated June 3, 2009;

(B) the approximately 160 acres of land located in Gila and Pinal Counties, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Dripping Springs” and dated June 3, 2009; and

(C) the approximately 940 acres of land located in Santa Cruz County, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Appleton Ranch” and dated June 3, 2009.

(b) **MANAGEMENT OF ACQUIRED LAND.**—

(1) **LAND ACQUIRED BY THE SECRETARY.**—

(A) **IN GENERAL.**—Land acquired by the Secretary under this Act shall—

(i) become part of the national forest in which the land is located; and

(ii) be administered in accordance with the laws applicable to the National Forest System.

(B) BOUNDARY REVISION.—On acquisition of land by the Secretary under this Act, the boundaries of the national forest shall be modified to reflect the inclusion of the acquired land.

(C) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of a national forest in which land acquired by the Secretary is located shall be deemed to be the boundaries of that forest as in existence on January 1, 1965.

(2) LAND ACQUIRED BY THE SECRETARY OF THE INTERIOR.—

(A) SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA.—

(i) IN GENERAL.—The following land shall be added to, and administered as part of, the San Pedro Riparian National Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area:

(I) The land acquired by the Secretary of the Interior under subsection (a)(2)(A).

(II) Any land acquired by the Secretary of the Interior which is adjacent to the San Pedro Riparian National Conservation Area.

(ii) MANAGEMENT PLAN.—Not later than 2 years after the date on which the land is acquired, the Secretary of the Interior shall update the management plan for the San Pedro Riparian National Conservation Area to reflect the management requirements of the acquired land.

(B) DRIPPING SPRINGS.—Land acquired by the Secretary of the Interior under subsection (a)(2)(B) shall be managed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable land use plans.

(C) LAS CIENEGAS NATIONAL CONSERVATION AREA.—Land acquired by the Secretary of the Interior under subsection (a)(2)(C) shall be added to, and administered as part of, the Las Cienegas National Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area.

(c) SURRENDER OF RIGHTS.—In addition to the conveyance of the non-Federal land conveyed to the United States under this Act, and as a condition of the land exchange, Resolution Copper shall surrender to the United States, without compensation, the rights held by Resolution Copper under the mining laws and other laws of the United States to commercially extract minerals under—

(1) Apache Leap; and

(2) the property described in subsection (a)(1)(E) (commonly known as “The Pond”).

SEC. 5. RECREATIONAL ACCESS AND IMPROVEMENTS.

(a) RECREATIONAL ACCESS AND FACILITIES.—

(1) IN GENERAL.—As a condition of the land exchange under this Act, Resolution Copper shall pay to the Secretary \$1,250,000, to improve access and facilities for dispersed recreation and other outdoor recreational activities as provided in paragraph (2).

(2) USE OF AMOUNTS.—The Secretary shall use the amount paid in accordance with paragraph (1), without further appropriation, to construct or improve road access, turnouts, trails, parking areas, or facilities for dispersed recreation and other outdoor recreational activities as the Secretary determines to be appropriate.

(3) PREFERRED LOCATIONS.—To the maximum extent practicable, the funds made available under this subsection shall be used by the Secretary on national forest land—

(A) in the general area north of Arizona State Highway 60; or

(B) in the general area along Arizona State Highway 177.

(b) DETERMINATION OF VALUE.—Amounts paid by Resolution Copper under this section shall not be considered in determining the value of the Federal and non-Federal land under section 3(f).

SEC. 6. VALUE ADJUSTMENT PAYMENT TO UNITED STATES.

(a) ANNUAL PRODUCTION REPORTING.—

(1) IN GENERAL.—As a condition of the exchange, beginning on February 15 of the first calendar year beginning after the date of commencement of production of valuable locatable minerals in commercial quantities from the Federal land conveyed to Resolution Copper under section 3, and annually thereafter, Resolution Copper shall file with the Secretary of the Interior a report indicating the quantity of locatable minerals produced in commercial quantities from the Federal land during the preceding calendar year.

(2) **REPORT CONTENTS.**—The reports under paragraph (1) shall comply with any recordkeeping and reporting requirements prescribed by the Secretary or required by applicable Federal laws in effect at the time of production.

