

**Statement of
Mary Wagner
Associate Chief
U.S. Forest Service
U.S. Department of Agriculture**

**Before the
Subcommittee on National Parks, Forests and Public Lands
Natural Resources Committee
U.S. House**

June 14, 2011

Concerning

H.R. 1904: the “Southeast Arizona Land Exchange and Conservation Act of 2011.”

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 H.R. 1904, the “Southeast Arizona Land Exchange and Conservation Act of 2011. I am Mary Wagner, Associate Chief of the U.S. Forest Service. H.R. 1904 would direct the Secretary of Agriculture to convey federal land for use as an underground copper mine in exchange for environmentally sensitive non-federal land in Arizona. We defer to the Department of the Interior on provisions relating to lands to be managed by the Bureau of Land Management (BLM).

H.R. 1904 would direct the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), a 2,422 acre parcel of land on the Tonto National Forest. The federal land to be conveyed, known as Oak Flat, contains a potentially sizeable copper ore body and adjoins an existing copper mine on private land owned by Resolution Copper. In exchange, Resolution Copper would convey five parcels of land to the Forest Service and three parcels of land to BLM. The total non-federal acreage that would be conveyed by Resolution Copper is 5,344 acres, all of which are in Arizona.

The Bill calls for an equal value exchange in Section 4e. If the value of the federal land (including the ore body) to be conveyed exceeds the value of the parcels to be acquired, the Bill would allow for a cash equalization payment by Resolution Copper in excess of twenty-five percent. Under current law, cash equalization payments may not exceed twenty-five percent. A cash equalization payment resulting from the exchange would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land for addition to the National Forest System.

The appraised value of the federal land to be conveyed to Resolution Copper would include the value of the ore body. The Bill, in Section 6b would require Resolution Copper to make value adjustment payments if, as the mine is developed, annual production of the mine exceeds expectations documented in the appraisal. Those funds would be deposited in a special account in the Treasury to be used, upon appropriation by Congress, for maintenance, repair, and rehabilitation projects. The Department's position is that funds received from land conveyance should be used for land acquisition.

The Bill also would provide for the sale of a 30 acre parcel of land currently being used as a cemetery, a reversionary interest and reserved mineral rights in a 265 acre parcel, and 250 acres near the Superior Airport at market value to the Town of Superior. Sale proceeds would be deposited in the Sisk Act account to be used, upon appropriation by Congress, for acquisition of land to the National Forest System.

H.R. 1904 would require Resolution Copper to pay all costs associated with the exchange. The Bill would provide that it is the intent of Congress that the exchange be completed not later than one year after the date of enactment.

At the request of Resolution Copper, the Bill would require the Secretary, within 30 days of such request, to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area, from existing drill pads located outside the area, if such activities would not disturb the surface of the Area. At the request of Resolution Copper, within 90 days, the Bill would require the Secretary to issue a special use permit to Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), if the activities are conducted from a single exploratory drill pad which is located to reasonably minimize visual and noise impacts to the Campground.

H.R. 1904 would require the Secretary of Agriculture to complete an environmental review document after the exchange, and after the above-noted activities were permitted to take place, but before Resolution Copper's commencement of commercial mineral production on the land it would acquire in the exchange. Specifically, once the land exchange is consummated, and these lands are in the private ownership of Resolution Copper, Resolution Copper is authorized to submit a mine plan of operation to the Secretary. Thereafter, the Secretary must complete an environmental review document within three years that is limited to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA). The environmental document would be used as the basis for any federal action or authorization related to the proposed mine and mine plan of operations of Resolution Copper, including the construction of associated power, water, transportation, processing, tailings, waste dump, and other ancillary facilities. After the exchange, Resolution Copper may need to use the adjoining National Forest System land for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads. As we understand the Bill, it would require the Forest Service to prepare an environmental analysis before issuing authorizations for such activities, which would be consistent with existing requirements under NEPA.

