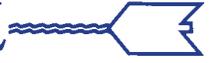




INTER TRIBAL COUNCIL of ARIZONA



- MEMBER TRIBES**
 AK-CHIN INDIAN COMMUNITY
 COCOPAH TRIBE
 COLORADO RIVER INDIAN TRIBES
 FORT McDOWELL YAVAPAI NATION
 FORT MOJAVE TRIBE
 GILA RIVER INDIAN COMMUNITY
 HAVASUPAI TRIBE
 HOPI TRIBE
 HUALAPAI TRIBE
 KAIBAB-PAIUTE TRIBE
 PASCUA YAQUI TRIBE
 PUEBLO OF ZUNI
 QUECHAN TRIBE
 SALT RIVER PIMA-MARICOPA
 INDIAN COMMUNITY
 SAN CARLOS APACHE TRIBE
 TOHONO O'ODHAM NATION
 TONTO APACHE TRIBE
 WHITE MOUNTAIN APACHE TRIBE
 YAVAPAI APACHE NATION
 YAVAPAI PRESCOTT INDIAN TRIBE

April 29, 2010

The Honorable Nick J. Rahall, II, Chair
 Committee on Natural Resources
 U.S. House of Representatives
 1324 Longworth HOB
 Washington, DC 20515

Re: ITCA Opposition to H.R. 2509, H.R. 4880 and S. 409

Dear Chairman Rahall:

On behalf of the 20 federally recognized Indian Tribes, Nations, and Communities (“Member Tribes”) who are Members of the Inter Tribal Council of Arizona (“ITCA”), I am conveying to you in this letter and the enclosure to it strong opposition to H.R. 2509 AND H.R. 4880 and S. 409, the Southeast Arizona Land Exchange and Conservation Act of 2009, as well as the more recent incarnation of this legislation, H.R. 4880.

The effect of this legislation is to convey to two foreign-owned mining conglomerates and their subsidiary public lands, ore bodies and other natural resources that are located in an extremely sensitive area for Tribes of Arizona from the standpoint of American Indian sacred sites, religion, culture, and history as well as the environment and hydrology of the region. Each of these bills would facilitate the use of “block and cave mining” and thereby ensure the subsidence of the land in close proximity to Apache Leap, Gaan Canyon, Oak Flats, and Queen Creek, all of which have strong historical, religious, cultural and sacred importance to our people. This form of mining in this location would threaten the integrity of each of these land features and the significance of them to American Indians.

We are aware of your herculean and noble efforts in the past to help Native Americans protect sacred sites and to have lands of importance to them respected and protected and considered when the federal government is making decisions about the use of public lands. We ask that your concern for such sites be brought to bear to oppose the environmental, cultural and sacred sites debacle that would be perpetrated upon Tribes in Arizona if either of the bills listed were enacted. We respectfully urge and seek your continued opposition to the above cited bills which, to our people, represent nothing short of an assault on the history, culture, sacred sites and religion of many Tribes in addition to the environment, including water resources, of the entire region primarily for the benefit of the shareholders of these foreign owned mining conglomerates.

Each of the current bills contemplates allowing these mining conglomerates and their subsidiary to use the highly destructive of the surface block and cave mining in this very sensitive location primarily because it is “cheaper” than other methods of mining, some of which have been in use in that very same region in the past. To our Tribes, there is nothing

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that justifies the despoliation and offense that the bills would bring and certainly not because it is a way to better line the pockets of foreign corporations at the expense of public resources of the United States.

Among the numerous deficiencies of the Rio Tinto/BHP Billiton bills are:

1. No Full EIS: Failure to require a comprehensive *full* Environmental Impact Statement (EIS) on the entire proposed project, including exploration, mine development, mining processing, mine closure, reclamation and maintenance, prefeasibility and feasibility studies, mine closure and monitoring to protect air quality, surface and ground water supply, and surface and ground water quality,

2. Failure to Protect Sacred Sites and the Environment: Failure to protect Sacred Sites and Locations, including Apache Leap, Gaan Canyon, Oak Flat. These areas should be retained in federal ownership to the extent they are today and protected with no mining activities allowed on or under these sites, including without limitation, exploration, drilling, tunneling or administrative activities, and standards and restrictions are established so that any proposed related activities in areas other than these would preserve necessary vertical and lateral natural geologic support, to assure that these sites would suffer no subsidence, structural or visual damage.

A. Apache Leap Must Absolutely be Protected—The member tribes of ITCA support the provision in Section 7 of the amended S. 409 which directs that Apache Leap be “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.” In addition, ITCA supports Section 8(a) (1)’s provision which provides for the Secretary to “manage Apache Leap to preserve the natural character of Apache Leap and to protect archaeological and cultural resources located on Apache Leap.”

