

**Statement of President Raphael R. Bear
Fort McDowell Yavapai Nation
Before the U.S. House of Representatives
Subcommittee on National Parks, Forests & Public Lands
Committee on Natural Resources
November 1, 2007**

CONCERNING

**H.R. 3301 Southeast Arizona Land Exchange and
Conservation Act of 2007**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Raphael Bear, I am the President of the Fort McDowell Yavapai Nation located in Fort McDowell, Arizona. I have been invited to testify today on the proposed Southeast Arizona Land Exchange legislation, H.R. 3301, that will authorize and direct the exchange and conveyance of National Forest and other land in central and southeast Arizona. My comments, both written and oral, will specifically address and provide evidence as to why this proposed mining operation causes great concern to the People of the Fort McDowell Yavapai Nation.

We recognize the increasing global demand for copper has resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. This includes a large undisturbed ore body beneath the original Magma Mine and about 7000 feet below Apache Leap (1000 ft below sea level), as well as Oak Flat and Devil's Canyon, just east of Superior, AZ. The Resolution Copper Company, herein referred to as RCC, is exploring the feasibility of mining this deposit estimated to be worth in the tens of billions of dollars. The proposed House and companion Senate bill (S. 1862), directs the Secretary of Agriculture to convey and dispose of 3025 acres within the Tonto National Forest (FS) including the Federally Protected Oak Flat Campground. This would exchange land from Federal to private property-- property that was once inhabited by the Yavapai People. Given the current economic conditions our country and the State of Arizona are facing, this type of endeavor with the *potential* to generate millions of dollars in tax revenues could be looked on favorably. However, the feasibility of the mine, the equalization of the exchange, the environmental and cultural losses, and potential economic benefits as purported by RCC has not been fully or fairly appraised or analyzed.

At this time, the Congressional Budget Office (CBO) and /or Office of Management and Budget (OMB) can not truly evaluate the exchange as the Federal government has yet to

perform a substantive economic evaluation of the land that houses the copper and other minerals. We believe that appraisal-related provisions and the equalization of values provisions are needed *prior to* Congressional passage. As H.R. 3301 is drafted, all mineral deposits within the Federal parcel are not accounted for in the evaluation. As of today, RCC asserts that there may be over 24,000,000 tons of copper (600,000 tons per year for 40 years). In today's market, that would translate to roughly \$150 billion. Thus, the Federal parcel is orders of magnitude greater in value than that of the non-federal parcels selected for exchange. The mineral report is an essential step toward an appraisal of the Federal parcel and therefore critically needed to assure the parity of the land exchange. However, section 4(d) of the legislation requires that the exchange and other critical documentation be completed within one year after congressional passage. We do not believe that this is sufficient time for the completion, analysis, and review of a mineral report and appraisals. Once RCC has completed their evaluation and analysis, we call for an independent, 3rd party review of the engineering reports for this operation. This must be accomplished in consultation with all affected parties, including the Fort McDowell Yavapai Nation, prior to this legislation moving forward. At this time, relying on the RCC current engineering report or the Department of Agriculture review of this report is insufficient. On a monetary level, RCC financially recoups all mineral profits at the expense of the public making such an exchange grossly disproportionate.

Oak Flat is a major piece of this land exchange. In 1955, Oak Flat campground was recognized by President Eisenhower as an important U.S. resource. This area was specifically withdrawn from mining activity when he signed Public Land Order 1229. I will not expound on reversing President Eisenhower's decision as others before me have either testified or documented the significance of this region. However, when designated lands are legally protected from future anthropogenic disturbances, in this case mining activity, then congressionally reversed, any assurances that other Federal land that is deemed culturally important or environmentally critical is also in jeopardy. Thus, this exchange sets a dangerous precedent.

As past stewards of this land, we are deeply concerned that the mine will cause irreparable harm to the environment including, but not limited to, contaminating scarce water supplies, decimating the land base directly through mining practices and post mining subsidence, destroying habitat for endangered species, and causing massive surface damage. The bill does not specifically direct the Secretary of Agriculture to perform or have performed in-depth, critically needed environmental studies and analysis of the mining operation. RCC will be effectively exempt from National Environmental Policy Act (NEPA) and any opportunity for public involvement afforded by NEPA. The NEPA process mandates analysis and disclosure of environmental impacts, allowing all affected parties and decision-makers to review and comprehend the risk assessment. The Yavapai People are a critically affected party in this legislation. As such, the Secretary of Agriculture must direct RCC to provide full disclosure of all pertinent environmental information regarding the mining operation, including a substantive mining and reclamation plan prior to congressional mark-ups.

Currently, there are no stringent mining laws that govern copper mining. Provisions for reclamation in the 1872 Mining Act are inadequate and the Surface Mining Control and Reclamation Act of 1977 is not applicable for copper mining. The majority of environmental protections that these Federal lands are currently afforded are through federal law but many may become inapplicable once the exchange becomes law. Our paramount concern is where and how will overburden and tailings be re-located? In consulting with geologists and geomorphologists, it does not appear that there are sufficient, previously abandoned surface mine pits that could either temporarily or permanently house the predicted 100,000's of tons of material generated per day for the 40 years of mining. Much of this material will contain an array of toxic substances. Will unspoiled canyons be sacrificed to store this material? Furthermore, technologically enhanced naturally occurring radioactive materials (TENORM) are waste elements within stockpiles that release toxins into the environment. Subterranean toxic metals pose little harm to human health. However, when brought to the surface, stockpiled, exposed to the air, and subjected to various technological processes, there is a potential for adverse effects to humans. This is particularly true in Arizona where there are abundant deposits of radioactive metals and poisonous arsenic. Thus, in the absence of truly meaningful Federal laws regulating copper mining, who will make determinations as to what lands will be sacrificed – land that my People hold so sacred? We must be consulted and allowed to participate in the process.