The Bill would add five parcels of land totaling almost 1,200 acres to the National Forest System. Most of these parcels include riparian areas which are somewhat rare in Arizona. One of the parcels that would be acquired adjoins the Apache Leap area on the Tonto National Forest. Additionally, as a condition of the land exchange, Resolution Copper would surrender its rights to commercially extract minerals under Apache Leap.

While the Department understands and appreciates the potential economic benefits and the value of the lands to be acquired by the American public, the Department cannot support the Bill as written but is looking forward to working with the Sponsor and the Committee. The principal concern is that the Bill would require the agency to prepare an environmental review document under NEPA *after* the land exchange is completed. Also of concern is the fact the Bill would immediately authorize mining exploration activities under an area that is sacred to the San Carlos Apache Tribe without a review or study.

NEPA is a forward looking statute setting out procedural obligations to be carried out before a federal action is taken. It requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action and alternatives of such action. It is this Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement congressional direction.

The purpose of the requirement in the bill that the agency prepare a limited NEPA review *after* the exchange, when the land is in private ownership, is unclear because the bill provides the agency limited discretion to exercise. An environmental review document after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. In addition, the U.S. Forest Service does not have an understanding of the impacts the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could be obtained by the Forest Service with NEPA analysis *before* the exchange. A NEPA analysis after the exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership.

The Bill should be amended to require the preparation of an environmental impact statement *before* the land exchange is completed. The purpose of preparing an environmental analysis before consummating the land exchange would be to analyze the effects of the transfer of the federal land to Resolution Copper, any activities that are reasonably foreseeable to occur on the transferred land (including mineral development), and the acquisition of the non-federal land resulting from the exchange. The agency would use the environmental analysis to make a decision on whether and how to proceed with the exchange and what mitigation conditions would be required to mitigate the identified impacts.

The legislation states that it is Congressional intent that the exchange be completed within one year. Based on our experience with complex land exchanges, this is an

insufficient amount of time to complete the exchange. Given the requirement of mineral reports, appraisals, title documents, environmental analysis and government to government consultation with local Tribes, a two to three-year timeframe is much more realistic. Doing a pre-exchange review would increase the time requirement as well.

The agency also understands that a number of federally recognized Indian tribes and regional and national tribal organizations are concerned that the Bill circumvents various laws, policies, and Executive order that directs the Federal land managing agencies to engage in formal consultation with the interested Indian tribes. Indian tribes have also raised important concerns that the Bill is contrary to various policies and Executive Orders that Federal land managing agencies to protect and preserve sites that are sacred to Native Americans. The Forest Service understands that land is very sacred to the tribe and holds significant traditional and historic value. Because of these expressed concerns and because this specific site has been the focus of historic Government protection it is important that this Bill provide for the process of formal tribal consultation to ensure both tribal participation and protection of this site.

The Bill would require the Secretary to prepare a management plan for Apache Leap. Further, the federal lands to be exchanged (Oak Flat) hold significant cultural values to Indian Tribes. Although the Bill would require government-to-government consultation, any consultation would not be considered meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", because the Secretary's discretion regarding the land exchange is limited. The focus of the consultations would likely be the management of those areas over which the agency would have discretion, namely, the federal land adjacent to the mine and Apache Leap.

For example, the Secretary would not have discretion over the conveyance or on-site management of the Oak Flat site, which under the legislation would be conveyed to Resolution Copper. The San Carlos Apache Tribe considers the Oak Flat area to be a sacred site. They have expressed concerns that block cave mining would cause subsidence would impact the fundamental religious nature of the site. They have also expressed concerns regarding potential impacts on water quality. They have detailed in correspondence the importance of traditional acorn gathering and religious ceremonies which still occur on this site. The Department has a responsibility to consider the Tribes' concerns and these can only be adequately addressed if a pre-exchange environmental analysis is the first step.