ITCA has remaining concerns, however, that the provisions of Section 8(a) (2) of the amended S.409 do not sufficiently protect this area of great cultural and religious significance to ITCA Tribes, and do not sufficiently protect the rights of Tribal Members to continue to conduct religious and cultural activities at Apache Leap as they have since the beginning of time. Although the provisions of Section 8(a)(2) only allow for activities to occur under the surface of Apache Leap if the Secretary determines that they “would not disturb the surface of the land”, this is not sufficient to protect the integrity of this consecrated site. The subsurface activity itself is sacrilege. In addition, even if the Secretary exercises all due diligence in making such a determination to allow subsurface activity, the determination cannot be made without a chance of error or subsidence of a portion of Apache Leap regardless of intentions to the contrary. In the case that a determination was made in error, and underground activities resulted in damage to this sacred land, there would be no means or manner by which the mistake could be corrected – the character of Apache Leap and its resources would be lost forever. The United States should not allow that possibility to occur.

Apache Leap is where American Indians jumped to their deaths rather than be captured during the early days of the history of the territory of Arizona. It is a sacred area as you would imagine. ITCA cannot support any provision in H.R. 2509 or H.R. 4880 or S. 409 which would allow for activity beneath the surface of Apache Leap. There is no justifiable rationale for including such a provision in this proposed legislation. Apache Leap should be withdrawn from activity under the public land laws, mining laws, and leasing laws. *There is no legitimate purpose in conducting activities beneath its surface at any time.*

B. Oak Flat Requires Protection--H.R. 2509 and H.R. 4880 refers to the federal land to be exchanged as “the approximately 2,406 acres of land . . . depicted on the map entitled ‘Southeast Arizona Land Exchange and Conservation Act of 2009 – Federal Parcel-Oak

Flat' and dated January 2009." The amendment also refers a parcel of land titled the "Oak Flat Withdrawal Area". ITCA has not been provided maps referenced in the bill, and is therefore unclear on which part of Oak Flat is within the Withdrawal Area, and which part is included in the Federal land proposed to be exchanged.

The Oak Flat Picnic and Camp Ground has been permanently withdrawn from appropriation under the United States' mining laws since the Eisenhower Administration, yet the H.R. 2509 AND H.R. 4880, Section 5(e)(1) allows Resolution Copper to carry out mineral exploration activities under the Oak Flat Withdrawal Area prior to a land exchange. This violates the intent of the Secretary of Interior on behalf of the United States to permanently protect this site, and is unacceptable to ITCA. The protections afforded to Oak Flat years ago were intended to be permanent, and there is no legitimate reason to remove these protections, and certainly not for mining on lands that include sites sacred and religious to American Indians.

C. Sacred and Religious Sites Must be Protected--In addition to Apache Leap and Oak Flat, Gaan Canyon and Queen Creek are religious and sacred sites which would be affected adversely by the proposed exchange and subsequent mining operations, and which require protection under the Bill. Oak Flat, Gaan Canyon, and Queen Creek have significant cultural and religious meaning and importance to the member Tribes of ITCA. Neither the Senate Bill, nor H.R. 2509 or H.R. 4880, provide for protection of these sites.

ITCA requests that any legislation be amended to fully protect Apache Leap, Oak Flat, Gaan Canyon, and Queen Creek from surface and subsurface mining or other activities, and additionally provide for permanent access for Tribal members to these sites. We request that the Committee respect and protect the religious beliefs and activities of the Tribes and their Tribal members, beyond the requirements of the American Indian Religious Freedom Act.

In the American Indian Religious Freedom Report dated August 1979 and issued by the Federal Agencies Task Force as mandated by Public Law 95-341, the report identifies some of the obstacles throughout our nation that American Indians face in terms of obtaining appropriate respect for and recognition of their religious views by federal agencies as they implement other federal laws. The report states that:

"While proclaiming their (non-Indians') own traditions to be infallible and literal truths, non-Indians have not accorded other religions the same courtesy . . . The most critical aspect of past federal treatment of Indian religious activities, practices, and sacred locations is that abuses have for the most part arisen because of ignorance or misunderstanding on the part of the non-Indian. The treatment exemplifies what can happen to a religious minority when its tradition is radically divergent from that of a majority in society . . ."

Further, the report states:

"The primary essence of the tribal religions is to remain in a constant and consistent relationship with nature . . . Customs which adjust to the natural world and its inhabitants thus dominate the tribal religions where laws and institutions are the dominant factors in the larger religions."

Additionally, Executive Order 13007 requires with certain guidelines, that federal agencies – "accommodate access to and ceremonial use of Indian sacred sites . . . and . . . **avoid adversely affecting the physical integrity of such sacred sites.**" (Emphasis added).

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These issues have direct relevance to whether or not the land exchange proposed by international mining conglomerate Resolution Copper can be determined to be “in the public interest.” From our standpoint, if the United States takes its responsibilities to Native Americans with the solemnity and commitment that is required under the Constitution, treaties and the law, it would defy rationality for anyone to contend that such an exchange could be in the public interest.

