

**H.R. 473, H.R. 869, H.R. 1258,
H.R. 1545, H.R. 1740 & H.R. 1904**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS
AND PUBLIC LANDS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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Tuesday, June 14, 2011
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LEGISLATIVE HEARING ON H.R. 1904, "SOUTH-EAST ARIZONA LAND EXCHANGE AND CONSERVATION ACT OF 2011"; H.R. 869, "TO CLARIFY THE DEFINITION OF FLOOD CONTROL OPERATIONS FOR THE PURPOSES OF THE OPERATION AND MAINTENANCE OF PROJECT NO. 2179 ON THE LOWER MERCED RIVER"; H.R. 1258, "BOX ELDER UTAH LAND CONVEYANCE ACT"; H.R. 1545, "WACO MAMMOTH NATIONAL MONUMENT ESTABLISHMENT ACT OF 2011"; H.R. 473, "HELP TO ACCESS LAND FOR THE EDUCATION OF SCOUTS OR HALE SCOUTS ACT"; AND 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."

Tuesday, June 14, 2011

U.S. House of Representatives

Subcommittee on National Parks, Forests and Public Lands

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to call, at 10:03 a.m. in Room 1334, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Subcommittee] presiding.

Present: Representatives Bishop, Duncan, McClintock, Labrador, Grijalva, Holt, Garamendi, and Markey (ex officio).

Also Present: Representatives Gosar, Denham, Schweikert, Flores, and Boren.

Mr. BISHOP. All right. This hearing will come to order. The Chairman notes the presence of a quorum. The Subcommittee on National Parks, Forests, and Public Lands is meeting today to hear testimony on a number of bills that fall within our jurisdiction.

Although today's hearing will cover a couple of controversial bills, it will also cover some non-controversial bills that we hope to take up, and because many of the witnesses have asked to testify today, I will remind everyone that the time limit for all speeches is five minutes, and you can see in front of you where that ends up.

Under the rules, opening statements are limited to the Chairman and Ranking Member. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the Clerk by the close of business today. Hearing no objections, it is so ordered.

I would also ask unanimous consent that Representative Flores and Representative Boren, who are not Members of this Subcommittee, be allowed to stay on the dais and participate with us, as well as any other Member who wishes to come and address a specific bill that he or she is proposing today. I ask unanimous consent, and without objection, that will be so ordered.

**STATEMENT OF HON. ROB BISHOP, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF UTAH**

Mr. BISHOP. Let me make my opening statement very quickly, and then I will recognize the gentleman from Arizona, Mr. Grijalva. You know, in each session of Congress, many bills, and sometimes hundreds, are referred to this Subcommittee.

All are well intentioned, but not all help our country address the real and high priority needs of our citizens for both sound conservation, and at the same time appropriate access to vital resources found in our vast public land system.

Today, we are going to take up six bills—from a purely conservationist Wild and Scenic River designation, to a carefully thought out development of a copper mining operation that will provide high-paying jobs for thousands of workers, and give them the opportunity to provide for the material needs of their families.

And just as importantly help those families to have self-respect and dignity in good jobs that they will be provided, and because we have a lot to cover, I am going to limit my remarks to that, and hopefully we can get started quickly.

I now defer to the Ranking Member, the Gentleman from Arizona, Mr. Grijalva, for an opening statement.

[The prepared statement of Mr. Bishop follows:]

**Statement of The Honorable Rob Bishop, a Representative in Congress
from the State of Utah**

In each session of Congress many bills—sometimes hundreds of bills—are referred to this Subcommittee.

All are well-intentioned but not all help our country address the real and high priority need of our citizens for both sound conservation and, at the same time, appropriate access to the vital resources found on our vast system of public lands.

Today, we take up 6 bills that range from a purely preservationist Wild and Scenic River designation to a carefully thought out bill that authorizes development of a copper mining operation that will provide high-paying jobs for thousands of workers, giving them the opportunity to provide for the material needs of their families—and just as importantly—help these families to have the self-respect and dignity good jobs provide.

**STATEMENT OF HON. RAÚL GRIJALVA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA**

Mr. GRIJALVA. Thank you, Mr. Chairman. I appreciate it. As you noted, three of the measures before the Subcommittee today—your legislation, Mr. Chairman, and Mr. Boren's HALE Scouts Act bill and Mr. Larsen's Wild and Scenic River bill—are non-controversial measures that have already passed the House.

In fact, I would like it to be noted that your bill, Mr. Chairman, has passed the House twice while I had the privilege of being the Chairman of this Subcommittee, and I hope that you are as successful as we were in that time in getting this bill through the House.

We look forward to any updates on these measures from the witnesses today. The Waco Mammoth bill also passed the House in the last Congress, with 85 of my Republican colleagues voting to support the measure.

Unfortunately, the version introduced in this Congress is drastically different from that popular bipartisan measure. Along with other harmful changes, the bill prohibits all Federal funding for this proposed new national park unit.

This attempt to provide the Waco Mammoth National Monument with national status and NPS expertise, the expertise that it deserves, while denying the unit any Federal funding, is contradictory and unworkable.

The Administration will lay out the fatal flaws in this approach, and it is my hope that the Subcommittee will revert to the version of the bill which received overwhelming bipartisan support in the last Congress.

The Lower Merced River bill is problematic as well, amending an existing Wild and Scenic River designation to allow the river to be inundated would be a significant step to be taken only under very serious circumstances.

It is not clear that the changes proposed by the Merced Irrigation District are actually necessary for flood control, and thus this unprecedented proposal to amend the Wild and Scenic designation must be considered very, very carefully.

I oppose the land exchange mandated by H.R. 1904, the Resolution Copper legislation, on behalf of local environmental communities, local native peoples, and the American taxpayers, I worked hard as Chairman of this Subcommittee to craft legislation that could move forward, that was transparent and of value to the taxpayers, and conscious of all the constituencies affected by this decision.

I intend to continue to do that in my present role on the Committee. The known impacts of H.R. 1904 are bad enough. The vast lucrative mining operation authorized by this legislation will harm an area richly blessed with cultural, recreational, and scenic resources, and will do so for the benefit of a wealthy, multinational, mining conglomerate.

But the unknown impacts of this giant mine raise even more serious concerns. Among the unanswered questions are: Could the proposed mining operations under Apache Leap even collapse? What are the potential health impacts for those living and working in Southeastern Arizona? What are the potential impacts on the quantity and quality of water in an already drought-plagued area? How much profit does Rio Tinto and BHP stand to make over the life of the mine? How reliable are the companies' employment and economic impact projections?

The list of the unknown goes on and on, and the reason that we have no answers to these critical questions is because H.R. 1904 short-circuits fundamental good government policies, such as full

compliance with NEPA and robust government-to-government consultation with Native people, and that should take place and must take place before the decision to allow this project to move forward is made.

In the end, the real question is, if the resolution counterproposal is truly in the best interests of the American public, why does the legislation include so many instances where the public's right to know is short-circuited or eliminated?

We look forward to the insights of our witnesses on this subject to explain this and to explain other serious problems with this legislation. With that, Mr. Chairman, I yield back.

[The prepared statement of Mr. Grijalva follows:]

**Statement of The Honorable Raúl Grijalva, Ranking Member,
Subcommittee on National Parks, Forests and Public Lands**

Thank you, Mr. Chairman.

Three of the measures before the Subcommittee today—your legislation, Mr. Boren's HALE Scouts bill, and Mr. Larsen's Wild and Scenic River bill—are non-controversial measures that have already passed the House. In fact, I would like it noted that your bill, Mr. Chairman, passed the House *twice* while I was the Chairman of this Subcommittee. We look forward to any updates on these measures from our witnesses today.

The Waco Mammoth bill *also* passed the House last Congress, with 85 Republicans voting to support the measure. Unfortunately, the version introduced this Congress is drastically different from that popular, bipartisan measure. Along with other harmful changes, the bill *prohibits all federal funding* for this proposed new National Park unit.

This attempt to provide the Waco Mammoth National Monument with the national status and NPS expertise it deserves, while denying the unit any federal funding, is contradictory and unworkable. The Administration will lay out the fatal flaws in this approach and it is my hope the Subcommittee will revert to the version of this bill which received such overwhelming support from both Democrats and Republicans last Congress.

The Lower Merced bill is problematic as well. Amending an existing Wild and Scenic River designation to allow the river to be inundated would be a significant step, to be taken only under very serious circumstances. It is not clear that the changes proposed by the Merced Irrigation District are actually necessary for flood control and thus, this unprecedented proposal to amend the Wild and Scenic designation must be considered very carefully.

Finally, I fundamentally oppose the land exchange mandated by H.R. 1904, the Resolution Copper legislation. On behalf of the local environmental community, local Native Peoples and the American taxpayers, I worked hard as the Chairman of this Subcommittee to prevent this legislation from moving forward and intend to continue doing so as the Ranking Member.

The known impacts of H.R. 1904 are bad enough. The vast, lucrative mining operation authorized by this legislation will harm an area richly blessed with cultural, recreational and scenic resources and will do so for the benefit of a wealthy, multinational mining conglomerate.

But the *unknown* impacts of this giant mine raise even more serious concerns. Among the unanswered questions are:

- Could the proposed mining operations under Apache Leap cause it to subside or even collapse?
- What are the potential health impacts for those living and working in southeastern Arizona?
- What are the potential impacts on the quality and quantity of water in this already drought-plagued area?
- Just how much profit do Rio Tinto and BHP-Billiton stand to make over the life of this mine?
- How reliable are the company's employment and economic impact projections?

The list of unknowns goes on and on and the reason we have no answers to these critical questions is because H.R. 1904 short-circuits fundamental, good-government policies—such as full compliance with the National Environmental Policy Act and robust, government-to-government consultation with Native People—that must take place *before* the decision to allow this project to move forward is made.

In the end, the real question is, if the Resolution Copper proposal is truly in the best interests of the American public, why does the legislation include so many instances where the public's right to know is short-circuited?

We will look forward to the insights of our witnesses to explain this and other serious problems with this legislation.

Mr. BISHOP. Otherwise OK?

Mr. GRIJALVA. Otherwise it is fine.

Mr. BISHOP. All right. We are grateful for all of you being here. The first bill that we will consider is House Bill 473, a conveyance of Forest Service lands to the Boy Scouts. Our witnesses will be the author, Mr. Boren, who is on the dais, Mary Wagner, the Associate Chief of the United States Forest Service, and Bill Haines, who is the CEO of the Indian Nations Council, Boy Scouts of America. Mr. Boren, we would welcome your comments first.

**STATEMENT OF HON. DAN BOREN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. BOREN. Thank you, Mr. Chairman. I do want to thank Chairman Bishop and Ranking Member Grijalva for having this hearing, and I would also like to thank Mr. Bill Haines for joining us today and making himself available for questions about the HALE Scouts bill.

This is a non-controversial piece of legislation that will provide a conveyance of 140 acres of land in Oklahoma's Ouachita National Forest to the Indian Nations Council of the Boy Scouts of America.

The Indian Nations Council of the Boy Scouts of America is a non-profit organization providing educational programs for boys and young adults to build character, to train, to instill the responsibilities of citizenship, and to develop personal fitness and well-being.

Camp Tom Hale first opened in June of 1930 to serve Boy Scouts in Oklahoma. In 1963, the Boy Scouts Council worked with the State of Oklahoma and the United States Forest Service to exchange the camp for 440 acres of wilderness areas in the Ouachita National Forest.

This new Camp HALE has continued as a summer adventure camp, serving thousands of scouts during the intervening 41 years. In 1997, the council board developed a strategic plan for a \$3.5 million expansion and renovation of the camp.

Since then, the council has spent in excess of \$1 million, continually updating and expanding facilities to meet the needs of Scouts. As a result, a renewed emphasis on wilderness and the outdoors has flourished.

Over 6,000 scouts and leaders from a five-State area attend weekly sessions offered in June and July, and enjoy the beautiful Ouachita Forest. Attendance has now exceeded the maximum number of available camp sites and program areas, which is causing Camp HALE to turn away hundreds of scouts each summer.

It is now critical for camp growth that the boundaries be extended to include more area for camping and additional program and training services. Successful completion of this objective will allow the Boy Scouts to continue the expansion of outdoor and leadership training for thousands of youth living in the Central South-

west, and bring additional usage, and enjoyment of the Ouachita National Forest to more families.

In the last Congress, the HALE Scouts bill passed the House without opposition and then was reported out of the Senate Committee on Agriculture, Nutrition, and Forestry, by Senator Lincoln without amendment. With that, I yield back and again I want to thank Mr. Haines and all also Ms. Wagner for being here.

Mr. BISHOP. Thank you, Congressman. As with all our witnesses, your written testimony is going to appear in the full hearing record. So we are going to ask you to keep your oral comments to five minutes.

The timer is in front of you, and you will notice that the green light means that you have five minutes left, and when one minute remains, it will go yellow, and then at red, we will ask you to conclude. Ms. Wagner, if we can start with you first.

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. WAGNER. Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, thanks for the opportunity to be here and share the Department's views on H.R. 473. The Department does not oppose this bill.