There is no doubt that the lands that would be acquired and managed by the U.S. Forest Service under H.R. 1904 have important resource values that should be protected. It is also clear that the economic benefits from the production of copper could be significant in creating family wage jobs in tough economic times. However, it is important to more fully understand the scope of the project before proceeding and address potentially significant environmental concerns and sites of high importance to local Tribes. In addition to the concerns expressed in testimony, the Department would like to work with the Committee on a number of significant technical concerns.

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

**STATEMENT
MARY WAGNER
ASSOCIATE CHIEF
US FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE
HOUSE OF NATIONAL RESOURCES COMMITTEE
NATIONAL PARKS FORESTS AND PUBLIC LANDS SUBCOMMITTEE**

JUNE 14, 2011

CONCERNING

HR. 1258: to Provide for the conveyance of parcels of land to Mantua, Box Elder County, Utah

Chairman Bishop, Ranking Member Grijalva and members of the Subcommittee, thank you for the opportunity today to present the Department's view on HR. 1258, legislation to provide for the conveyance of parcels of land to Mantua, Box Elder, Utah.

HR. 1258 would direct the Secretary of Agriculture to convey, without consideration, to the Town of Mantua, Utah, all right, title and interest of the United States in approximately 31.5 acres of National Forest System (NFS) land in Box Elder County, Utah. This land is currently part of the Uinta-Wasatch-Cache National Forest. The 31.5 acres in question comprise three parcels identified in the bill as parcels A, B, and C on the map entitled 'Box Elder Utah Land Conveyance Act' and dated July 14, 2008. The parcels are encumbered with several outstanding rights in Brigham City, including three pipelines, a right to construct a pipeline, and use of four springs.

The Department does not object to conveyance of this NFS land, but notes that these parcels have not been officially described; a federal survey would be required in advance of conveyance. Although the bill does require the Town to cover the Federal land survey costs associated with the conveyance, it does not clearly state who would be responsible for bearing other administrative costs.

We believe that the Forest Service could meet the objectives of the bill administratively through either the Townsite Act of July 31, 1958 (16 U.S.C. 478a) or the Weeks Act of March 1, 1911 (16 U.S.C. 516) as supplemented by the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (P.L. 94-579, 90 Stat. 2743; 43 U.S.C. 1716; as amended). The Townsite Act authorizes communities to acquire up to 640 acres of NFS land in order to serve community objectives and requires payment to the United States of the market value of the federal land. The Weeks Act authorizes the exchange of NFS land for non-Federal land on the basis of equal value.

It is long standing policy that the United States receive market value for the sale, exchange or use of NFS land. This policy is well established in law, including the Independent Offices Appropriation Act (31 U.S.C. 9701), section 102(9) of FLPMA, as well as numerous land exchange authorities. The parcels were acquired by donation from Box Elder County in 1941. They have value to the United States for their potential to be used to facilitate future land exchanges.

Mr. Chairman, regardless of the ultimate outcome of the congressional consideration of HR. 1258, the Forest Service is committed to working with the bill sponsors, the Town of Mantua, and the Committee, in hopes of assisting the Town. We would appreciate the opportunity to work with the Committee to address concerns with HR 1258, such as the definition of public purpose and the reversionary language.

Also, to avoid constitutional concerns, the Department of Justice recommends that the bill be revised to make absolutely clear that the town would have to agree to the proposed conveyance, which is what we understand Congress intends. This change might be accomplished by adding "subject to the Town's agreement" after "the Secretary shall convey," in section 2(a) of the bill.

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

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MARY WAGNER
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UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 14, 2011**

CONCERNING

**H.R. 1740, TO AMEND THE WILD AND SCENIC RIVERS ACT TO DESIGNATE A
SEGMENT OF ILLABOT CREEK IN SKAGIT COUNTY, WASHINGTON, AS A
COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM**

Chairman Bishop, Ranking Member Grijalva and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on H.R. 1740.