(b) **PAYMENT ON PRODUCTION.**—If the cumulative production of valuable locatable minerals produced in commercial quantities from the Federal land conveyed to Resolution Copper under section 3 exceeds the quantity of production of locatable minerals from the Federal land used in the income capitalization approach analysis prepared under section 3(e)(3), Resolution Copper shall pay to the United States, by not later than March 15 of each applicable calendar year, a value adjustment payment for the quantity of excess production at the same rate assumed for the income capitalization approach analysis prepared under section 3(e)(3).

(c) **STATE LAW UNAFFECTED.**—Nothing in this section modifies, expands, diminishes, amends, or otherwise affects any State law relating to the imposition, application, timing, or collection of a State excise or severance tax.

(d) **USE OF FUNDS.**—The funds paid to the United States under this section shall be deposited in the fund established under Public Law 90–171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) and shall be made available to the Secretary, without further appropriation, for the acquisition of land for addition to the National Forest System in the State.

SEC. 7. WITHDRAWAL.

Subject to valid existing rights, Apache Leap and any and acquired by the United States under this Act is withdrawn from all forms of—

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) disposition under the mineral leasing, mineral materials, and geothermal leasing laws.

SEC. 8. APACHE LEAP.

(a) **MANAGEMENT.**—

(1) **IN GENERAL.**—The Secretary shall manage Apache Leap to preserve the natural character of Apache Leap and to protect archeological and cultural resources located on Apache Leap.

(2) **SPECIAL USE PERMITS.**—The Secretary may issue to Resolution Copper special use permits allowing Resolution Copper to carry out underground activities (other than the commercial extraction of minerals) under the surface of Apache Leap that the Secretary determines would not disturb the surface of the land, subject to any terms and conditions that the Secretary may require.

(3) **FENCES; SIGNAGE.**—The Secretary may allow use of the surface of Apache Leap for installation of fences, signs, or other measures necessary to protect the health and safety of the public, protect resources located on Apache Leap, or to ensure that activities conducted under paragraph (2) do not affect the surface of Apache Leap.

(b) **PLAN.**—

(1) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the Secretary, in consultation with applicable Indian tribes, the Town, Resolution Copper, and other interested members of the public, shall prepare a management plan for Apache Leap.

(2) **CONSIDERATIONS.**—In preparing the plan under paragraph (1), the Secretary shall consider whether additional measures are necessary to—

- (A) protect the cultural, archaeological, or historical resources of Apache Leap, including permanent or seasonal closures of all or a portion of Apache Leap; and
- (B) provide access for recreation.

SEC. 9. CONVEYANCES TO TOWN OF SUPERIOR, ARIZONA.

(a) **CONVEYANCES.**—

(1) **IN GENERAL.**—On request from the Town and subject to the provisions of this section, the Secretary shall convey to the Town the following:

(A) Approximately 30 acres of land as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009—Federal Parcel—Fairview Cemetery” and dated January 2009.

(B) The reversionary interest and any reserved mineral interest of the United States in the approximately 265 acre of land located in Pinal County, Arizona, as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009—Federal Reversionary Interest—Superior Airport” and dated January 2009.

(C) The approximately 250 acres of land located in Pinal County, Arizona, as depicted on the map entitled “Southeast Arizona Land Exchange and

Conservation Act of 2009—Federal Parcel—Superior Airport Contiguous Parcels” and dated January 2009.

(b) PAYMENT.—

(1) IN GENERAL.—The Town shall pay to the Secretary the fair market value for each parcel of land or interest in land acquired under this section, as determined by appraisals conducted in accordance with section 3(e).

(2) REDUCTION.—If the final appraised value of the non-Federal land exceeds the value of the Federal land under section 3—

(A) the obligation of the Town to pay the United States shall be reduced by an amount not to exceed the excess value of the non-Federal land conveyed to the United States; and

(B) the amount donated by Resolution Copper to the United States shall be reduced accordingly.

(e) SISK ACT.—Any payment received by the Secretary from the Town under this section shall be deposited in the fund established under Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) and shall be made available to the Secretary, without further appropriation, for the acquisition of land for addition to the National Forest System in the State.

(d) TERMS AND CONDITIONS.—The conveyances (under this section shall be subject to such terms and conditions as the Secretary may require.

PURPOSE

The purpose of S. 409, as ordered reported, is to authorize a land exchange in southeastern Arizona between Resolution Copper, the Secretary of Agriculture, and the Secretary of the Interior under which Resolution Copper would acquire National Forest lands necessary to allow it to develop a large copper mine and the United States would acquire other lands in Arizona with important scenic, conservation, and recreational values.