The bill would provide for the sale of approximately 140 acres of land in the Ouachita National Forest to the Indian Nations Council of the Boy Scouts of America. We appreciate that the bill language includes the sale of National Forest system land for fair market value, and that the council will pay the reasonable administrative costs for appraisals, surveys, and other administrative analyses associated with the land sale.

The bill authorizes the retention and use of the proceeds from the land sale to purchase land having high priority resource and public recreation benefits. We would like to work with the Committee staff on technical corrections to the bill, and to ensure bill language includes the Indian Nations Council's agreement to the conveyance.

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

[The prepared statement of Ms. Wagner follows:]

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

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.

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.

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.

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

Mr. BISHOP. Thank you. Mr. Haines.

**STATEMENT OF BILL HAINES, CEO, INDIAN NATIONS
COUNCIL, BOY SCOUTS OF AMERICA**

Mr. HAINES. Good morning, Mr. Chairman, and the Members of the Subcommittee. I would just like to thank you for the opportunity to be here today, and be able to testify on H.R. 473.

I am Bill Haines, the Scout Executive and CEO of the Indian Nations Council. On the HALE bill, it will allow the Boy Scouts and Indian Nations Council to purchase land in the Ouachita National Forest.

The Boy Scouts are not looking for a handout. We are willing to pay on the fair market value. Each year, there are over 7,000 scouts and scouters who attend our camp. Each year, there are scouts and kids who we have to turn away because we don't have enough land.

We have donors who are willing to help us to expand and to make this count bigger, but we don't have the land to do that. We are landlocked. Each year, there are a lot of boys that are just lost on the streets, and in scouting, we teach citizenship, to love nature, and how to protect the land.

And the Boy Scouts have always been great stewards of the land. With the passing of this bill, it will help many scouts for years to come. That is my testimony. Thank you.

[The prepared statement of Mr. Haines follows:]

**Statement of Bill Haines, Scout Executive/Chief Operating Officer,
Indian Nations Council, Boy Scouts of America, on H.R. 473**

Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss H.R. 473, the 'Help to Access Land for the Education of Scouts' or 'HALE Scouts Act.'

The HALE Scouts Act proposes to allow the Indian Nations Council of the Boy Scouts of America to purchase acreage from the Ouachita National Forest to expand summer camp operations. We have worked extensively with the U.S. Forest Service to coordinate the purchase.

Further, the Indian Nations Council Board worked closely with Congressman Boren's and Senator Inhofe's offices as they drafted the HALE Scouts Act. We would like to thank Congressman Boren and Senator Inhofe, their staff, and the U.S. Forest Service for their support and cooperation.

Boy Scout camps develop the "whole self" and encourage good citizenship. The Indian Nations Council is not looking for a handout, only the ability to purchase additional acreage from a willing seller at fair market value to provide great scouting experiences for more kids.

In 1963, the Indian Nations Council acquired 480 acres from Ouachita National Forest to establish Camp Tom Hale. Camp Tom Hale continues to this day as an adventure camp, providing thousands of Scouts and adult leaders each summer from around the country with a wide variety of activities, advancement, and learning opportunities.

This summer over 6,800 Scouts will attend camp during one of its nine sessions. During a typical week at Camp Tom Hale, scouts participate in leadership and life skills development, nature conservation, and value building exercises, consistent with the Boy Scout program. Nearly 20,000 merit badges were earned for 2007 and over 1,300 rank advancements were completed by the scouts in attendance. Attendance in 2010 was 113% of the 2009 participation. Year-over-year program growth has been consistent. Ninety-three percent (93%) of our Council's troops attended a long-term camp session last summer at Camp Tom Hale.

In recent years, the Council has invested over \$1 million in the camp to accommodate increased demand for camp services. An additional week of camping has been added, which now completely fills the summer availability. Previously, we have added new camp sites with bathroom and shower facilities.

We are at complete capacity and have a waiting list of troops wishing to attend. Other recent improvements include:

- New Dining Facility Seating 500
- Junior Olympic Pool
- Facilities for Nature Training
- Lake Aquatics Training
- Air-conditioned Staff Housing
- Downhill Skiing Area
- Horse Stables
- Leadership Training Center
- 28,000 Gallon Water Storage & Delivery System
- New Waste Disposal Lagoon with a 10,000 Scout capacity
- Many Other Program & Facility Enhancements

Funding of more than \$400,000 has been approved by the Indian Nations Council Board for purchase of additional land, including the immediate construction of infrastructure and facilities to camp 180 additional scouts per week, once the acquisition is completed. Further funding in excess of \$1.5 million has been raised for additional camping and program facilities.

Camp Tom Hale is not just for the youth. Since 2002, Camp Tom Hale has hosted adult leader training courses, covering a wide variety of leadership and outdoor skill development and first aid courses. This past year 1,500 various adult leader course completion certificates were issued. In addition, First Aid and CPR Certification was offered, resulting in 232 leaders completing adult CPR with AED, 126 were certified in First Aid, and 261 adults completed Wilderness First Aid.

Due to the growth of the scouting program in eastern Oklahoma, attendance at Camp Tom Hale has outgrown the program capacity, causing us to turn away hundreds of scouts each summer. The critical need to serve more scouts requires additional space to allow us to maintain the quality of camping and experience for our scouts and their adult leaders. Boundaries must now be extended to include more area for camping and for additional program and training services.

Passage of the HALE Act will provide the space needed to allow over 1,500 additional scouts the ability to go to camp.

Thank you for your time and consideration of this matter. I appreciate the continued support and cooperation of Congressman Boren, Senator Inhofe and the U.S. Forest Service. I would be pleased to answer any questions.

Mr. BISHOP. Thank you. I appreciate both of you for the testimony that you have given. I have no questions for these witnesses. Mr. Grijalva.

Mr. GRIJALVA. I have no questions, Mr. Chairman.

Mr. BISHOP. Let's go back and forth. Are there any questions? Representative Duncan, or Representative Boren? Representative Gosar? Representative Markey, do you have questions for this witness?

Mr. MARKEY. It might come in the form of—well, sometimes my questions come in the form of answers.

Mr. BISHOP. We have all questioned your answers all the time, but for the next bill. Representative Flores. All right. We appreciate your time with us today. Thank you, Mr. Haines, and Ms. Wagner, we would ask you if you would stay at the table for the next bill. Thank you. Representative Boren, thank you very much. Mr. Markey.

**STATEMENT OF HON. EDWARD MARKEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS**

Mr. MARKEY. I thank you, Mr. Chairman, very much. Mr. Chairman, 1955 was a good year. The Salk vaccine was approved. The Brooklyn Dodgers won their first World Series, and in Seattle, Washington, William and Mary Gates welcomed the birth of their son, Bill.

Mr. BISHOP. Mr. Markey, if I can stop you right there. The 1955 Yankees lost, and if you are going to go farther with this, I am going to stop you right now.

Mr. MARKEY. In Boston, we identify with the Dodgers.

Mr. BISHOP. OK. Fine.

Mr. MARKEY. And it all relates to the Yankees, of course, in Boston and in Brooklyn, although we had to wait another 40 years, or no, 50 years, to finally have the curse removed from our heads.

And at the White House, Mr. Chairman, President Dwight Eisenhower issued Public Land Order 1229, withdrawing 760 acres of Federal land known as Oak Flat in Southeastern Arizona from further mining development.

And here we are 56 years later, and the question being asked is, after more than five decades, haven't we conserved this area long enough?. Polio has been wiped out in the developed world, and Bill Gates is retired, and in the name of progress and for the promise of jobs, isn't it time to end our capital stewardship of this land, and hand it over to development, and just like the Dodgers, move out?

The answer, Mr. Chairman, is No. The proponents of H.R. 1904 accurately describe the bill as a land exchange, and urge a capital analysis of the bill's procedural provisions. In other words, we are encouraged to conduct a surface analysis of this mining legislation when, ironically, what we need to do is to dig much deeper.

The public needs to have a clear picture of what is gained, and what is being lost in this exchange. Yes, the public stands to gain roughly 5,000 acres of land through this exchange, and by all

accounts, much of that acreage is desirable and worthy of preservation.

Further, we are told, there will be jobs created in this mine. Of course, much of the work will be automated and controlled offsite, but certainly some limited number of jobs will be created.

It is true that the company would pay an unspecified amount for the copper they would mine. That is what we would gain. Unfortunately, the true costs of all of that would be lost, and that has yet to be counted.

Those costs would be paid in water. Block and cave mining operations, 7,000 feet below sea level, in an already arid and drought-prone area, could devastate the quality and quantity of drinking water for thousands of people living and working in the area.

Those costs will be paid by the recreation community, who will see an area renowned for camping, hiking, and world-class rock climbing, carved into a matrix of tunnels and pits. Those costs will be paid by native people, who will watch as an area sacred to them since well before 1955 is desecrated and potentially even destroyed.

Finally, the American taxpayers will bear the costs of handing over billions of dollars in mineral resources to a foreign company for international sale without a fair return, and what is worse, Mr. Chairman, H.R. 1904 not only fails to fairly or even fully capture these costs, the bill specifically seeks to circumvent the public process designed to calculate these values by waiving meaningful compliance with the National Environmental Policy Act, and timely tribal consultation, H.R. 1904 urges us to move along, and assures us that there is nothing to see here.

Mr. Chairman, the last version of this legislation included a requirement that the Secretary make a formal determination that the proposed exchange was in the public interest before it could go through.

The fact that the public interest determination has been stripped from this bill should tell us everything that we need to know about H.R. 1904. I yield back the balance of my time, Mr. Chairman. Thank you.

[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,
Committee on Natural Resources**

Thank you.

1955 was a good year, Mr. Chairman. The Salk vaccine was approved, the Brooklyn Dodgers won their first World Series and in Seattle Washington, William and Mary Gates welcomed the birth of their son, Bill.

And at the White House, President Dwight Eisenhower issued Public Land Order 1229, withdrawing 760 acres of federal land known as Oak Flat in southeastern Arizona from further mining development.

And here we are, 56 years later, and the question being asked is, after more than 5 decades, haven't we conserved this area long enough? Polio has been wiped out in the developed world and Bill Gates is retired. In the name of progress, and for the promise of jobs, isn't it time to end our careful stewardship of this land, hand it over to development, and just like the Dodgers, move out? The answer, Mr. Chairman, is no.

The proponents of H.R. 1904 accurately describe the bill as a land exchange and urge a careful analysis of the bill's procedural provisions. In other words, we are encouraged to conduct a surface analysis of this mining legislation when, ironically, what we need to do is dig much deeper.

The public needs to have a clear picture of what is being gained, and what is being lost in this exchange. Yes, the public stands to gain roughly 5,000 acres of

land through this exchange and, by all accounts, much of that acreage is desirable and worthy of preservation.

Further, we are told there will be jobs created in this mine. Of course, much of the work will be automated, and controlled off-site, but certainly some limited number of jobs will be created.

And it's true that the company would pay an unspecified amount for the copper they would mine.

That is what we would gain. Unfortunately, the true costs of all that would be lost have yet to be counted.

Those costs will be paid in water. Block and cave mining operations seven thousand feet below sea level, in an already arid and drought-prone area, could devastate the quality and quantity of drinking water for thousands of people living and working in the area.

Those costs will be paid by the recreation community who will see an area renowned for camping, hiking, and world-class rock climbing carved into a matrix of tunnels and pits.

Those costs will be paid by Native People who will watch as an area sacred to them since well before 1955 is desecrated and potentially even destroyed.

And finally, the American taxpayers will bear the cost of handing over billions of dollars in mineral resources to a foreign company for international sale without a fair return.

What's worse, Mr. Chairman, H.R. 1904 not only fails to fairly—or even fully—*capture* these costs, the bill specifically seeks to circumvent the public process designed to *calculate* these values. By waiving meaningful compliance with the National Environmental Policy Act and timely Tribal consultation, H.R. 1904 urges us to move along and assures us that there is nothing to see here.

Mr. Chairman, the last version of this legislation included a requirement that the Secretary make a formal determination that the proposed exchange was in the public interest before it could go through. The fact that the public interest determination has been stripped from this bill should tell you everything you need to know about H.R. 1904.

Mr. BISHOP. I thank the Ranking Member of the Full Committee, and I appreciate him reminding us that the Dodgers never won again until they changed their environment. All right. Our second bill is H.R. 1740, a Wild and Scenic River designation, sponsored by Mr. Larsen of Washington, who is not here with us.

We will also hear again from Mary Wagner, who is the Associate Chief of the United States Forest Service, and Ms. Lisa Bellefond, if I am pronouncing that correctly, who is the Federal Government Relations Director for The Nature Conservancy. So, Ms. Wagner.

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. WAGNER. Members of the Committee, thank you again for the opportunity to share the Department's views on H.R. 1740, which amends Section 3(a) of the Wild and Scenic River Act to designate two segments of Illabot Creek in Skagit County, Washington, as a component of the National Wild and Scenic River System.

We strongly support this legislation. 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.

Illabot Creek also supports the highest density of chum and pink salmon in the Skagit River watershed, and provides habitat for one of the largest concentrations of wintering bald eagles in the Continental United States.

Mr. Chairman, we recommend that the Subcommittee consider designating all of Illabot Creek, from its headwaters to its

confluence with the Skagit River, as recommended in the Mt. Baker-Snoqualmie National Forest Plan.