The Wild and Scenic Rivers Act, Public Law 90-542 (16 U.S.C. 1271 – 1287, as amended) protects the free-flowing condition, water quality, and outstandingly remarkable natural, cultural, and recreational values of some of our most precious rivers. It also provides an opportunity to build partnerships among landowners, river users, tribal nations, and all levels of government.

This bill amends Sec. 3(a) of the Act to designate a segment of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic Rivers System. It adds 14.3 miles in two segments: 4.3 miles from the headwaters to the Glacier Peak Wilderness boundary classified as wild, and 10 miles from the Glacier Peak Wilderness boundary to approximately 1000 feet south of the Rockport-Cascade road classified as recreational.

We strongly support the legislation.

The segment to be designated by H.R. 1740 is a tributary of the Skagit River, which was added to the National Wild and Scenic Rivers System in 1978. It is located on the Mt. Baker-Snoqualmie National Forest, approximately 100 miles northeast of Seattle, Washington and flows from the glaciers of the North Cascades into the upper Skagit River, the largest tributary to Puget Sound.

Illabot Creek provides exceptional spawning and rearing habitat for summer and fall Chinook, coho, chum and pink salmon; native steelhead; and, one of the largest populations of bull trout in the Skagit River watershed. Puget Sound Chinook, steelhead and bull trout are listed under the Endangered Species Act. Illabot Creek also supports the highest density of chum and pink salmon in the Skagit River watershed and provides habitat for wintering bald eagles. Eagles

using the Illabot roost are a part of one of the largest concentration of wintering bald eagles in the continental United States.

Mr. Chairman, we recommend the Subcommittee consider designating all of Illabot Creek, from its headwaters to its confluence with the Skagit River (16.3 miles) as recommended in the Mt. Baker-Snoqualmie National Forest Plan (June 1990). This includes the lower 2 miles, classified as a recreational river, of which approximately 1.4 miles is in the Skagit Wild and Scenic River Corridor. With the designation of Illabot Creek as proposed in H.R. 1740, only 0.6 mile is not included in either Illabot Creek Wild and Scenic River or the existing Skagit Wild and Scenic River corridor. The lower 2 miles includes some of the most important fish spawning habitat and an important foraging and roosting area for wintering bald eagles. Much of this area is in the Skagit River Bald Eagle Natural Area and dedicated to resource protection.

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

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND
PUBLIC LANDS
HOSUE NATURAL RESOURCE COMMITTEE**

June 14, 2011

H.R. 473: Help to Access Land for the Education of Scouts

Chairman Bishop, Ranking Member Grijalva and members of the Subcommittee, thank you for the opportunity to appear before you today in order to provide the Department of Agriculture's view on H.R. 473. The Department does not oppose this bill. This bill would provide for the sale of approximately 140 acres of land in the Ouachita National Forest in Oklahoma to the Indian Nations Council, Inc., of the Boy Scouts of America.

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The bill stipulates that the sale of National Forest System land shall be for market value, as determined in an appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions. H.R 473 provides that the Council will pay the reasonable administrative costs for appraisals, surveys and other administrative analyses associated with the land sale. The bill authorizes retention and use of the proceeds from the land sale to purchase land and interests in land within the Ouachita National Forest.

As background, the Council owns and operates a camp on land they own within the Ouachita National Forest, and desires to build additional facilities on land east of their current operation. While the land proposed for acquisition is not identified for conveyance in the Forest Plan, it does adjoin a sizable private in-holding owned by the Council. The provision in the bill directing the retention of proceeds from the sale to be used for land acquisition will allow the Forest Service to purchase replacement lands having high priority resource and public recreation benefits.

While the Department does not oppose H.R.473, we would like to work with Committee staff on technical corrections to the bill. Additionally, the Department of Justice recommends that the bill be revised to make absolutely clear that the Indian Nations Council, Inc., of the Boy Scouts of America would have to agree to the proposed conveyance, which is what we understand Congress intends.

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Mr. Chairman, this concludes my testimony and I am happy to answer any questions you might have.