D. Block Cave Mining Must Be Prohibited--ITCA believes that when the block cave mining technique is used, it is impossible to permanently protect surrounding lands from surface subsidence and instability. ITCA requests that legislation be amended to include language that would require that any mining activity conducted before, during or after any land exchange use a technique which will ensure permanent vertical and lateral support of all surface features in the area.

Resolution Copper proposes to use the block cave mining technique primarily because it is *cheaper*. Resolution Copper identifies the primary ore body as located approximately 7,000 feet below the surface and 3,000 feet below sea level. The ore body would be accessed by excavating a void below the ore body, or about 3,000 feet below sea level. The ore body would be mined vertically by explosions, collapsing or “caving” the ore into the void or work area, until the entire ore body is removed.

This would, of course, leave an enormous cavern more than 2,000 feet deep. There is no question that the land above the cavern, including Apache Leap, Oak Flat and Gaan Canyon would be rendered unstable, and eventually be in danger of collapsing into the cavern.

Due to the intense pressure, heat, and risk inherent to humans by mining at such depths with this technique, the ore body will be accessed and mined by robots and automation.

The ore body which Resolution Copper targets is the foundation for a major mountain area in central Arizona, which includes Apache Leap, Oak Flat and Gaan Canyon. The instability and eventual collapse of these features are unacceptable and would be an outrageous offense to American Indians with history in the area and others whose sacred sites may be similarly sacrificed for some foreign-owned mining conglomerates. Not only would it seriously harm or destroy these sacred and religious sites, it would alter regional weather patterns, precipitation, wind patterns and temperature zones. This actuality would be catastrophic. Congress should not enable this result. Congress should prohibit such consequences as they would be unconscionable results of the legislation.

3. Failure to Adequately Protect Water Supply and Resources: Resolution Copper should be required to disclose the potential impact on local and regional surface and subsurface water supplies, and water quality resulting from mine development, mining activity, ore processing and mine closure and maintenance.

The proposed legislation in the House and Senate makes no mention of concerns regarding water supplies or water quality. While these issues may be addressed in the environmental review and the Secretary’s public interest determination required in the Senate’s amended bill, ITCA strongly urges the Congress to include specific language in any bill requiring Resolution Copper to disclose potential impacts on water supplies and water quality posed by mining activities. Specific language as to these issues would demonstrate Congress’s intent to protect water quality and supply as vital to the public interest determination and environmental review. Assuming that these issues will be addressed in environmental review is not sufficient.

4. Water Rights and Regional Water Resources are Not Protected: Finally, ITCA requests that Resolution Copper be required to prove that it has present perfected legal rights and priorities for all

water necessary to develop, mine, process ores, restore and maintain the proposed mine processing sites, prior to the initiation of any mine development, if such development were approved by the Secretary.

The proposed legislation in the House and the Senate does not address whether Resolution Copper holds the rights to legally use the water required for their proposed mine without interfering with prior superior rights under Federal and Arizona law. ITCA strongly urges you to insist on such language into the bill which is appropriate and sufficient to address this issue.

The protection of water quality, quantity, and vested protected water rights must be provided in this Bill. As ITCA has raised these and related concerns before Congress, Resolution Copper has maneuvered and manipulated political interests in Arizona to change laws and regulations which have been in place for decades in order to exempt itself from these vital public safeguards. *See, e.g.*, H.B. 2289, 49th Leg., 2d Reg. Sess. (Ariz. 2010); H.B. 2617, 49th Leg., 2d Reg. Sess. (Ariz. 2010); S.C.R. 1046, 49th Leg., Reg. Sess. (Ariz. 2010).

ITCA requests that the Bill be amended to take the direct federal control necessary to ensure that the surface water and ground water is protected in both quantity and quality, and that federal, tribal, private, and public water rights are protected in perpetuity from interference, diminishment and degradation.

Conclusion

Chairman Rahall, thank you for your consideration of the ITCA's views on this matter. We ask that you oppose this highly offensive and destructive legislation that has so many downsides to it for American Indians and the environment of the region of Arizona where it is proposed.

We request that you insist on remedying the many deficiencies we have outlined above and thereby best serve the interests of the member Tribes of ITCA and American Indians and others in the United States who stand with us, the people of Arizona, and the public interest of the people of the United States.

Thank you for your support of our position as stated above. In the past we have depended on your predecessor as Chairman of the Congressional Committee of Congress with jurisdiction over Indian Affairs, the Honorable Morris K. Udall of Arizona, for justice and respect for American Indians concerns. We look to you to help ensure that the Congress meets its responsibilities and those of the United States to American Indians with respect to this proposed legislation.

Sincerely,



Shan Lewis, President
Inter Tribal Council of Arizona

Vice Chairman
Fort Mojave Indian Tribe

xc: Honorable Raul M. Grijalva, Chairman
Subcommittee on National Parks, Forests, and Public Lands