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

[The prepared statement of Ms. Wagner follows:]

**Statement of Mary Wagner, Associate Chief, U.S. Forest Service,
U.S. Department of Agriculture, on H.R. 1740**

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.

Mr. BISHOP. Thank you. Ms. Bellefond.

**STATEMENT OF LISA BELLEFOND, FEDERAL GOVERNMENT
RELATIONS DIRECTOR, THE NATURE CONSERVANCY**

Ms. BELLEFOND. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today in support of H.R. 1740. I am Lisa Bellefond, Director of Federal Government Relations for the Washington State Program of The Nature Conservancy.

The Conservancy is dedicated to preserving the plants and animals in the natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive.

Our conservation work is grounded in pragmatism, sound science, partnerships with private, tribal, and public landowners, and tangible results in local places. For more than 30 years, The Conservancy has been working in collaboration with local partners to preserve the mighty Skagit River.

In 1976, the Conservancy and the Washington Department of Fish and Wildlife created the Skagit River Bald Eagle Natural Area. In winter, bald eagles now gather by the hundreds to feed on returning salmon, inspiring a popular annual festival that boosts the local economy.

The project includes other landowning partners, such as Skagit County, Washington State Parks, Washington Department of Natural Resources, Seattle City Light, and the Forest Service.

Together, we have cooperated to preserve more than 9,000 acres of eagle habitat, including more than 10 miles of river, and thousands of acres of forests. About 1300 acres are owned and managed by The Nature Conservancy.

Amending the Wild and Scenic Rivers Act to include Illabot Creek, which is a tributary of the Skagit River, complements the significant investments that have been made at the local level to protect the special area.

It also complements the trout and salmon fisheries recovery efforts underway in the Skagit Basin. This designation would protect water flows, and help to ensure that Illabot Creek continues to be a source of cold, clean water to Puget Sound, and provide exceptional habitat for steelhead and bull trout.

Illabot is one of the most important areas for bull trout in the Skagit Basin, and the Skagit River has the greatest abundance of bull trout in Washington. Bull trout are one of the keystone species in this basin. They rely on extremely cold and extremely clean water, and so their presence is an indicator of a healthy aquatic ecosystem.

In Puget Sound, bull trout are Federally listed as threatened, largely because land uses have degraded water quality, and warmed the waters once hospitable to the waters once hospitable to these fish.

But in places like Illabot Creek, ample cold clean water exists fore a core population of bull trout to exist. It is these core populations that will be relied upon to reestablish bull trout and to achieve delisting.

In light of the important fish and wildlife resources in the Illabot Creek watershed, and a history of voluntary land protection efforts, The Nature Conservancy and our many partners, that include the Skagit County Commissioners, Skagit Fisheries Enhancement Group, Western Washington Agricultural Association, Seattle City Light, Janke Logging and Construction, American Rivers, and the Washington Council of Trout Unlimited, all support H.R. 1740. Thank you for the opportunity to comment on this legislation.

[The prepared statement of Ms. Bellefond follows:]

**Statement of Lisa Bellefond, Director of Federal Government Relations,
The Nature Conservancy, Washington State Program, on H.R. 1740**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today in support of **H.R. 1740** to amend the Wild and Scenic Rivers Act to designate a segment of Illabot Creek in Skagit County, Washington, as a compo-

ment of the National Wild and Scenic Rivers System. I am Lisa Bellefond, Director of Federal Government Relations for the Washington Chapter of The Nature Conservancy.

The Nature Conservancy is dedicated to preserving the plants, animals and the natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Conservancy has more than 1 million individual members and we have programs in all 50 states and in 30 countries.

Our conservation work is grounded in pragmatism, sound science, partnerships with private, tribal and public landowners, and tangible results in local places. For more than 30 years, The Nature Conservancy has been working in collaboration with partners to preserve the mighty Skagit River. In 1976, the Conservancy and the Washington Department of Fish and Wildlife created the Skagit River Bald Eagle Natural Area. In winter, bald eagles now gather by the hundreds to feed on returning salmon, inspiring a popular annual festival that boosts the local economy. The project includes another six landowning partners and has preserved more than 9,000 acres of eagle habitat, including more than 10 miles of river and thousands of acres of forests. About 1,300 acres are owned and managed by the Conservancy.

Amending the Wild and Scenic Rivers Act to include Illabot Creek, a tributary of the Skagit River, complements the significant investments that have been made at the local level to protect this special area in addition to the salmon and trout recovery efforts within the Skagit basin. This designation would protect water flows and help to ensure that Illabot Creek continues to be a source of cold, clean water to Puget Sound and provide habitat for Steelhead and Bull trout.

Illabot is one of the most important areas for Bull trout in the Skagit Basin, and the Skagit River has the greatest abundance of Bull trout in Washington. Bull trout are the keystone species in this basin. They rely on extremely cold and extremely clean water, so their presence is an indicator of a healthy aquatic ecosystem.

In Puget Sound, Bull trout are federally listed as threatened, largely because land uses have degraded water quality and warmed the waters once hospitable to Bull trout. But, in places like Illabot Creek, ample cold clean water exists for a "core population" of Bull trout to exist. It is these "core populations" that will be relied upon to reestablish Bull trout and to achieve delisting. Wild and Scenic designation will ensure these fish have undammed, free-flowing cold and clean water essential for recovery.

In addition, the lower reach of Illabot Creek and Illabot Slough are especially important habitat for chum and pink salmon, providing some of the highest density spawning habitat in the basin for those species. Mature and old growth forest habitats along the creek provide important bald eagle roosting habitat.

In light of the important fish and wildlife resources in the Illabot Creek watershed and the history of voluntary land protection efforts, The Nature Conservancy supports H.R. 1740. This Wild and Scenic designation would protect instream flows, complement fish recovery efforts in the Skagit basin, and help protect the investments that private and public land managers have made in protecting Illabot Creek.

Thank you for the opportunity to comment on this important legislation.

Mr. BISHOP. Thank you, both of you, for your written, as well as oral testimony. I have no questions of these witnesses. Mr. Grijalva.

Mr. GRIJALVA. Yes, one quick question for both if you don't mind. The testimony from the Administration suggests expanding the proposed designation to cover even more of the creek. Could you both react and expand on the pros and cons of that recommendation suggestion?

Ms. WAGNER. Mr. Grijalva, the bill establishes the lower terminus for the creek at a thousand feet south of the Rock Port Cascade Road, excluding the lower two miles of Illabot Creek.

Of this lower two miles, approximately 1.4 miles is already in the Skagit Wild and Scenic River Corridor. So that leaves .6 miles of Illabot Creek outside of a river corridor. So we are just suggesting that it might be worth considering from an efficiency standpoint, and from a standpoint of considerations under Section 7(a) of the Wild and Scenic River Act including that section of the river in this designation.

Mr. GRIJALVA. Thank you.

Ms. BELLEFOND. My comments are from local feedback, and working with the Skagit County Commissioners, and with the Public Works Department. We receive feedback that it would be in the best interests to move the designation toward the bridge.

The bridge is having some reconstruction efforts that are to remove pilings out of the river so that way the—out of Illabot Creek, which would benefit the fisheries, and the project has been very collaborative and voluntary.

So we took feedback from the County Commissioners for the area beyond Illabot Creek. It has a great deal of land that is owned by The Nature Conservancy and managed for these fisheries value. So we will continue to protect that area.

But there are a very small number of private land holdings there. Some of these landholdings are actually—have easements that are to benefit salmon fisheries, but the landowners would prefer not to have the designation.

So that was the understanding when we put together this bill, which was to get local feedback from the county commissioners, and the local community, and that is what we put forward.

Mr. GRIJALVA. Thank you. Mr. Chairman, I yield back.

Mr. BISHOP. Mr. Duncan, any questions?

[Pause.]

Mr. BISHOP. Mr. Markey, any questions?

[Pause.]

Mr. BISHOP. Mr. Flores, any questions?

[Pause.]

Mr. BISHOP. If not, we thank both of you for your testimony on this particular bill. Our third bill is 1545, a bill to establish the Waco Mammoth National Monument, which was introduced by Mr. Flores of Texas.

Testifying for the Department of the Interior will be Marcilynn Burke, the Deputy Director of the Bureau of Land Management, and we will also hear from Larry Groth, the City Manager of Waco. If I could ask both of them to come to the table.

I appreciate having both of you here. The same thing. Your written statement will appear in the record. You see how the clock works in front of you for your oral statements.

First of all, we will turn to the sponsor of the bill, Mr. Flores, for any statement that he would like to make.

**STATEMENT OF HON. BILL FLORES, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS**

Mr. FLORES. Thank you, Chairman Bishop and Ranking Member Grijalva, and Members of the Subcommittee for holding today's hearing. My legislation, H.R. 1545, would recognize and establish the Waco Mammoth site as the Waco Mammoth National Monument, included as a unit of the National Park Service.

The Committee has received 29 letters of support from local leaders and organizations, and schoolchildren, and I would ask unanimous consent that these letters of support for H.R., 1545 be included in the record.

Mr. BISHOP. Without objection, so ordered.

The documents listed below were submitted for the record and have been retained in the Committee's official files.

- Association of California Water Agencies, Letter to Rep. Denham expressing support for H.R. 869
- Chart, Illustrating Unemployment Rates in California, San Joaquin, Mendota, Firebaugh, and Huron, 2003–2010 vs CVP Water Allocation
- City of Livingston, CA, Resolution in support of H.R. 869
- Congressman Flores, Multiple Letters in Support of H.R. 1545
- Defenders of Wildlife, Letter to Chairman Bishop and Ranking Member Grijalva expressing opposition to H.R. 869
- Friends of the River, Chronology of Merced River W&S Bills
- Friends of the River, Statement from hearing on S. 549, March 21, 1991
- Hing, Michael, Mayor, Photo showing Superior, AZ
- Horizon Holdings LLC, Letter to Rep. Denham expressing support for H.R. 869
- Inter Tribal Council of Arizona, Resolution opposing H.R. 1904
- Inter Tribal Council of Arizona, Resolution opposing S. 3157
- Inter Tribal Council of Arizona, Resolution opposing S. 409
- International Brotherhood of Electrical Workers, Letter to Sen. Feinstein expressing support for H.R. 869
- Merced County Board of Supervisors, Resolution in support of H.R. 869
- Merced County Farm Bureau, Letter to Rep. Denham expressing support for H.R. 869
- Merced Irrigation District, Document showing specifics of Spillway Modification Project
- Pattea, Clinton M., President, Fort McDowell Yavapai Nation, Statement regarding H.R. 1904
- Paramount Farming Company, Letter to Rep. Denham expressing support for H.R. 869
- Rambler, Terry, Chairman, The San Carlos Apache Tribe, Testimony Regarding H.R. 1904
- Resolution Copper, Executive Summary of Economic and Fiscal Impact Report, Superior, AZ June 2011
- Resolution Copper, Letter to Congressman Gosar promising to protect Apache Leap
- Resolution Copper, Map of Copper Triangle
- Resolution Copper, Map of Land and Mineral Ownership
- Resolution Copper, Map Showing Existing Mine Activity
- San Joaquin River Water Authority, Letter to Rep. Denham expressing support for H.R. 869
- U.S. Forest Service, Map of H.R. 1258
- U.S. Forest Service, Map of H.R. 473
- Wetlands Water District, Letter to Rep. Denham expressing support for H.R. 869

Mr. FLORES. On a spring day in 1978, Waco residents, Paul Bartron and Eddie Bufkin, were out looking for arrowheads and fossils along the Bosque River, and just happened across a large bone protruding from the earth.

Realizing the possible significance of this discovery, Mr. Barron and Mr. Bufkin immediately took the bone to the Strecker Museum at Baylor University for analysis. Little did they know at the time that they had just stumbled upon what is today believed to be the world's largest concentration of Columbian Mammoths to die in a single event.

Over a period of nearly 30 years, crews of paleontological and archaeological experts, scientists, and volunteers, slowly excavated this lost world, eventually unearthing more than two dozen mammoths, as well as the remains of a camel, a still unidentified animal, and the tooth from a saber-tooth cat.

It is amazing that the initial discovery of one bone led to such a massive, world-renowned collection allowing us a farther glimpse into our world's prehistoric times.

The National Park Service conducted a special resource study of the Waco Mammoth site, first authorized in 2002, and completed in 2008. This study concluded that the site possesses nationally significant resources, is a suitable addition to the system, and would be a feasible addition to the system.

On the fourth criteria of a need of direct NPS management, the study cites an appropriateness to investigate the potential for inclusion of the site in the National Park System, and for the National Park Service to take on key roles in a partnership arrangement, and I stress partnership.

Currently the National Park Service has a \$10 billion backlog. Given our current fiscal situation, H.R. 1545 has been drafted to provide the national recognition the site deserves, without adding additional burdens to the Federal budget or the backlog at NPS.

In 2006, a non-profit organization of local citizens established the Waco Mammoth Foundation to make the site a public park. A seamless partnership exists between the City of Waco, Baylor University, and local community leaders and volunteers, who have all worked so hard for decades to safeguard the site.