BACKGROUND AND NEED

Resolution Copper Mining LLC (Resolution Copper) is a subsidiary of Rio Tinto and BHP-Billiton. The company owns land and holds mining claims near the Town of Superior, in southeastern Arizona. In the late 1990s, Resolution Copper’s exploratory activities revealed the existence of a very large copper deposit, located between 4,500 to 7,000 feet below the surface. It has indicated that if further exploration indicates the mine is feasible, it would develop a large underground mine, using block caving techniques. Under this method, the mine would be developed through tunnels extending deep underground, where the ore would be extracted and removed. The company anticipates that it would remove the ore through other underground tunnels to an existing open pit mine in the area, where it would be processed.

The Oak Flat Campground, part of the Tonto National Forest, is located in the center of Resolution Copper’s land holdings and mining claims. Approximately 760 acres of National Forest lands in and around the Oak Flat Campground were withdrawn from the mining laws in 1955. See Public Land Order 1229 (Sept. 27, 1955); 20 Fed. Reg. 7336-37 (Oct. 1, 1955). Resolution Copper has proposed a land exchange to allow it to acquire the campground and adjacent withdrawn National Forest lands so that it can proceed with development of the mine. In exchange, the company has acquired several environmentally important parcels in the State, which it would convey to the Forest Service or the Bureau of Land Management.

Enactment of the land exchange would allow the company to develop the mine, while adding other important lands to Federal management. Resolution Copper estimates that the total economic

impact of the mine over its projected 66-year life will exceed \$46 billion, and the mine could provide up to one-quarter of the nation's estimated annual copper needs.

The lands to be acquired by the United States under the exchange would be added to other areas managed by the Forest Service or the Bureau of Land Management in the State. Included within these parcels are seven miles of riparian land along the San Pedro River that would be added to the San Pedro Riparian National Conservation Area, and over 950 acres of grasslands within the Las Cienegas National Conservation Area.

LEGISLATIVE HISTORY

S. 409 was introduced by Senators Kyl and McCain on February 11, 2009. The Subcommittee on Public Lands and Forests held a hearing on S. 409 on June 17, 2009 (S. Hrg. 111-65).

Similar legislation, S. 3157, was introduced in the 110th Congress by Senator Kyl on June 18, 2008. The Subcommittee on Public Lands and Forests held a hearing on S. 3157 on July 7, 2008 (S. Hrg. 110-572).

Senators Kyl and McCain also introduced similar bills in the 109th Congress, S. 1122 and S. 2466, and the Subcommittee on Public Lands and Forests held a hearing on S. 2466 on May 24, 2006 (S. Hrg. 109-582).

None of the previous bills were reported by the Committee.

At its business meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered S. 409 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on December 16, 2009, by a voice vote of a quorum present, recommends that the Senate pass S. 409, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 409, the Committee adopted an amendment in the nature of a substitute. Except as specifically provided, the committee amendment requires the Secretary of Agriculture to consider the exchange in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act of 1969 (NEPA), and other applicable laws. Under the process set forth in the committee amendment, the Secretary is required to complete any required environmental or other analyses following Resolution Copper's submission of a mining plan of operations to the Secretary. The land exchange could proceed if the Secretary determines, following the analysis, that the exchange is in the public interest.

The amendment includes additional provisions to protect the culturally and historically significant Apache Leap site, located adjacent to the proposed mine, and requires the Secretary to engage in government-to-government consultation with affected Indian tribes prior to making a determination whether the exchange is in the public interest.

The amendment also requires that any cash proceeds from the exchange be deposited in the Sisk Act Fund, which is used to acquire additional National Forest lands in Arizona, reflecting that the underlying Federal lands to be conveyed are National Forest lands.

The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Southeast Arizona Land Exchange and Conservation Act of 2009”.

Section 2 defines key terms used in the bill. In particular, the term “Federal land” means the approximately 2,406 acres of Forest Service land that would be conveyed to Resolution Copper under the exchange, and the term “non-Federal land” means the approximately 5,346 acres of land owned by Resolution Copper in nine distinct parcels that would be conveyed to the United States for management by the Forest Service or the Bureau of Land Management.

Section 3 describes the terms of the land exchange.

