

April 15, 2008

David Salisbury
Resolution Copper
102 Magma Heights
Superior, AZ 85273

Dear Mr. Salisbury:

It has been some time since the Subcommittee on National Parks, Forests and Public Lands held a hearing on H.R. 3301, the Southeast Arizona Land Exchange and Conservation Act of 2007. As we all know this proposal has significant support and an equal, if not greater, amount of opposition. The hearing held in my subcommittee brought many concerns to light that will need to be resolved prior to this legislation being scheduled for any further action in the Natural Resources Subcommittee for National Parks, Forests and Public Lands.

Since the hearing there have been a number of meetings with some stakeholders in an attempt to move this legislation forward. In some areas there seems to be some improvement in the proposal, but in other areas there have been serious setbacks.

I will reiterate the concerns I addressed at the close of the hearing in November that, in my view, must be addressed and resolved prior to further congressional action on this legislative proposal. But, I also feel the need to address some additional but, by all means not inclusive concerns, on what needs to be done to make this proposal truly beneficial to all taxpayers.

Cultural Resources

The outstanding issues relating to the loss of culturally and historically significant sites has yet to be resolved, etc. what does this "etc." refer to? Tribal nations in the state have raised concerns about the loss of the Oak Flats area to traditional activities such as acorn gathering, other spiritual ceremonies held on site., and the potential impact of block cave mining on the Apache Leap Escarpment, on area springs and other sites in the area containing Native American cultural resources. To date, I am not in receipt of information suggesting that these issues have been resolved. There still seems to be a lack of government to government discussions among senior Forest Service representatives and elected representatives of impacted Native American governments, which was a key issue raised at the public hearing. These discussions should have been held long before the public hearing had taken place and as belated as it is, must be initiated and completed prior to this legislation moving to a mark-up.

Previous Public Lands Executive Orders

Federal legislators are being asked to give up publicly owned lands that have been in trust for the American and Native peoples since 1955, when President Eisenhower signed BLM Public Land Order 1229 (20 FR 7336) which specifically put this land off-limits to all future mining activity. President Nixon subsequently issued BLM PLO 5132 (36 FR 19029) in 1971 to modify PLO 1229 and allow “all forms of appropriation under the public land laws applicable to national forest lands—except under the U.S. mining laws.” To date there have been two executive orders from two separate republican administrations to preserve these lands in perpetuity with special emphasis on prohibiting mining activities on the site in question. Please explain why Resolution Copper feels that these preservation orders should be overturned after all these years.

Conservation Properties

The ecological values of several of the parcels offered in exchange for the federal property at Oak Flats have been questioned, with some environmental organizations supporting the inclusion of certain parcels and others completely opposed. An independent analysis as to the ecological importance of those properties should be completed along with an assessment of what parcels were not included along the San Pedro that would be needed to protect the lower San Pedro in perpetuity.

An independent review of the ecological value of the proposed lands to be traded and others that could be included should go beyond the current piecemeal approach in preserving this segment of the San Pedro River in its entirety. There is an opportunity to establish a National Conservation Area along this segment if the principal benefactors of the exchange adopt a long term preservation vision and work to make this prospect a reality. The recent media reports of buyout negotiations among the parent companies of this partnership increase the potential for this concept to come to fruition.

Rock Climbing

Another major component of this legislation was the company’s proposal to create a state rock climbing park that was represented as a new state park that would rival or exceed the economic benefits and international recognition of Karchner’s Cavern. This component seems to have fallen out of the proposal, leaving rock climbing opportunities in serious jeopardy, along with the loss of anticipated economic benefits from tourism and international recognition for this state climbing park. Climbers continue to raise concerns about loss of climbing in the existing areas particularly “The Palisades” area north of State Rte 60. Their concerns are centered on an offer of creating a unilateral revocable use agreement to continue climbing on this and other impacted climbing sites, which are some of the most accessible climbing areas in the region.

Mining Impact

Several parties of interest have raised concerns about the type of mining that is proposed for this project and the long-term impacts and ability to reclaim the area once mining ceases. The subsidence expected from block cave mining would make the top of the Apache Leap potentially unsafe for any future public access long after the life of this mine. The proponents have opposed addressing the mining processes as part of the review for this trade but with the potential for long-term loss of access to this sacred area, greater discussion of mining process options should take place with the impacted communities.

Local Economic Development

A large part of the discussions on this bill has been the purported economic development potential of the mining proposal. However, claims of local employment should be verified by independent review to ensure economic and employment presentations are accurate and will come to fruition. In the effort to move this bill more quickly to passage, claims have been made that the specialized miners needed for exploration will leave and not return for an unknown period of time, thereby furthering the delay of this project. This claim has been made for a couple of years now with an ever-changing deadline for their departure, so at this point, the validity of this argument is somewhat suspect. An independent review of the economic benefits and pay scale of jobs to be offered as a result of this exchange should be submitted to the Committee so that members may weigh the costs and benefits to the region and its residents from employment at the proposed mine.

National Conservation Area

Since the hearing was held on this bill, there have been several articles in the Wall Street Journal and other publications about ongoing buyout efforts between the two main principals, BHP and Rio Tinto, involved in the Resolution Copper venture. With the potential for BHP to take over all of Rio Tinto's holdings and thereby become the sole benefactor, there is the potential for significant improvement to this proposal. But any environmentally significant lands obtained in trade for lands held in federal trust should be owned and managed by the federal government, ideally through establishment of a National Conservation Area and not by outside third parties.

In the past, Resolution Copper has been unable to obtain commitments from BHP to assist in resolving concerns about properties along the San Pedro River, use of their old slag/barrow pits for solar electricity generation, potential water use associated with BHP's master planned community, or the impacts of any drawdown on the San Pedro River. There is also the potential for preservation of Native American cultural and historic sites along the lower San Pedro that could be part of this proposal. Now is not the time for a rush to judgment, and these issues should be closely examined before this bill moves forward.

Royalty Language Proposal

Land exchanges and conveyances can often be burdensome on the public interest. Even with the parcels that the Federal Government would acquire under H.R. 3301, the overall benefit to the public interest is in question. Resolution Copper should be required to pay a royalty on the proceeds from mining on the Federal lands that would be acquired under H.R. 3301. The draft royalty proposal received by my office, dated January 20, 2008, is inadequate. Resolution Copper should draft a new proposal that is based on current law or pending legislation before Congress. I suggest that Resolution Copper take a close look at the royalty provision in the Greens Creek Land Exchange Act of 1995 (P.L. 104-123), or at H.R. 2262, the Hardrock Mining and Reclamation Act of 2007.

BHP and Rio Tinto Buyout

We have read in several newspapers about the ongoing buyout talks among the principal partners of this endeavor. There is considerable concern that agreements made with resolution copper may not be acceptable to new ownership and that there could be future efforts to change commitments at a later date, if deemed economically unacceptable by the new ownership. This partnership and the parent companies appear to be in significant transition and rushing this project forward. This gives the impression of being more about increasing one partner's value during the buyout than negotiating the best possible arrangement for all stakeholders. The recent removal of Resolution's President Rickus without a public explanation increases uneasiness about the changing corporate entities' long-term commitments negotiated under his leadership.

There are too many unanswered questions, too much continued opposition on record for my office to support moving this legislation through the National Parks, Forests, and Public Lands Subcommittee at this time. I would appreciate a written response to these concerns and an outline of all meetings held with all stakeholders since the Subcommittee hearing was held. Once that information has been provided, my office will be in contact about the need for any future meetings on this legislation.

Sincerely,



Raúl M. Grijalva
Chairman

Subcommittee on National Parks, Forests and Public Lands