The Foundation has demonstrated their commitment to showcasing this discovery, and has already raised more than \$4 million for the site. The Waco Mammoth Foundation completed its first phase of improvements with a visitor center that officially opened to the public at the end of 2009.

The Waco Mammoth site should be recognized for its incredible collection of prehistoric artifacts. H.R. 1545 would allow the National Park Service to capitalize on the efforts of this unique partnership consisting of private and community investment.

I have personally toured the mammoth site, and I am proud to say to my colleagues that it is truly a site of national recognition. I believe that it is time to develop a new model to leverage the support of committed local citizens and supporters in order to protect, maintain, and promote the assets of national significance, while at the same time avoiding additional strains on precious taxpayer resources.

Thank you again, Mr. Chairman, for holding today's hearing. I would also like to extend my appreciation to the Waco City Manager, Larry Groth, for his dedication in seeking this recognition and for testifying today.

I look forward to working with my colleagues on the Committee to ensure this national recognition becomes a reality, and this new partnership approach with the National Park Service will allow the citizens of Waco to share this true national treasure in Central Texas with the rest of the world. Thank you.

[The prepared statement of Mr. Flores follows:]

**Statement of The Honorable Bill Flores, a Representative in Congress
from the State of Texas**

Thank you Chairman Bishop, Ranking Member Grijalva, and members of the subcommittee for holding today's hearing. My legislation, H.R. 1545, would recognize and establish the Waco Mammoth site as the Waco Mammoth National Monument and include it as a unit of the National Park Service.

On a spring day in 1978, Waco residents Paul Barron and Eddie Bufkin were out looking for arrowheads and fossils along the Bosque River and just happened to come across a large bone protruding from the earth. Realizing the possible significance of this discovery, Mr. Barron and Mr. Bufkin immediately took the bone to

the Strecker Museum at Baylor University for analysis. Little did they know at the time that they had just stumbled upon what is today believed to be the world's largest concentration of Columbian Mammoths to die in a single event.

Over a period of nearly 30 years, crews of paleontological and archaeological experts, scientists and volunteers slowly excavated this lost world, eventually unearthing more than two dozen mammoths as well as the remains of a camel, a still unidentified animal and a tooth from a saber-tooth cat. It is amazing that the initial discovery of one bone led to such a massive, world-renowned collection allowing us a further glimpse into our world's prehistoric times.

The National Park Service conducted a Special Resource Study of the Waco Mammoth site, first authorized in 2002 and completed in 2008. This study concluded that the site possesses nationally significant resources, is a suitable addition to the system and would be a feasible addition to the system. On the fourth criteria of a need for direct NPS management, the study cites an appropriateness "to investigate the potential for inclusion of the site in the National Park System and for the National Park Service to take on key roles in a partnership arrangement."

Currently, the National Park Service has a \$10 billion backlog. Given our current fiscal situation, H.R. 1545 has been drafted to provide the national recognition the site deserves, without adding additional burdens to the federal budget or the backlog at NPS. In 2006, a non-profit organization of local citizens established the Waco Mammoth Foundation to make the site a public park. A seamless partnership exists between the City of Waco, Baylor University, and local community leaders and volunteers who have all worked so hard for decades to safeguard the site. The Foundation has demonstrated their commitment to showcasing this discovery and has already raised more than \$4 million for the site. The Waco Mammoth Foundation completed its first phase of improvements with a visitor center that officially opened to the public at the end of 2009. The Waco Mammoth site should be recognized for its incredible collection of prehistoric artifacts. H.R. 1545 would allow the National Park Service to capitalize on the efforts of this unique partnership consisting of private and community investment. I have personally toured the mammoth site, and I am proud to say to my colleagues that it is truly a site of national recognition.

Thank you again Mr. Chairman for holding today's hearing. I would also like to extend my appreciation to Waco City Manager Larry Groth for his dedication to seeking this recognition and for testifying today. I look forward to working with my colleagues on the committee to ensure this national recognition becomes a reality, and this new partnership approach with the National Park Service will allow the citizens of Waco to share this true national treasure in Central Texas with the world.

Mr. BISHOP. Thank you, Congressman. Mr. Burke.

**STATEMENT OF MARCILYNN BURKE, DEPUTY DIRECTOR,
BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE
INTERIOR**

Mr. BURKE. Good morning, and thank you for this opportunity to testify on behalf of the Department of the Interior on H.R. 1545, which would establish the Waco Mammoth National Monument. With me today is Patrick Gregerson, and he is the National Park Service Chief of Planning, and he is available to answer any questions that you may have.

H.R. 1545 would establish the Waco Mammoth National Monument in Texas. The Department supports establishing a unit of the National Park Service at this site, consistent with the study that the National Park Service completed in 2008.

However, we oppose H.R. 1545 in its current form. The bill contains significant changes to the version of this legislation introduced in the last Congress. It requires the Secretary to administer the national monument as a unit of the National Park System, but prohibits the Secretary from expending any Federal funds to do so.

That would create an untenable situation. We would like to work with the sponsor and the Committee to address these concerns.

Thank you again for the opportunity to testify today, and Mr. Gregerson will be happy to answer any questions.

[The prepared statement of Ms. Burke follows:]

**Statement submitted for the record by the National Park Service,
U.S. Department of the Interior, on H.R. 1545**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1545, a bill to establish the Waco Mammoth National Monument in the State of Texas, and for other purposes.

The Department supports establishing a unit of the National Park System to commemorate and protect the Waco Mammoth site consistent with the study the National Park Service (NPS) completed in 2008. However, we oppose H.R. 1545 in its current form. The Department testified in support of H.R. 1376, a similar bill, before this subcommittee on April 23, 2009, during the last Congress. During this Congress, we testified before the Senate Subcommittee on National Parks, on May 11, 2011, in opposition to S. 849, a bill identical to H.R. 1545. As we explain in this testimony, H.R. 1545 contains significant changes to the last Congress's bill. It requires the Secretary of the Interior (Secretary) to administer the national monument as a unit of the National Park System—but prohibits the Secretary from expending any federal funds to do so. We would like to work with the sponsor and the committee on revising the bill so that we could support it.

H.R. 1545 would establish a new unit of the National Park System, the Waco Mammoth National Monument (monument), near the city of Waco, Texas. The bill directs the Secretary to administer the monument in accordance only with the provisions found in the bill and with any cooperative agreements entered into with Baylor University and the City of Waco. The bill also authorizes the Secretary to acquire land for the monument by donation from the City of Waco. The Secretary is authorized to complete a General Management Plan for the monument within three years after enactment, but prohibited from expending any federal funds to do so. Finally, no federal funds are authorized to be used to pay for costs associated with the monument, and designation of the monument as a unit of the National Park System shall terminate if the Secretary determines that federal funds are required to operate and maintain the monument.

The NPS was directed to complete a Special Resource Study (SRS) of the Waco Mammoth site by Public Law 107–341. This study evaluated a 109-acre site owned by the City of Waco and Baylor University and found that the site met all the criteria for designation as a unit of the National Park System.

The Waco Mammoth Site area is located approximately 4.5 miles north of the center of Waco, near the confluence of the Brazos and the Bosque rivers. Baylor University has been investigating the site since 1978 after hearing about bones emerging from eroding creek banks that led to the uncovering of portions of five mammoths. Since then several additional mammoth remains have been uncovered making this the largest known concentration of mammoths dying from the same event.

The discoveries have received international attention and many of the remains have been excavated and are in storage or still being researched. The SRS determined that the combination of both in situ articulated skeletal remains and the excavated specimens from the site represents the nation's first and only recorded nursery herd of Pleistocene mammoths. The resource possesses exceptional interpretive value and superlative opportunities for visitor enjoyment and scientific study.

From the time the site was discovered until the present, the University and the City have managed the site responsibly. The SRS examined a range of proposed options for the NPS involvement at the site. We believe that the NPS joining in partnership with the city of Waco, Baylor University, and others would offer the most effective and cost-efficient management of this unique resource.

The provisions in H.R. 1545 contradict each other by requiring the Secretary to administer the monument as a unit of the National Park System, but then deleting the reference to the laws applicable to such units, and prohibiting the expenditure of federal funds to carry out the administration of the monument. Expenditure of funds is specifically prohibited for carrying out the cooperative agreement for management of the monument, acquiring land, developing a visitor center, operating or maintaining the monument, constructing exhibits, or developing the General Management Plan.

The National Park Service preserves and protects areas of the country that are found to be nationally significant. If the Waco Mammoth site were designated a unit of the National Park System to be administered by the Secretary, then the laws ap-

plicable to such units would need to apply and federal funds would be needed to carry out those responsibilities, as they are for all other units of the National Park System.

The ambiguity as to the applicable laws and the lack of certainty and continuity of non-federal funding could create an untenable situation for staffing the park and providing consistent visitor services. This uncertainty could lead to the NPS not knowing from month to month whether the park would be open. Also, federal land acquisition policies generally do not allow the federal government to accept lands acquired with a reverter clause attached, as proposed in the bill.

We would be happy to work with the committee to revise the bill into a form that we could support, such as H.R. 1376 from the 111th Congress. In that version of the bill, the monument would be established based upon the management alternative recommended in the SRS, where we estimated that the costs to create the monument would include \$8.1 million from the identified partners to develop the facilities at the monument, with the NPS providing an additional \$600,000 for enhanced interpretive media. Total operational costs are estimated to be \$645,000 with the NPS contributing approximately \$345,000 for the NPS staffing of four full-time equivalent positions and associated supplies, materials, and equipment. All funds would be subject to NPS priorities and the availability of appropriations.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions that you or other members of the Subcommittee may have.

Mr. BISHOP. Thank you, and if he would like to join you at the table just in case that would be fine. Mr. Groth.

**STATEMENT OF LARRY GROTH, CITY MANAGER,
CITY OF WACO, TEXAS**

Mr. GROTH. Thank you, Mr. Chairman and Committee Members. My name is Larry Groth, and I am the City Manager of the City of Waco. I am here today to urge your favorable consideration of the establishment of the Waco Mammoth site as a national monument.

As Congressman Flores mentioned, the site does contain over 24 Columbian Mammoths, ranging from 3 to 55 years old, which appear to have died in approximately 68,000 years ago, and does make it the largest concentration in North America.

We all seem to complain about the wheels of government moving slowly, not only at the Federal level, and the State level, and at my level locally, but I suppose these mammoths probably 68,000 years old, probably decided that it is time for us to get something done.

We have been worked on this for a long time, and we certainly would like to see some movement. We mentioned the Natural Resource Study, and there is no debate at all about the significance.

There is no debate about the national significance of the site. There is no debate about the site being suitable as an addition to the system, and there is no debate about it being feasible as a unit of the National Park System.

I am pleased to report that we have raised a lot of money locally to get the site open to the public. Our biggest concern was the degradation of the bones that are in situ at the site, and so we built a protective cover. We built a small visitors center, and check-in, and we built access so that the public can come and view the site, and we can also protect this wonderful resource.

Since construction, we have had over 40,000 visitors with very little advertising on our part. They have come out and visited the site, and we are pleased with that. We believe that favorable con-

sideration of this issue would greatly enhance our efforts to protect and interpret this fantastic national treasure.

Bringing the National Park Service in as a partner with the City of Waco and Baylor university would greatly strengthen an already strong relationship. Most importantly, we are not asking for Federal dollars for capital. We have already raised that.

We are not asking for Federal dollars for operation and maintenance. We are committed as a city to provide that. What we need is the National Park Service to be given the authority to work with us to make this happen.

We do greatly appreciate Congressman Flores' efforts on our behalf, and on this site, and we thank you. The main thing is please help us to get that wonderful arrowhead.

[The prepared statement of Mr. Groth follows:]

**Statement of Larry D. Groth, P.E., City Manager,
City of Waco, Texas, on H.R. 1545**

Mr. Chairman and Committee Members, my name is Larry D. Groth and I am City Manager for the City of Waco. I am here today to urge your favorable consideration for H.R. 1545.

We are extremely fortunate to have a paleontological site in Waco that has national significance. In 1978, two of our local citizens discovered some large bones in a ravine in north Waco near the confluence of the Brazos and Bosque Rivers. This discovery was the first of more than 24 Columbian Mammoths ranging from 3 to 55 years old, which appear to have died approximately 68,000 years ago. There are also indications of more mammoth remains near the existing excavations. This makes the Waco site the largest concentration in North America of extinct mammoths. It provides a unique opportunity for all of us to understand and interpret the behavior and ecology of an extinct species.

This discovery has already received international attention with archeologists, geologists, and paleontologists from the U. S., Sweden, and Great Britain visiting the site during the past several years. Integrity of the scientific data has been protected since the site has been under investigation by a single agency, Baylor University, since 1978. The City of Waco and Baylor University have partnered to protect the remains and secure sufficient property surrounding the site for future development of the resource. Over 105 acres surrounding the dig site has been secured with access to the Bosque River to enhance recreational opportunities.

In December 2002, a special resource study by the National Park Service was authorized for the Waco site. The study found that the Waco Mammoth Site met the requirements of being nationally significant, being a suitable addition to the system and a feasible addition to the system. The need for direct management by the National Park Service was not absolute, but a partnership was highly recommended to achieve the development and protection goals of the site to its fullest extent.