Subsection (a) provides that, subject to the provisions of this Act, if Resolution Copper offers to convey to the United States all right, title, and interest to the lands owned by Resolution Copper and proposed for exchange, the Secretary of Agriculture is to convey the Federal lands as depicted on the referenced map. The principal requirements for the land exchange are found in: subsection (b), requiring compliance with applicable laws, including FLPMA and NEPA; subsection (c), requiring title to any land conveyed by Resolution Copper to be in a form acceptable to the Secretary and subjecting the exchange to any terms and conditions the Secretary or the Secretary of the Interior may require; subsection (f), requiring that the values of the lands to be exchanged be equal; and section 206(a) of FLPMA, requiring that the Secretary determine whether the land exchange is in the public interest.

Subsection (b)(1) requires the Secretary of Agriculture (Secretary) to carry out the land exchange, except as otherwise provided in this Act, in accordance with section 206 of FLPMA and other applicable laws, including NEPA.

Paragraph (2) states that to the maximum extent practicable under NEPA and Council on Environmental Quality regulations, the Secretary, in consultation with the Secretary of the Interior, shall prepare a single environmental review document, which shall be used as the basis for all decisions under Federal law related to the land exchange and connected agency decisions related to the proposed mine on the Federal land to be conveyed to Resolution Copper. The paragraph clarifies that the Secretary is not precluded from using separate environmental review documents.

Subsection (c)(1) provides that title to any land conveyed by Resolution Copper to the United States shall be in a form that is acceptable to the Secretary, for lands to be conveyed to the Forest Service, and the Secretary of the Interior, for lands to be conveyed to the Bureau of Land Management.

Paragraph (2) states the land exchange shall be subject to such terms and conditions as the Secretary and the Secretary of the Interior may require. The substitute amendment does not include specific language requiring Resolution Copper to make confidential

information available to the United States necessary for the preparation of a mineral report and proper valuation of the Federal land to be conveyed, but the Committee expects that the Secretaries can include such requirements as part of the terms and conditions they may impose.

Subsection (d) requires the Secretary to engage in government-to-government consultation with affected Indian tribes concerning issues relating to the exchange prior to making a determination as to whether the exchange is in the public interest.

Subsection (e) describes the process for appraising the lands to be exchanged.

Paragraph (1) requires the Secretary and Resolution Copper, as soon as practicable after the date of enactment, to select an appraiser.

Paragraph (2) requires the appraisals to be conducted in accordance with nationally recognized appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, except that after the final appraised value is determined and approved by the Secretary, the Secretary is not required to update the final appraised value for 3 years (although the Secretary is not precluded from requiring a reappraisal or update of any appraisal). The paragraph also clarifies that any improvements made by Resolution Copper on the Federal land prior to entering into an exchange agreement shall not be included in the appraised value of the Federal land.

Paragraph (3) directs the appraiser to prepare a detailed income capitalization approach analysis of the market value of the Federal land, even if that analysis is not the appraisal approach relied on by the appraiser to determine the market value of the Federal land. The income capitalization approach analysis, which is commonly used in valuing mineral properties, is required for the purpose of calculating future value adjustment payments to the United States in accordance with section 6. The income capitalization approach analysis is required to be included in the final appraisal report of the Federal land.

Subsection (f)(1) requires that the value of the Federal land and the non-Federal land to be exchanged under this Act must be equal or otherwise equalized in accordance with this subsection.

Paragraph (2) provides that if the final appraised value of the Federal land exceeds the value of the non-Federal land, then Resolution Copper shall convey additional non-Federal lands to the Secretary or the Secretary of the Interior (subject to their approval), or make a cash equalization payment, or any combination of the two. Notwithstanding section 206(b) of FLPMA, the Secretary may accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests conveyed. Any cash payments received by the United States are to be deposited into the Sisk Act Fund and used, without further appropriation, to acquire additional lands for addition to the National Forest System in the State.

Paragraph (3) provides that if the final appraised value of the non-Federal land exceeds the value of the Federal land, the United States shall not be required to make a cash equalization payment to Resolution Copper, and that the excess value shall be considered

to be a donation by Resolution Copper to the United States. If the United States makes land conveyances to the Town of Superior, Arizona, as provided in section 9, the Town's obligation to pay fair market value for the conveyed lands is reduced by the excess value, and Resolution Copper's donation is reduced accordingly.

Subsection (g) addresses mineral exploration issues within the Oak Flat Withdrawal Area, which is part of the Federal land proposed for conveyance to Resolution Copper, and which is presently withdrawn from operation of the public land and mining laws.

