

Testimony from Sandy Bahr, Sierra Club, Grand Canyon (Arizona) Chapter

Regarding H.R. 3301 Southeast Arizona Land Exchange and Conservation Act of 2007 Before the Committee on Natural Resources Subcommittee on National Parks, Forests & Public Lands

November 1, 2007

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to provide information on H.R. 3301 Southeast Arizona Land Exchange and Conservation Act of 2007. My comments will focus primarily on the problems with the exchange itself and the negative impacts of the mine it will facilitate. I will outline the concerns about the 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 Oak Flat Picnic and Camp Ground. H.R. 3301 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.

Oak Flat campground was recognized by President Eisenhower as an important area back 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 camp grounds, 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 threatened by this proposed mine.

Oak Flat is an important part of our history and also has significant cultural values for native peoples, including for acorn collection. Because of the 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 the Apache people, and the important recreational opportunities it offers, the Sierra Club is strongly opposed to this land swap.

In addition to privatizing this important area, H.R. 3301 also rescinds P.L.O. 1229. In Section 10 of the bill, titled “MISCELLANEOUS PROVISIONS”, it revokes any public land order that withdraws Federal land or the land to be conveyed to Arizona State Parks. It is disturbing to see this withdrawal of the protection for Oak Flat. Considering all the pressures on our public lands, the important services and opportunities they provide, and the important respite from the increasing urbanization they provide, it is a bad precedent and a bad message for the Congress to give up to a mining company 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. It 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 and the amount of water the mine will utilize, between 17,000 and 19,000 acre feet of water per year (see RCC website.), the risks of dewatering Devil’s Canyon are significant. Banking Central Arizona Project water at a remote location as the company is currently doing will not protect this important riparian area.

No Meaningful Environmental Analysis

H.R. 3301 allows Resolution Copper Company 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 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 Resolution Copper Company (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.

Because there is no real NEPA process associated with the exchange, 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 they 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. Are they going to smelt the ore? If so, where? Clearly there are significant air quality issues associated with that, not to mention considerable energy use.

Resolution Copper Company indicates that they will complete an Environmental Impact Study in 2009. That study will have little relevance if this bill has already passed and the land exchange has been consummated. 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. We will not know the effects of this proposed mine on Devil's Canyon until after the fact. We will not know 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 until after the deal is done. 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 Resolution Copper Company has provided on this proposed mine is accurate, it will be the largest mining operation in Arizona. It would be larger than the Phelps Dodge 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

A critical issue that is 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 US 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.

Resolution Copper Company has indicated that this is a large rich ore body. The company's website indicated that there were 30 billion pounds of copper last month. This month, the website says it is 48 billion pounds or 600,000 tons of copper per year for 40 years. That is a huge shift in the numbers in just one month. If valued at three dollars per pound, the ore body 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. 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 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 has been proposed for listing 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 (BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest, GAO/RCED-00-73, June 2000.) 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 nonfederal party who 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 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 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 H.R. 3301

H.R. 3301 does not represent a land exchange that is in the broader public interest. A large contiguous parcel of public land – 3,025 acres – that includes Oak Flat Campground is conveyed to Resolution Copper Company. Approximately 4583 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 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. What will this do to Devil's Canyon? 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 is there not time allotted for adequate 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 H.R. 3301.

Again, thank you for the opportunity to discuss this important issue.