In 2006, the City of Waco and Baylor University chartered the Waco Mammoth Foundation to initiate a major fund raising campaign to construct the first phase of site development which provided for a permanent structure to protect the dig site, a small visitor and ticketing center, and access to the site.

I am pleased to report that we have raised over \$4 million, mostly local donations, and have completed the phase I construction. More than 40,000 visitors have enjoyed the site since opening.

Favorable consideration for H.R. 1545 would greatly enhance our efforts to protect and interpret this fantastic national treasure. Bringing in the National Park Service as a partner with the City of Waco and Baylor University would greatly strengthen an already strong relationship. It would provide an opportunity to maximize each of our strengths in the management and development of this resource.

Most importantly, we are not asking for federal dollars for capital or operations & maintenance since we are providing that locally. We are only asking for the national recognition this site deserves. We need the National Parks Service to be given the authority to work with us and make this happen. Your favorable consideration of H.B. 1545 will greatly leverage our local efforts.

Also, we greatly appreciate Congressman Flores' efforts on our behalf and for this unique opportunity for our nation.

Mr. BISHOP. I thank both of you for your testimony. At 68,000 years of age, that puts us in approximately the average age of a United States Senator, right?

Mr. GROTH. I will not answer that.

Mr. BISHOP. That is why you got the job that you have. I wish to yield my time to Representative Flores for questions.

Mr. FLORES. Thank you, Mr. Chairman. Ms. Burke, thank you for your testimony today. In listening to your testimony, I understand that what I have introduced is a unique approach to recognition according to NPS standards, but given the country's fiscal situation, and the backlog at the Agency, I believe it is time to look at doing things other than in a business-as-usual mode.

Considering the significant financial commitments that have been raised locally, and the operational commitments that have been committed, or made locally, has NPS considered looking at partnership alternatives which would allow for this recognition, and protection of this site, while at the same time avoiding use of scarce taxpayer resources? And either one of you can answer that.

Mr. GREGERSON. We have looked at it through the special resource study, and one of the alternatives that we came up with was to make it an affiliated area. That was not the chosen alternative. It was Alternative C that was chosen, to have direct management and operations over the site.

Mr. FLORES. And what were the reasons that—what were the weaknesses that were perceived to that approach?

Mr. GREGERSON. I can't give you that right now, but I can give you that information.

Mr. FLORES. All right. Is there any problem looking at an approach like this in the future? I mean, again, you have a \$10 billion backlog at your agency. We are not proposing to further dilute that or to add to that backlog, or to dilute precious taxpayer resources.

I am just at a loss to understand what the weaknesses are of our approach.

Mr. GREGERSON. Well, for us to have a viable unit of the National Park System, we believe that Federal dollars would have to be expended to protect the site. We can take a look at Alternative B and reassess the look at a—well, I am drawing a blank.

Mr. FLORES. Well, for instance, what if there were a management fee arrangement, or something like that? Is that out of the realm of possibility?

Mr. GREGERSON. I have never experienced that, and I would have to get back to you on that.

Mr. FLORES. But never does it mean impossible, right?

Mr. GREGERSON. I can't say.

Mr. FLORES. It shouldn't. OK. Mr. Groth, thank you for your testimony today. You walked us through briefly phase one. Would you like to spend two minutes and 20 seconds to elaborate on phase one and what you see going forward with the site?

Mr. GROTH. Certainly. What we did is that we have a hundred-acre site, and we actually started with five acres, and then we were able to obtain some acreage around that carries us down to the Bosque River.

We have a master plan that would create a really wonderful recreational area for the community and protect the site. The site is

a relatively small dig area of the hundred acres, and we have built a protective structure, basically a building, that covers the dig area so that is protected.

We have access areas to that, and we have picnic areas, and we have a small visitors' reception area that at some point we will probably turn back into maintenance as we build a larger educational facility, and then the associated drives and parking lots so that the folks can come out and enjoy the site.

Mr. FLORES. Thank you. Mr. Chairman, I am going to yield back, but before I do, I just want to say that this is truly an asset of national significance, and I wanted to show pictures today, but my staff advised against it, but it is truly a unique asset.

Mr. BISHOP. Mr. Flores, before you yield back, could I ask to reclaim my time and ask one question of Ms. Burke.

Mr. FLORES. Yes.

Mr. BISHOP. I understand your testimony is that you would like to take this over, but only if you can spend Federal funds on it. You are not going to get more money, and so what are you proposing to cut within your budget to spent funds on this program?

Mr. GREGERSON. I would have to get back to you on that. We can give you that information later.

Mr. BISHOP. Well, we have plenty of time. All right. Mr. Grijalva, do you have any questions?

Mr. GRIJALVA. Yes, for the Park Service, a quick question. Are there arrangements short of unit designation that Congressman Flores was talking about that would not give it the unit designation, but some other management partnership, or something, but does not have the unit status?

Mr. GREGERSON. We have a number of affiliated areas, and that was the term that I was looking for.

Mr. GRIJALVA. But the affiliated area designation was something that was not—that the community did not want. They wanted a unit status. Am I correct?

Mr. GREGERSON. I believe so, yes.

Mr. GRIJALVA. OK. Thank you. For Mr. Groth, the City Manager. Do you agree with the study that was conducted by the National Park Service says that the site deserves national recognition?

Mr. GROTH. Absolutely.

Mr. GRIJALVA. And if I am not mistaken the city supported H.R. 1376 in the previous Congress, which included the possibility of Federal funding for the site. Am I correct on that as well?

Mr. GROTH. Yes, sir.

Mr. GRIJALVA. The National Park Service submitted testimony stating that if H.R. 1545 were enacted as currently written that they would be unable to implement it because they don't know how to operate the National Park without national funding.

As a City Manager, I am sure that you might be able to understand the point that I think NPS is attempting to make. You have a city building, a city park, and a public school in Waco. The city is supposed to operate them, but is prohibited from using any funding to do that.

Would it be—and I leave that because wouldn't that be in your position, wouldn't that be difficult to try to carry out that public

responsibility if the city council issued a prohibition that you are not allowed to use any of the public funds associated with the city?

Mr. GROTH. That would be difficult, but I believe that if I had an associated agency that we should be able to work that out. My feeling is that we are not asking for any funds for capital, and we are not asking for any operation and maintenance funds at the site.

Somehow we need to work with the National Parks, and I am sure that there is a way that we can work out an agreement, a management agreement with them. Obviously it is going to take some staff time, and that is my testimony.

I want the National Park to be authorized to do whatever they need to do to make this happen. I am not sure what all that means, but we are not asking for any expenditures of funds at the site.

Mr. GRIJALVA. OK. So given the choice, Mr. City Manager, between having the National Park Service as a partner or not, you would choose to have them involved?

Mr. GROTH. Yes, sir.

Mr. GRIJALVA. OK. Thank you.

Mr. GROTH. Thank you.

Mr. GRIJALVA. I yield back.

Mr. BISHOP. Mr. Duncan.

Mr. DUNCAN. When the National Park Service did its study did it estimate how much money it would take to operate as a typical unit of the National Park Service at this type of site with this size? Do we have any rough guess as to how much money the National Park Service would want?

Mr. GREGERSON. Just for annual staffing for four full-time staff, it would be approximately \$345,000 a year.

Mr. DUNCAN. And, Mr. Groth, how much is the city planning to spend, or this group that is operating the site right now?

Mr. GROTH. Yes, sir, we have been operating for a year, and we spend about \$300,000, which we are actually subsidizing the revenue not coming in to cover those expenses, and so we subsidize about \$170,000 a year.

Mr. DUNCAN. So the city is subsidizing that operation at this point?

Mr. GROTH. Yes, sir.

Mr. DUNCAN. And when you talk about that it is 109 acres right now, but when you talk about some kind of a park there, you are talking about on the 109 acres, or does the city or the Park Service feel that this site needs to be expanded beyond the 109 acres?

Mr. GROTH. I can't address what the Park Service thinks. I can from my standpoint. We were very intent on acquiring buffer area around the dig site to protect it, and we feel like we have sufficient land.

Mr. DUNCAN. You feel like you have sufficient land. You want to acquire a buffer area, but you feel like you have sufficient land at this point?

Mr. GROTH. Yes, sir.

Mr. DUNCAN. So you don't have to acquire anymore?

Mr. GROTH. That is correct.

Mr. DUNCAN. What does the Park Service say about that? The Park Service always wants more land.

Mr. GREGERSON. No, actually we agree with that assessment.

Mr. DUNCAN. You do? OK. You know, too many local governments—it sounds so great for a politician to create a park, but we have created so many parks at the local, and State, and Federal levels now that most of them are barely used.

I mean, you have a few, like the Great Smoky Mountains in my district, that has over nine million visitors a year, and there are a few others that get millions of visitors, but you have a lot of these local and State parks now that are just deserted almost, and we keep taking land off the tax rolls at the same time that the teachers and the police, and others, are coming to us wanting more money.

And so at some point, I think that we have to wake up and realize that we need to take better care of the parks that we have, and stop taking all this land off the tax rolls. And it seems to me that that is something that somebody in the local government should be especially concerned about. But at any rate that is all the questions that I have, Mr. Chairman.

Mr. BISHOP. Thank you. Mr. Flores.

Mr. FLORES. Well, I wanted to dig in a little deeper on the question that we asked a minute ago that Mr. Duncan started. The Park Service, and just to verify this number, you said that it was going to take \$345,000 a year to operate the park to NPS standards; is that correct?

Mr. GREGERSON. Yes, that was the estimate that we had.

Mr. FLORES. And, Mr. Groth, you are saying that today the park is costing about \$300,000. So if we took it to NPS standards, we are talking about \$345,000. Is it your view that the community and the city would continue to and be able to provide the funding for the park at that level to meet the NPS standards?

Mr. GROTH. Yes, sir.

Mr. FLORES. OK. And again what was the attendance number that you quote a minute ago, 40,000 persons last year?

Mr. GROTH. Yes, sir.

Mr. FLORES. OK. And that was virtually with zero advertising, and zero budget for marketing, and things like that; is that correct?

Mr. GROTH. Correct.

Mr. FLORES. OK. Thank you. No further questions.

Mr. BISHOP. With that, unless there are any other questions, we appreciate Representative Flores for bringing the bill, and we appreciate our two witnesses. You are dismissed. Thank you.

We will move on to the next bill, which is 1258, Box Elder Utah Land Conveyance Act. Ms. Wagner, we would ask you to come again to present the Forest Service testimony. At issue is part of a larger gift that was given by Hans Rasmussen to the Forest Service in the 1940s for a dollar. There are no forest activities occurring on this land, which is primarily grassland, surrounded on three sides, and each parcel surrounded on three sides by either private property or city land.

The City of Mantua would like to use this for expansion in their cemetery, construction of a town hall, and needed fire station. The current cemetery is at capacity, which is a problem, and similar versions of this bill, as was mentioned by the Ranking Member, have passed before, but have yet to pass The Senate.

Ms. Wagner, if you have testimony, you are recognized right now.

STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. WAGNER. Chairman Bishop, thank you, and Ranking Member Grijalva, and Members of the Subcommittee, thank you for the opportunity to share the Department's view on H.R. 1258.

It 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 land in Box Elder County, Utah.

While we believe the Forest Service could meet the objectives of the bill administratively through the Town Site Act, the Department does not object to the conveyance of this National Forest System land.

We do note that these parcels have not officially been described, and a Federal survey would be required in advance of the conveyance. We would appreciate the opportunity to work with the bill's sponsors, the Committee, and the Town of Mantua to address concerns with H.R. 1258, such as the definition of public purpose, the reversionary language, ensuring the town's agreement to the conveyance, and provisions for the administrative costs of the conveyance.

This concludes my testimony, and I am happy to answer any questions.

[The prepared statement of Ms. Wagner follows:]

Statement of Mary Wagner, Associate Chief, U.S. Forest Service, U.S. Department of Agriculture, on H.R. 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 H.R. 1258, legislation to provide for the conveyance of parcels of land to Mantua, Box Elder, Utah.

H.R. 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 longstanding 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 dona-

tion 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 H.R. 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 H.R. 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.

Mr. BISHOP. Mr. Grijalva, do you have any questions?

Mr. GRIJALVA. Mr. Chairman, in the 10 years that I have been on this Subcommittee, this is the finest piece of legislation that I have ever laid eyes on. Thank you.

Mr. BISHOP. I thank the Ranking Member's brilliant deduction. All right. Thank you for this particular bill. I am going to do an audible here. Mr. Denham would like to be here for his bill, but he is in another committee.

Mr. Gosar is here for his bill, and if it is all right with you, Mr. Carlisle, I would like to switch those around, and so we will deal first with H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011.

Our witnesses are Ms. Wagner again, and if I dismissed you too soon, I would like to come back here for the Forest Service; and Ms. Burke from the Bureau of Land Management. We have with us Michael Hing—and I hope that I pronounced that correctly—the Mayor of the City of Superior, Arizona; Bryan Martyn, the Vice Chairman of the Pinal County Board of Supervisors; Mr. Harrison Talgo, the former Chairman of the San Carlos Apache Tribe; Mr. John Cherry, the Vice President of Resolution Copper Mining; Shan Lewis the President of the Intertribal Council of Arizona, and the Vice Chairman of the Fort Mojave Indian Tribe; and Mr. Roger Featherstone, the Director of the Arizona Mining Reform Coalition.