Paragraph (1) provides that notwithstanding the existing withdrawal, the Secretary may authorize Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area (which is identified on a referenced map) so long as those activities would not disturb the surface of the area. In addition, the Secretary may allow surface activities to be conducted within the withdrawal area from a single exploratory drill pad, although the pad may not be located within the Oak Flat Campground.

Paragraph (2) states that any activities undertaken in accordance with subsection (g) are subject to any terms and conditions that the Secretary may require.

Paragraph (3) provides that the authority to undertake mineral exploration activities under subsection (g) expires when the land is conveyed to Resolution Copper or 3 years after the date the special use permit authorizing mineral exploration activities is issued, whichever is earlier.

Subsection (h) requires Resolution Copper to pay, without compensation and as a condition of the land exchange, any costs that are associated with the land exchange and agreed to by the Secretary.

Subsection (i)(1) states that it is the intent of Congress that the Secretary complete any necessary environmental reviews and determine whether it is in the public interest to proceed with the land exchange not later than 3 years after the date Resolution Copper submits a mining plan of operation to the Secretary.

Section 4 describes the nine parcels of land that would be conveyed by Resolution Copper to the United States under the exchange.

Subsection (a) describes six parcels, totaling approximately 1,196 acres, that would be conveyed to the Forest Service. The 110-acre parcel described as "Apache Leap—South End" is conveyed subject to the retained right of Resolution Copper to conduct underground activities that do not involve commercial mineral extraction under Apache Leap, and which the Secretary determines would not disturb the surface of Apache Leap.

The remaining three parcels, totaling approximately 4,150 acres, would be conveyed to the Secretary of the Interior, to be administered by the Bureau of Land Management as part of the San Pedro Riparian National Conservation Area or Las Cienegas National Conservation Area, both of which are located in southern Arizona.

Subsection (b) describes how the specific parcels are to be administered by the Secretary or the Secretary of the Interior.

Subsection (c) requires, as a condition of the land exchange, that Resolution Copper shall surrender to the United States, without compensation, the company's rights to commercially extract min-

erals under Apache Leap, and the property described in subsection (a)(1)(E), known as "The Pond".

Section 5 addresses issues relating to recreational access and recreation-related improvements.

Subsection (a) requires that as a condition of the land exchange, Resolution Copper pay to the Secretary \$1.25 million to improve access and facilities for dispersed recreation and other outdoor recreational activities, including road access, turnouts, trails, parking areas, or facilities for dispersed recreation and other outdoor recreational activities. To the maximum extent practicable, the funds are to be used on National Forest land in the general area north of Arizona State Highway 60 or in the general area along Arizona State Highway 177.

Subsection (b) provides that the amount paid by Resolution Copper under this section is not to be considered in determining the value of the Federal and non-Federal land.

Section 6 describes a potential future value adjustment payment to be made by Resolution Copper to the United States.

Subsection (a) provides that as a condition of the land exchange, beginning on the first year after the date production of valuable locatable minerals in commercial quantities from the Federal land conveyed to Resolution Copper begins, and annually thereafter, the company is required to file a report with the Secretary of the Interior indicating the quantity of locatable minerals produced in commercial quantities from the land during the preceding calendar year.

Subsection (b) states that if the cumulative production of valuable locatable minerals produced in commercial quantities from the Federal land conveyed to Resolution Copper exceeds the quantity of minerals assumed in the income capitalization approach analysis prepared under section 3(e)(3), the company shall pay to the United States each year a value adjustment payment for the quantity of excess production at the same rate assumed for the analysis.

Subsection (c) clarifies that nothing in this section modifies or otherwise affects any State law relating to the imposition, application, timing, or collection of a State excise or severance tax.

Subsection (d) provides that the funds are to be deposited into the Sisk Act Fund and used, without further appropriation, to acquire additional lands for addition to the National Forest System in Arizona.

Section 7 withdraws, subject to valid existing rights, Apache Leap and any land acquired by the United States under this Act from the public land laws, the mining laws, and the mineral leasing, mineral materials, and geothermal leasing laws.

Section 8 pertains to the management of the area known as Apache Leap.