Once the land is conveyed, under the mining laws of the State of Arizona, RCC will probably not be required to expend cash to post a bond to underwrite either the cost of remediating toxic spills during their mining operations, or for their pollution clean-up upon mine closure. Typically, self-bonding or corporate guarantees are all that is required. The impacts of sulfuric acid and other contaminants from leach solution are well documented and thus I need not elaborate. However, in Arizona, mining companies who declare bankruptcy leave behind large clean-up obligations. For example, Asarco, which owns many mines in Arizona, declared bankruptcy and was reported to have left 100's of millions of dollars in clean-up costs. Thus, a greater level of financial responsibility should be mandated as there is much risk associated with this project

As related in previous public testimony on earlier versions of this bill, a major scientific concern relates to groundwater pumping as it will de-water this region. Riparian areas and natural springs such as Devil's Canyon are not only hydrologically significant but are sacred to the Yavapai People and will be lost forever as a result of groundwater pumping. Although a conservation easement would provide protection for Apache Leap from surface disturbance, dewatering of the tunnels will cause a serious drawdown in the water table of the region and will result in subsidence in and around the Apache Leap. Further required investigations vis-à-vis water must also address:

- What empirical and realistic predictions are made for long-term water-use over the 40 plus years of mining? Has the long-term availability and sustainability of water use been assessed?

- How will dewatering of the mine be executed? Will water removed from the shafts prior to copper removal be stored? How will water be replaced in an environmentally safe and effective way after ore is removed?

- If during the course of mining operations, financial conditions prove this mine impracticable, what guarantees will be made to assure that water will be replaced back into the aquifer?

By conveying the land from public ownership to a private entity, much of the permitting process, particularly regarding clean water, is effectively removed. For example, if one looks at recent federal court rulings concerning private property across the U.S., Sections 402 and 404 of the Clean water Act have often been rendered unenforceable (Section 402 -National Pollutant Discharge Elimination System; Section 404 - regulates the discharge of dredged and fill material into waters of the United States, including wetlands). Thus, what safeguards will be congressional mandated to prevent water contamination or a decrease in quality that will/may result due to either direct or indirect discharge or result from this type of mining technique?

In essence, feasibility and economic studies in regard to water have not been fully addressed. Furthermore, given the on-going long-term drought and resulting potential water shortages within the State, including the Colorado River (BOR Colorado River Water Shortage Criteria Documentation, 2006-7) it is imperative that long-term strategic projections and economic data substantiate that water for mining purposes is the most beneficial use for the State as a whole. Thus, before this legislation moves forward, we request that the Secretary of Agriculture be directed to commission an independent, 3rd party analysis of the hydrologic and engineering reports that evaluate potential impacts of the entire area including Devil's Canyon and Apache Leap. This analysis must be in direct consultation with the Fort McDowell Yavapai Nation.

Mining will also impact lands that are tied to our cultural and religious heritage as this region is part of the Yavapai ancestral territory. As stated earlier, many federal protections will be removed from this land. Hence, the Native American Graves Protection and Repatriation Act (Public Law 101-601) or any provision of the American Indian Religious Freedom Act (42 U.S.C. 1996), the National Historic Preservation Act (6 U.S.C. 4701 et seq.), and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) that are designated to protect areas important to Native American's may be inapplicable or unenforceable. As stated above, dewatering, land subsidence, polluting of the land and water; all of these activities will desecrate this sacred area. I can not express in words how deeply felt this land is to the Yavapai – it simply transcends words. Damage that probably will result from this project can not be mitigated simply by placing a dollar value on it or by exchanging it for some other land that is far from the area of concern. Specific questions that must be addressed include, but are not limited to, the following:

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

In summary, the language of the bill, as currently drafted, does not adequately address: 1) the mineral report and appraisal of the Federal parcel to assure the parity of the land exchange; 2) the weakness of Federal and Arizona’s current statutes or laws governing copper mining; 3) the lack of an extensive mining plan, reclamation protocol, or bonding assurances; 4) groundwater and surface water issues; 5) subsidence issues; 6) the need for a third party, independent Environmental Impact Statement on the entire mining operation; and 7) Federal environmental and cultural protections afforded public lands are no longer applicable once the land is conveyed. We have additional concerns but many are addressed in Governor Napolitano’s letter of August 24, 2007 outlining very specific economic, environmental, and cultural omissions in the current bill. The San Carlos Apache Tribe has also expressed many of these very same concerns. Other Arizona Tribes have articulated their grave trepidations on this bill and provided documentation under separate cover. Thus, at this time, we believe there are too many unresolved serious issues that must be fully addressed prior to congressional approval.

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