So we will give you a second to coordinate yourselves at the table, if we can get you all in there. All right. I think if we are all set there, then Ms. Gosar, if you would like to make your statement from the dais, and participate also in the hearing.

Are you a Member of the Subcommittee? Well, we don't care. We already gave unanimous consent that any Member could be here. And I am happy that you are going to be there, because there is no way that you are going to fit down there anyway.

So what I would like to do is to allow you to make your statement, and then we will just go down the row, starting once again with Ms. Wagner, for those statements as well. Representative Gosar.

**STATEMENT OF HON. PAUL GOSAR, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA**

Dr. GOSAR. Thank you, Chairman Bishop, and Chairman Hastings, for recognizing the importance of this legislation, and to my

District, the State of Arizona, and our country, by scheduling this legislative hearing.

The need for this land exchange and ensuing copper mine was one of the very first projects brought to my attention by the people of my district. Many of those folks, excited for the economic development and sustainable growth that this project will bring, wanted this legislation introduced immediately with the start up of Congress.

However, I felt that it was my duty as a new Representative of Arizona's First Congressional District to engage in interested stakeholders. I would like to thank my constituents, including Terry Rambler, the Chairman of the San Carlos Apache Tribe, who is here today, for the many honest and candid conversations about this proposal.

I think and I believe Chairman Rambler does as well that it is important to maintain an honest and respectful debate about the issues facing our State. I remain committed to working with the involved parties as we move forward through this process.

Times are tough in my district. The unemployment rates in Pinal and Healy County sit above 10 percent. This legislation is overwhelmingly supported in Arizona because it will provide jobs and put Arizona back on the road to economic recovery.

The project will support over 3,700 jobs and provide for 220 million in annual wages. A total economic impact on the State of Arizona is estimated to be over \$61 billion, nearly \$1 billion per year, and another \$20 billion in Federal, State, and county, and local tax revenue.

This legislation will also significantly contribute to our mineral and energy independence. Today, we import over 30 percent of our copper, compared to seven percent in 1993. This project will produce up to 25 percent of the current United States demand.

The demand for copper is skyrocketing. A single three megawatt wind turbine requires 4.7 tons of copper. Renewable energy production from solar, wind, geothermal, and other technologies depend heavily on copper to transmit the energy that they generate.

Hybrid vehicles require double the amount of copper as gas-fueled automobiles. The Department of Defense indicates that copper ranks second, only behind aluminum, in defense industrial applications.

The United States must use domestic resources to meet this growing demand, and this legislation is a major step in the right direction. This legislation is not just a jobs bill. It is a conservation bill. The land that the Federal Government acquires in the exchange is a highly coveted recreation and conservation areas.

It protects one of the last few remaining undammed rivers in the State of Arizona, the San Pedro River. The 7-B property contains nearly seven miles of the lower San Pedro River, as well as over 800 acres of adjacent and intact Mesquite moss, representing what is probably the largest old growth mesquite forest remaining in Arizona.

Dripping Springs is a superb hiking and climbing location, and nearly a hundred acres of private land adjacent to the culturally important Apache Leap is being conveyed to the Federal Government.

I have drafted this legislation to ensure that this is a fair value exchange. Arizona is blessed with natural resources, and we only get one opportunity to tap them. It is very important to me to ensure that the taxpayers are not shorthanded.

If Resolution Copper produces minerals that exceed the productions assumed in the initial appraisal, the company is required to make a cash payment to the Federal Government. I also would like to address the inaccurate assertions that my legislation circumvents environmental law.

Sections 4(i) and 4(j) address explicitly and implicitly compliance with the Federal environmental laws, and regulations pertaining to conveyances of Federal land, and approval of mine plan operations.

The partners must comply with other applicable Federal laws and regulations prior to the conveyances of the land. Thus, the exchange will not go forward until major environmental requirements under the National Historic Preservation Act, Endangered Species Act, Executive Orders pertaining to wetlands and flood planes, and hazardous materials surveys are met.

Prior to the completion of the exchange, title to the non-Federal lands must be determined to be acceptable to the Secretaries of Agriculture and Interior, and appraisals of all lands must be completed in accordance with Federal appraisal regulations, and be approved by Federal Agencies.

With regards to mine plan of operations, H.R., 1904 is clear that this plan can only be approved following preparation of a full environmental impact statement that is in accordance with NEPA and all other applicable Federal laws and regulations.

Additional environmental compliance regulations will also have to be addressed at the State and local levels for this mine to be operated. H.R. 1904 may be new legislation, but this initiative is not.

Over the past six years this land exchange has been subject to intensive review, public consideration, and modification. Today marks the fifth Congressional hearing, the second in the U.S. House of Representatives, held on this topic.

It is time that Congress approves the legislation and puts this vital economic project into motion. I am confident that H.R. 1904 can serve as a fine example of utilizing the West's natural resources in a way that engages all stakeholders, while promoting economic development in an environmentally responsible way.

I firmly believe that this legislation will lead to a better future for my constituents and this country. Thank you.

[The prepared statement of Dr. Gosar follows:]

**Statement of The Honorable Paul A. Gosar, a Representative in Congress
from the State of Arizona, on H.R. 1904**

I would like to thank Chairman Hastings and Chairman Bishop for recognizing the importance of this legislation to my district, the state of Arizona, and our country by scheduling this legislative hearing.

The need for this land exchange and ensuing copper mine was one of the very first projects brought to my attention by the people of my district. Many of those folks, excited for the economic development and sustainable growth that this project will bring, wanted this legislation introduced immediately with the start of the new Congress. However, I felt it was my duty as the new Representative of Arizona's First Congressional District, to engage with interested stakeholders.

I would like to thank all my constituents, including Terry Rambler, the Chairman of the San Carlos Apache Tribe, who is here today, for the many honest and candid conversations about this proposal. I think, and I believe Chairman Rambler does as

well, that it is important to maintain an honest and respectful debate about the issues facing our state. I remain committed to working with the involved parties as they move through this process.

Times are tough in my district. The unemployment rates in Pinal and Gila County sit above 10 percent. This legislation is overwhelmingly supported in Arizona because it will provide jobs and put Arizona back on the road to economic recovery. The project will support over 3,700 jobs providing for \$220 million in annual wages. The total economic impact of the project on the State of Arizona is estimated to be over \$61.4 billion, near \$1 billion per year and another \$20 billion in federal, state, county and local tax revenue.

This legislation will also significantly contribute to our mineral and energy independence. Today we import 30 percent of our copper compared to 7 percent in 1993. This project will produce up to 25% of the current U.S. demand. The demand for copper is skyrocketing. A single 3 megawatt wind turbine requires 4.7 tons of copper. Renewable energy production from solar, wind, geothermal and other technologies depend heavily on copper to transmit the energy they generate. Hybrid vehicles require double the amount of copper as gas-fueled automobiles. The Department of Defense indicates that copper ranks second- behind aluminum- in defense industrial applications. The U.S. must use domestic resources to meet this growing demand and this legislation is a major step in the right direction.

This legislation is not only a jobs bill, it's a conservation bill. The land the federal government acquires in the exchange is highly-coveted recreational and conservation areas. It protects one of the last few remaining undammed rivers in the State of Arizona, the San Pedro River. The "Seven B" property contains nearly 7 miles of the lower San Pedro River, as well as over 800 acres of ancient intact mesquite bosque representing what is probably the largest old-growth mesquite forest remaining in Arizona. Dripping Springs is a superb hiking and climbing location. And nearly 100 acres of private land adjacent to the culturally important Apache Leap is being conveyed to the federal government.

I have drafted this legislation to ensure this is a fair value exchange. Arizona is blessed with natural resources and we only get one opportunity to tap them. It is very important to me to ensure the taxpayer is not shortchanged. If Resolution Copper produces minerals that exceed the production assumed in the initial appraisal, the company is required to make a cash payment to the federal government. Those funds will be used for the management and maintenance of current public lands. Considering Arizona is over 60% publicly owned, this could have major benefits for our state.

I'd like to address the inaccurate assertion that my legislation circumvents environmental law. Sections 4(i) and 4(j) address explicitly and implicitly compliance with Federal environmental laws and regulations pertaining to conveyances of Federal land and approval of mine plan of operations. The partners must comply with other applicable Federal laws and regulations prior to the conveyance of lands. Thus, the exchange will not go forward until major environmental requirements under the National Historic Preservation Act, Endangered Species Act, Executive Orders pertaining to wetlands and floodplains, and Hazardous Materials Surveys are met.

Prior to completion of the exchange, title to the non-Federal lands must be determined to be acceptable to the Secretaries of Agriculture and Interior, and appraisals of all lands must be completed in accordance with Federal appraisal regulations and be approved by the Federal agencies. With regards to the Mine Plan of Operations, H.R. 1904 is clear that this plan can only be approved following preparation of a full EIS that is in accordance with NEPA and all other applicable Federal laws and regulations. Additional environmental compliance requirements will also have to be addressed at the state and local levels in order for this mine to be developed. This legislation promotes economic development in an environmentally responsible way.

H.R. 1904 may be new legislation, but this initiative is not. Over the past six years, this land exchange has been subject to intensive review, public consideration and modification. Today marks the fifth Congressional hearing, the 2nd in the U.S. House of Representatives, held on this topic. It is time Congress approves the legislation and puts this vital economic project in motion.

I am confident H.R. 1904 can serve as a fine example of utilizing the West's natural resources in a way that engages all stakeholders while promoting economic development in an environmentally responsible way. I firmly believe this legislation will lead to a better future for my constituents and this country.

Mr. BISHOP. Thank you, Mr. Gosar. Once again, I remind all the witnesses that your written testimony will be included in the

record. Your oral testimony please is confined to the five minutes that you have there on the clock. Ms. Wagner, we will start with you again.

**STATEMENT OF MARY WAGNER, ASSOCIATE CHIEF, U.S.
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE**

Ms. WAGNER. Thank you, Mr. Chairman, and Members of the Committee, I appreciate the opportunity to share the Department's view on H.R. 1904, which 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. The Federal land to be conveyed, known as Oak Flat, contains a potentially sizable core copper ore body, and adjoins an existing copper mine on private land owned by Resolution Copper.

The bill would add five parcels of land with important resource values and riparian habitat, totaling almost 1200 acres to the National Forest System. Additionally, as a condition of the land exchange, Resolution Copper would surrender its rights to commercially extract minerals under Apache Leap.

After the exchange is consummated the bill would require the Forest Service to prepare an environmental analysis for ancillary activities related to the mining development, such as rights-of-way for electric lines, pipelines, or roads, before issuing authorizations for such activities, which would be consistent with existing requirements under NEPA.

While the Department understands and appreciates the significant potential economic benefits and jobs that would be potentially created, and the value of lands to be acquired by the American public, the Department cannot support the bill as written.

However, the Department is keenly interested and willing to work with the sponsor and the Committee to address our concerns. The principal concern is the provision in the bill which would require the Agency to prepare an environmental analysis after the land exchange is completed.

The bill should be amended to require the preparation of an environmental analysis before the land exchange is completed. The purpose of preparing an environmental analysis would be to analyze the effects of the transfer of Federal land to Resolution Cooper.

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 to proceed with the exchange and under what conditions, namely whether and how to require mitigation on the identified impacts.

The Department has a responsibility to consider tribal government concerns, and these can only be adequately addressed if the environmental analysis is the first step. There is no doubt that the lands that would be acquired and managed by the Forest Service under H.R. 1904 would have important resource values that should be protected.

And it is also clear that the economic benefits from the production of copper could be significant in creating family waged jobs in tough economic times.

Therefore, it is important to fully understand the scope of the project before proceeding, and to address potentially significant environmental concerns, and sites of high importance to local tribes. Mr. Chairman, this concludes my statement, and I would be happy to answer any questions.

[The prepared statement of Ms. Wagner follows:]

**Statement of Mary Wagner, Associate Chief, U.S. Forest Service,
U.S. Department of Agriculture, on H.R. 1904**

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 com-

mercial 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.

Mr. BISHOP. Ms. Burke.

**STATEMENT OF MARCILYNN BURKE, DEPUTY DIRECTOR,
BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE
INTERIOR**

Mr. BURKE. Thank you for the opportunity to testify on behalf of the Department of the Interior on H.R. 1904, the Southeast Arizona Land Exchange Conservation Act. H.R. 1904 provides for the exchange of a 2,422-acre parcel of Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the Forest Service and by the Bureau of Land Management.

The Department of the Interior defers to the Forest Service on issues directly related to Forest Service lands, and associated valuation. However, the Department cannot support this bill as written.

The exchange proposed in H.R. 1904 is complex, and the Department has several concerns, including the timing of the consultation with interested Indian tribes. The timing of the exchange, appraisal provisions, and value adjustment provisions.

Many of the lands to be exchanged in the bill hold significant cultural value to Indian tribes. Concerns have been raised by these tribes that the bill is contrary to various laws and policies, and Ex-

ecutive Orders, that direct Federal land managers to engage in formal consultation with interested Indian tribes, and to protect and preserve sites that are sacred to Native Americans.