Subsection (a) directs the Secretary to manage Apache Leap to preserve its natural character and to protect the archeological and cultural resources located on Apache Leap. The Secretary may issue special use permits to Resolution Copper to allow the company to carry out underground activities (other than the commercial extraction of minerals) under the surface of Apache Leap that the Secretary determines would not disturb the surface of Apache Leap, and subject to any terms and conditions that the Secretary may require. The Secretary may also allow the installation of

fences or signs necessary to protect public health and safety, or to ensure that any underground activities do not affect the surface of Apache Leap.

Subsection (b) requires the Secretary to prepare a management plan for Apache Leap within 3 years after the date of enactment. The plan is to be prepared in consultation with affected Indian tribes, the Town of Superior, Resolution Copper, and other interested members of the public, and is to consider whether additional measures are necessary to protect the cultural, archeological, and historical resources of Apache Leap and provide access for recreation.

Section 9 authorizes conveyances of land to the Town of Superior, Arizona.

Subsection (a) provides that on request from the town, the Secretary is to convey the three referenced parcels to the town, totaling approximately 545 acres. The parcels include a cemetery site, a reversionary interest in land used for the Superior airport, and land adjacent to the airport.

Subsection (b) requires the town to pay the Secretary the fair market value for each parcel of land acquired, as determined by appraisals conducted in accordance with this Act.

Subsection (c) provides that the funds are to be deposited into the Sisk Act Fund and used, without further appropriation, to acquire additional lands for addition to the National Forest System in Arizona.

Subsection (d) states that the conveyances are subject to any terms and conditions that the Secretary may require.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 409—Southeast Arizona Land Exchange and Conservation Act of 2009

S. 409 would authorize a land exchange in Arizona between the federal government and a mining company. Based on information provided by the affected agencies, CBO estimates that discretionary costs to implement the bill would be less than \$500,000 annually. That spending would be subject to the availability of appropriated funds. Those costs would involve preparing environmental assessments, surveys, and management plans to facilitate the exchange and administer new lands and agreements. Enacting the bill would have no significant net effect on direct spending and no effect on revenues.

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting S. 409 could affect direct spending, but the net effects would be negligible for each year.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Federal Land Exchange with Resolution Copper LLC

Under S. 409, the Forest Service would convey about 2,400 acres of land in Southeast Arizona to Resolution Copper Mining LLC in exchange for company land of an equivalent value. Of the company land, about 1,200 acres would become part of the National Forest System, while about 4,200 acres would be administered as conservation areas by the Bureau of Land Management.

If the federal property sought by Resolution Copper is appraised at more than the value of the property that the company offers for exchange, the company could donate additional land or make a cash payment to the United States. If the company's property is appraised for more than the federal acreage, the difference in value would be considered to be a donation to the federal government. Any cash payment received by the Forest Service would be available to the agency to acquire other lands in the state.

As a condition of the exchange, Resolution Copper would be required to pay the Forest Service \$1.25 million. The agency would use that amount, without further appropriation, to improve recreation facilities in the area. Finally, after completion of the exchange, Resolution Copper would have to pay the federal government a portion of any future income earned on the former federal property if the company determines that the actual cumulative production of minerals located on that property exceeds the value of the estimated production used in the original appraisal process.

The bill's effect on annual offsetting receipts (a credit against direct spending) is uncertain and would depend on the outcome of a formal appraisal to be conducted in the next year. That process will determine the relative value of the properties affected by the exchange, including the value of mineral deposits that underlie the federal land and presumably would be developed by Resolution Copper in the future. Under the terms of the exchange, the Forest Service would receive and spend \$1.25 million, probably within the next year. In addition, the federal government could receive cash payments either as a lump sum in the next year or two or annually beginning after several years (when Resolution Copper begins to develop its new mineral resources). Such payments, could total millions of dollars and would be spent by the Forest Service (without further appropriation) to purchase other lands within Arizona.

Sale of Federal Property to Superior, Arizona

Finally, section 9 of the bill would direct the Forest Service to sell certain property to the town of Superior, Arizona. Proceeds from the sale would be available without further appropriation for the purchase of land in the state. CBO estimates that the sale of property to Superior, Arizona, and use of the proceeds for land purchases would have no net effect on the federal budget.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation

of the regulatory impact which would be incurred in carrying out S. 409.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 409, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 409, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of Agriculture and the Department of the Interior at the June 17, 2009, Subcommittee hearing on S. 409 follows:

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

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.

* * * * *

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

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

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.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 409 as ordered reported.