Thank you again for the opportunity to testify here today, and I am happy to answer any questions.

[The prepared statement of Ms. Burke follows:]

Statement of Marcilynn Burke, Deputy Director, Bureau of Land Management, U.S. Department of the Interior, on H.R. 1904

Thank you for the opportunity to testify on H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act. The legislation provides for the exchange of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company in exchange for a number of parcels within the State of Arizona for management by the U.S. Forest Service (FS) and the Bureau of Land Management (BLM). Three of the private parcels are identified for transfer to the Secretary of the Interior. In general, the Department of the Interior (DOI) defers to the FS on the issues directly related to FS-managed lands and associated valuation issues. We believe that the intent of the legislation is to facilitate an exchange of land with Resolution Copper Mining, LLC. Resolution Copper has indicated its intention to develop a copper mine near Superior, Arizona, and wishes to acquire the 2,422-acre Forest Service parcel overlying the copper deposit as well as the Federal subsurface rights.

Conveyance of Parcels to the Bureau of Land Management

We note that while the bill states that three parcels are to be conveyed to the Secretary of the Interior, it is our understanding that the sponsor intends for the parcels to be placed under the administrative jurisdiction of the BLM. The parcels identified are located in Gila, Pinal, and Santa Cruz Counties and include:

- 3,050 acres along the Lower San Pedro River near Mammoth, Arizona;
- 160 acres within the Dripping Springs area near Kearny, Arizona; and
- the 940-acre Appleton Ranch parcel adjacent to the Las Cienegas National Conservation Area near Sonoita, Arizona.

The legislation references maps for these three parcels dated March 2011. The sponsor's office informs us that these maps do not exist and that the sponsor intends to use the boundaries delineated on the maps dated June 3, 2009, which the BLM previously prepared for Senator Kyl of Arizona. The BLM would be happy to prepare new maps for H.R. 1904 if requested.

The lower San Pedro parcel is east of the town of Mammoth, Arizona, and straddles the San Pedro River. The acquisition of these lands would enhance key migratory bird habitat along the San Pedro River. H.R. 1904 provides for the lower San Pedro parcel to be managed as part of the BLM's existing San Pedro Riparian National Conservation Area (NCA) designated by Public Law 100-696. The lower San Pedro parcel lies along the same riparian corridor as the San Pedro NCA, but it is at least 60 miles downstream (north) of the existing NCA and has substantially different resource issues and needs. If this parcel is conveyed to the Secretary the Interior and incorporated into the NCA, the Department recommends that the existing 80 acres of adjacent BLM-managed public land likewise be included within the NCA to facilitate the efficient and effective management of this important riparian corridor.

The legislation also proposes to transfer 160 acres in the Dripping Springs area near Kearny, Arizona to the Secretary of the Interior. This private parcel is an inholding within a larger block of public lands and has important resource values, including sensitive Desert Tortoise habitat.

Finally, the bill provides for the transfer of the 940-acre Appleton Ranch parcel to the Secretary of the Interior. This parcel is located on the southern end of the BLM's Las Cienegas NCA. These lands lie within the "Sonoita Valley Acquisition Planning District" established by Public Law 106-538, which designated the Las Cienegas NCA. That law directs the Department to acquire lands from willing sellers within the planning district for inclusion in the NCA to further protect the important resource values for which the NCA was designated. These lands are part of a significant wildlife corridor. The acquisition of these lands advances important conservation goals associated with this unique and special natural resource and is consistent with the President's America's Great Outdoors initiative.

General Concerns

The Department has several concerns with the bill and cannot support the bill as written. Among these concerns are the timing of consultations with interested In-

dian Tribes, the timing of the exchange, appraisal provisions, and value adjustment provisions.

Concerns have been raised by Indian Tribes that the bill is contrary to various laws and policies and Executive Orders that direct Federal land managing agencies to engage in formal consultation with interested Indian Tribes, and to protect and preserve sites that are sacred to Native Americans.

Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area. The Department recommends the Secretary of the Interior be included, along with the Secretary of Agriculture in the consultation required in the legislation when it relates to Indian tribes. However, the Department is concerned that any consultations under this H.R. 1904 would not be meaningful under Executive Order 13175, "Consultation and Coordination with Indian Tribal Government", because the Secretary's discretion regarding the land exchange is limited.

Section 4(i) of the legislation expresses the intent of Congress that the exchange be completed within one year. Based on our experience with exchanges, we believe this amount of time is insufficient to complete and review the necessary environmental documents, mineral report, appraisals, as well as to conduct the final verification and prepare title documents. We are also concerned that one year may not be sufficient to complete analysis of any historic and sacred sites in the exchange area as required by the Native American Graves Protection Act and the National Historic Preservation Act.

Preparation of a mineral report is a crucial first step toward an appraisal of the Federal parcel because the report provides important information about the Federal mineral deposit. The bill does not address access to confidential exploration and development data and company analyses on the mineral deposits underlying the Federal land in order to ensure a timely and accurate appraisal. Such information is essential for the mineral report, particularly in the context of this exchange, because of the size of the proposed mining operation and the proposed mining technique.

Section 6 of H.R. 1904 provides for an annual value adjustment payment to the United States if the cumulative production of locatable minerals exceeds the projected production used in the appraisal required by section 4(d)(3). This provision recognizes that an accurate projection of future production as part of the appraisal process will be difficult to develop, and provides a mechanism for additional payments to the United States if the actual production exceeds the projected production. The Department generally defers to the FS on the specific provisions of section 6 of the bill. However, we note that this section creates a new fund in the U.S. Treasury for the deposit of these value adjustment payments. The Department recommends that these funds be dedicated to Federal land acquisition in the same manner as the initial land equalization payments provided for in section 4(e)(2)(C) of the bill. Because these funds are to compensate for a possible initial inadvertent under-appraisal of land values, it is appropriate that the value when captured be used in the same manner as if it had been included in the initial appraisal.

Finally, there are a number of issues of a more technical nature that we would welcome the opportunity to discuss as this legislation moves forward.

Conclusion

Thank you for the opportunity to testify. The exchange proposed in H.R. 1904 is complex. The Departments of Agriculture and of the Interior seek to assure that the Federal government's interest is appropriately protected in any final legislation.

Mr. BISHOP. Thank you. Mayor Hing.

STATEMENT OF HON. MICHAEL HING, MAYOR, CITY OF SUPERIOR, ARIZONA

Mr. HING. Good morning, Mr. Chairman, and Members of the Subcommittee. My name is Michael Hing. I am the Mayor of Superior, Arizona, a small town in Pinal County, about 65 miles southeast of Phoenix.

Our town strongly supports H.R. 1904. I represent a town that has gone through extreme rough economic times, with unemployment even higher than 15 percent. However, we are at the verge

of a major step forward. I am speaking about the economic development that will occur if Resolution Copper is able to reopen and deepen the almost century-old Magna Mine.

This land exchange represents an unprecedented opportunity to improve the long-term economic vitality of my community. Mr. Chairman, there are several significant factors that make our town ideally suited to host and service a reopened mine at Oak Flat.

If I can draw your attention to the photo on the screen. The photo clearly shows that the Town of Superior is located less than a 10 minute drive from the mine site on State Highway 60, providing an excellent access to the mine for both workers and supplies.

The highway is one of the major East-West traffic arteries in Arizona. Our community is serviced by a rail line and has a skilled workforce, and housing bed base that is begging to be utilized.

Many of our residents have mining experience. Our area has numerous existing powerlines and other infrastructures that can service the mine. The most important element of the project, Mr. Chairman, are human.

Currently, vast numbers of Superior residents are forced to commute to the Phoenix metropolitan area and nearby towns at great expense, and time to find employment. The lack of stable local employment has taken a toll on us.

Families that have resided for many generations are moving away. The situation has not improved since the last time that I addressed the Committee. I provided testimony to Congress on two previous occasions. Previously, I discussed the importance of a speedy passage of the land exchange to the economic and social well-being of Superior and the neighboring communities.

I firmly believe that we have been waiting long enough for Congress to take action on this legislation. We need jobs. We need revenues now. It is time to act. A prestigious economic consulting company recently prepared an economic study of the proposed mining operation.

The study predicted a \$61.4 billion of economic activity to the State over the life of the mine. That is \$61.4 billion. This is exactly the type of economic shot in the arm that we need, and which our Nation and our large budget deficit also needs.

If we truly want jobs and revenue, Congress should be taking the bull by the horns and approving and expediting this project like this one. There are a few good local corporate citizens.

Resolution Copper has voluntarily spent \$30 million to clean up the old tailing piles and other mining debris in our community, and will be spending \$20 million more to finish the job.

They are funding programs at our school, and are expanding our students' intellectual horizons and increasing their math, science, and technological skills. Last, Mr. Chairman, the land exchange will allow Superior to acquire lands adjacent to town.

We are only four square miles and completely surrounded by public lands. The lands that Superior will acquire through exchange are crucial in attracting new development, and will provide significant economic opportunities.

Finally, I believe that Congress has an excellent opportunity to provide an ideal balance between the expansion of jobs, local and

State revenues, and a diverse economic activity, while conserving ecologically sensitive and pristine lands for the future generation.

Unlike other economic stimulus plans, this legislation comes without a handout. I submit to you my sincere hope that the legislation can be swiftly approved to this remarkable economic impact of this exchange, and can begin to be fully implemented and realized.

We cannot afford to wait any longer. Our economic future is at stake. I appreciate your consideration of this very important bill.

[The prepared statement of Mr. Hing follows:]

**Statement of Michael O. Hing, Mayor,
Town of Superior, Arizona, on H.R. 1904**

Mr. Chairman and Members of the Subcommittee:

My name is Michael Hing. I am the Mayor of Superior, Arizona—a small town in Pinal County, about 65 miles southeast of Phoenix. Our town strongly supports H.R. 1904.

I am here today to discuss the future of my community. I represent a town that has gone through extremely rough economic times. . .with unemployment rates even higher than the 12% unemployment our County is experiencing. However, we are on the verge of a major step forward. I am speaking about the economic development that will occur if Resolution Copper is able to expeditiously re-open and deepen the old Magma Mine, which operated in our community for more than 80 years. This land exchange represents an unprecedented opportunity to improve the long-term economic vitality of my community, our local counties, the state, and the region. It is one thing to talk about the creation of new jobs and economic opportunity, and quite another to actually take action. . .like H.R. 1904 does. . .that will expedite the creation of those jobs and result in large increases in local, State and Federal tax revenues.

Mr. Chairman, there are several very significant factors which make our Town ideally suited to host and service a re-opened mine at Oak Flat:

1. As this photo clearly shows, the Town of Superior is located less than a 10 minute drive from the mine site on State Highway 60. This provides excellent access to the mine for both workers and supplies, without needing to build major new access roads.
2. Highway 60 is one of the major east-west traffic arteries in Arizona, and is in the process of being up-graded to 4 lane status all the way to Superior. This, again, will assist the entire mining operation.
3. We are serviced by an active rail line that runs from Superior to Florence, where it interties directly to the Union Pacific rail system. This will greatly facilitate the transport of copper concentrate to smelting and market.
4. We have a skilled work force and housing/bed base that is begging to be utilized, and have many residents with mining experience.
5. Our area has numerous existing powerlines, power substations and other infrastructure that can service the mine. This will enable the operation to have far less environmental impact than if entirely new facilities need to be built.

But the most important elements of this project, Mr. Chairman, are human. Currently vast numbers of Superior residents are forced to commute into the Phoenix metro area and nearby towns at great expense and time to find employment. The lack of stable local employment has taken its toll on us. Families that have resided here for generations are moving away. This situation has not improved since the last time I addressed this committee.

I provided testimony to Congress on two previous occasions, of which I have attached copies. In my previous remarks, I discussed the importance of speedy passage of the land exchange to the economic and social well being of Superior and neighboring communities. I firmly believe that Superior and the residents of the surrounding areas have waited long enough for Congress to take action on this legislation. We need jobs and revenue now! We don't want to see our economic future studied, appealed and litigated to the point where the mine project is delayed for decades because it is on Federal land. . .or where the company pulls out altogether and takes the jobs and revenues overseas. Congress has had bills before it on this land exchange for 5 years now. It's time to act!

Elliott D. Pollack and Company—a prestigious economic and real estate consulting company commissioned by Resolution Copper—recently prepared an economic study of the proposed mining operation. This study, which was originally

completed in 2008 and updated recently, provides a preview into the enormous economic and fiscal impacts of the construction and operation of the mine project. The study predicts a rather stunning \$61.4 billion of economic activity to the state over the life of the mine. . . \$61.4 billion! This is exactly the type of economic shot in the arm we need, and which our nation, and its large budget deficit, needs too. If we truly want jobs and revenue, Congress should be taking the bull by the horns and approving and expediting projects like this one.

Mining towns have seen their share of boom and bust. We have learned from this, and in partnership with Resolution Copper, have already taken steps to diversify our economy. To mark this partnership, the Town and Resolution Copper have entered into a landmark agreement providing funding for programs that will help Superior enhance business and residential opportunities. Resolution Copper has also voluntarily spent \$30 million to clean up the old tailings piles and other mining debris in our community. . . and will be spending \$20 million more to finish the job. They received a prestigious environmental award from Valley Forward, a Phoenix-based organization comprised of business and civic leaders, for doing that. They are funding programs at our schools that are expanding our students' intellectual horizons and increasing their math, science and technology skills.

They are a good local corporate citizen, as is demonstrated by the fact that they are headquartered right in our community, not at some distant location.

Lastly, Mr. Chairman, the land exchange of H.R. 1904 will allow Superior to acquire lands adjacent to the town. Superior is only 4 square miles, and is almost completely surrounded by public lands. The lands Superior will acquire through the exchange are crucial to attracting new development and will provide significant economic opportunities for us.

In conclusion, I believe Congress has an excellent opportunity to provide an ideal balance between the expansion of jobs, local and state revenues, and diverse economic activity while conserving ecologically sensitive and pristine lands for future generations. Unlike other economic stimulus plans, this legislation comes without a handout. I submit to you my sincere hope that this legislation can be swiftly approved so that the remarkable economic impacts of this exchange can begin to be fully implemented and realized as soon as humanly possible. We cannot afford to wait any longer. Our economic future is at stake.

I appreciate your consideration of this very important bill.

Mr. BISHOP. Thank you. Supervisor Martyn.

**STATEMENT OF BRYAN MARTYN, VICE CHAIRMAN,
PINAL COUNTY BOARD OF SUPERVISORS**

Mr. MARTYN. Mr. Chairman and Members of the Committee, my name is Bryan Martyn. I serve as the Vice Chairman of the Board of Supervisors for Pinal County, and I truly am honored to have the opportunity to testify before you today.

Prior to holding an elected office, I served our country for 20 years in the Army and in the Air Force as a helicopter pilot, and fought in Desert Storm, Bosnia, and a couple of tours in Iraq, and a couple of tours in Afghanistan.

There are no issues more important to Pinal County than the swift passage of H.R. 1904. My Board is comprised of two Democrats and a Republican. A simple point. This issue is not about politics. It is about enhancing the quality of life of the citizens of Pinal County and Arizona.

There are 3,147 counties in America. Pinal County is number two for growth. Over 50 residents a day move into Pinal County every day for the last 10 years. We need jobs for these new residents.

Mr. Chairman, let me explain why this legislation is so critical to Pinal County, and why our board has made this our top priority. First, as someone who grew up in Arizona, I believe that things that made our State great, and in particular, are the five C's; cop-

per, cotton, cattle, climate, and citrus, and should continue to be the life blood of our State.

Over the last 40 years the new C of construction has skewed our economic diversity. We must improve the spectrum of our economic opportunities. Today, we have an opportunity to turn Arizona's economy back around and utilize the resources that reside within our own State.

This is not your granddad's copper mine. The days of stripping the lands are behind us. Improvements in safety, operational technology, and environmental controls, clearly set this mine apart.

We on the board of supervisors plan to hold Resolution Copper to the highest standards of environment stewardship. Resolution Copper has already demonstrated through their actions, and not just lip service, that it is a good partner, and it is dedicated to the residents of Pinal County and Arizona. I see this in their commitment to education. The first full generation of workers for this mine are currently in the fourth grade. Resolution Copper recognizes this, and they have obligated funding for local schools, community colleges, and our universities, to ensure that my workforce in Pinal County has the necessary math, science, and mechanical skills needed to work in this hi-tech mine.

It is important to note that in Pinal County that one in four of our high school graduates are the first person in their family to graduate from high school. One in Four. The educational focus on math and science will change the dynamic and the future of my county.

In Arizona, we have an old saying. Whiskey is for drinking and water is for fighting. One of the first questions that I personally asked Resolution was where and how they planned to get their water for this project.

Mr. Chairman, I am pleased to tell you that Resolution Copper has been banking water and has secured the entire water supply for the projected life of the project even before the first ounce of copper has been pulled from the ground.

In Arizona, we take our water very seriously. The State manages our water supply to the very last drop. I should also point out that the water quality is one of my primary quality of life concerns.

Resolution Copper's activities will be closely monitored by ADEQ, the Arizona Department of Environment Quality, and they are overseen by the EPA. In Arizona, our water quality is regulated at standards that meet or exceed all EPA standards.

These standards are non-negotiable. Resolution Copper must meet or exceed these standards if they want to operate in Arizona. Pinal County currently has a 15 percent unemployment rate.

The unemployment rate on our Indian Reservations is more than triple that. We desperately need jobs. The Resolution Copper project and their extended impact will put over 5,000 people into high-paying jobs. This is a jobs bill, gentlemen.

This project alone will yield more than \$8 billion in new tax revenue to the Federal Treasury, and another \$2 billion to the State, county, and local governments. As Senator Kyle put it, this legislation is a stimulus without a handout.

Last, as you know, Mr. Chairman, H.R. 1904 brings over 5,000 acres of unique and valuable conservation properties into public

ownership, which includes a 3,050 acre 7B Ranch as Dr. Gosar mentioned.

The Nature Conservancy identifies this land as one of the top conservation priorities on the San Pedro River. I urge you and your Members to join me and the citizens of Pinal County in support of this project, and quickly adopt H.R. 1904.

Thank you again for the opportunity to testify. I look forward to any questions that you or the Committee might have. Thank you.
[The prepared statement of Mr. Martyn follows:]

Statement of Supervisor Bryan Martyn, Pinal County, on H.R. 1904

Mr. Chairman and Members of the Subcommittee:

My name is Bryan Martyn. I serve as the Vice Chairman of the Pinal County Board of Supervisors. I am honored to testify before you today. I would also like to thank my good friend and our congressman, Dr. Paul Gosar, for inviting me to testify.

Prior to holding elected office, I served our country for 20 years as an Army AH-64 Apache helicopter pilot and as an Air Force Special Operations helicopter pilot. I fought in Desert Storm, Bosnia and served two tours in Iraq and Afghanistan. Although my service often took me to foreign lands, I always yearned for the day to return home to Arizona to serve my country in another capacity. For this reason, I have stayed active in the issues that are critically important to my community. There are few issues that are more critical to Pinal County's economic growth, stability and quality of life than H.R. 1904.

Mr. Chairman, I would be remiss if I didn't personally acknowledge Pinal County Board Chairman Pete Rios who was originally slated to testify here today. He is home with his daughter who is due to give birth any day now. Nevertheless, I want to convey his strong support for H.R. 1904. Our third Board member, David Snider, also strongly supports this legislation. My Board is comprised of two Democrats and one Republican. My point is simple: this issue is not about politics; it's about enhancing the quality of life of the citizens in Pinal County and Arizona.

Allow me to give a brief background about Pinal County. It is located in the center of the state between Arizona's two largest counties, Maricopa (Phoenix) and Pima (Tucson) and is slightly larger than the state of Connecticut in area (approximately 5,386 square miles). In 1965, Pinal County's population was around 60,000. By 2000, the population had tripled to over 181,000. Today's population has exploded to more than 375,000 and by 2050 the population is estimated to be nearly two million people. There are over 3,000 counties in America. Pinal County is the second fastest growing county in the nation and it appears that this growth will continue for the foreseeable future.

Pinal County is defined by two distinct regions. The mountainous eastern part of the county is characterized by elevations as high as 6,000 feet and a predominance of copper mining that brings good-paying jobs to the area. The western part of the county is primarily low desert areas where irrigated farming has been the dominant feature of the land.

Only 25 percent of the land in Pinal County is privately owned. The other 75 percent is owned by federal, state or Tribal entities (35 percent is State Trust Land, 20 percent is Indian communities, 11 percent is BLM land, 6.5 percent is national forests, and 2.5 percent is parks/monuments). Consequently, the property tax base for the county is extremely modest. The rapid influx of residential property has outpaced retail and industrial properties. This growth has put severe strains on critical infrastructure needs, such as transportation, water, and energy services.

Mr. Chairman, please let me explain why this legislation is so critical to Pinal County and why our Board has made this our top priority.

First, as someone who grew up in Arizona, I believe that the things that made our state what it is today, in particular, our five C's—cotton, copper, cattle, citrus and climate—should continue to be our state's lifeblood. Over the past forty years, the new "C" of construction has changed the economic dynamic of the state. We have lost some of our diversity and because of the economic downturn, the state and County budgets have drowned our ability to provide some of the most basic services to our constituents. We must explore every opportunity to improve the spectrum of economic opportunities in Arizona. Copper was once known as "king". We now have an opportunity to turn Arizona's economy around that would help millions in our state.

With regard to mining, members of the Committee must understand that modern mining has evolved in dramatic fashion. This is not your granddad's copper mine. The days of stripping the land are behind us. Improvements in safety, operational technology and environmental controls clearly set this project apart. Based upon our working relationship with Resolution Copper to date, Pinal County believes that the Resolution project is going to be one of the most environmentally-sensitive mines in the nation. We, on the Board of Supervisors, plan to hold Resolution to the highest standard of environmental stewardship. Resolution Copper has already demonstrated through actions, not just lip service, that it is a good partner and dedicated to the residents of Pinal County and Arizona.

I see this in its commitment to education. The first full generation of workers for this mine is currently in fourth grade. Resolution Copper recognizes this and has obligated funding to local schools, community colleges and universities to ensure that the workforce in Pinal County has the necessary math, science and mechanical skills needed to work in this high-tech mine. It is important to note that Pinal County is a truly emerging county. Today, one in four of our high school graduates, is the first person in their family to graduate high school. The educational focus on math and science will change the future of our county.

Resolution Copper has also operated with consideration for the environment. It took over the nearly century-old Magma Mine site in Superior which required an extensive environmental cleanup. Resolution Copper was not obligated to complete this cleanup for decades, but voluntarily jumped headfirst into a \$50 million reclamation, which is already 60 percent complete. I have personally witnessed its progress and can sleep comfortably at night knowing that Resolution Copper's actions have ensured that we have a clean, safer, and healthier environment for our children and grandchildren.

In Arizona, we have an old say, "Whiskey is for drinking and water is for fighting." Everyone is concerned about water and what water source will be used for the life of this project. One of the first questions I personally asked Resolution was where it planned to acquire water. Mr. Chairman, I was pleased to hear that Resolution Copper has been banking water and will have secured the entire water supply for the life of the project before the first ounce of copper comes out of the ground.

Additionally, Resolution has already spent literally millions of dollars on water studies in the area to date. These studies have indicated that there will be no impact on the water supply of Superior, Globe-Miami, San Carlos or any other community. It is because of this that I am certain that the future of the regional water supply is secure.

I should also point out that water quality is one of my primary "quality of life" concerns. Resolution Copper's activities will be closely monitored by the Arizona Department of Environmental Quality (ADEQ), under authority delegated to it by the United States Environmental Protection Agency (EPA). In Arizona, our water quality is regulated at standards that meet or exceed EPA requirements. These standards are non-negotiable. Resolution Copper must meet or exceed these standards if they want to operate in Arizona.

Most importantly, Mr. Chairman, we cannot ignore the massive economic benefits this project will bring. Pinal County *and* Arizona have a potential windfall in our backyard that will offer much needed job and economic opportunities. Pinal County currently has a nearly 15 percent unemployment rate. The unemployment rate on our Indian reservations is more than triple that number. We desperately need jobs. The Resolution Copper project will put over 1,400 people into high-paying jobs. These jobs have the potential to create more than \$40 billion in economic activity.

As elected leaders, it is critical that we send a positive message about economic development to our citizens and to the world. Namely, that Pinal County, Arizona, and America are open for business. This project alone will yield more than \$8 billion in new revenue to the federal treasury and another \$2 billion to state, county and local governments. As Senator Jon Kyl puts it, this legislation is "a stimulus without a handout."

Pinal County has not been immune to the negative effects of the recent recession. While still growing, the County yearns for good, high-paying jobs. The Resolution Copper project is one of the biggest economic development projects in Arizona and the largest in Pinal County. The average annual projected pay is slated to be approximately \$70,000 per year for a County that has double-digit unemployment and an average wage that is less than half of what Resolution Copper will provide its employees.

Lastly, as you know, Mr. Chairman, H.R. 1904 brings over 5,000 acres of unique and valuable conservation properties into public ownership. This includes the 3,050 acre 7B Ranch property parcel in Pinal County that covers seven miles on both sides of the renowned San Pedro River, and immediately abuts conservation lands down-

stream from it that are managed by The Nature Conservancy and others. The Conservancy has observed that the 7B Ranch is one of the top three conservation priorities on the entire river, and is part of one of, and I quote, "most critical and irreplaceable migration corridors in the western hemisphere for neo-tropical birds".

In many ways, this legislation exemplifies why we chose this profession; to improve the quality of life of our constituents. This project represents all we value as Americans: stewardship of our environment, improved education of our children and our workforce, enhanced economic prosperity and the ability to make a better future for those around us.

I urge you to join me and the citizens of Pinal County in support for this project, and I urge the Committee to quickly adopt and pass H.R. 1904.

Mr. Chairman, thanks again for the opportunity to testify before you today. I look forward to any questions the Subcommittee may have.

Mr. BISHOP. Thank you. Mr. Cherry.

**STATEMENT OF JON CHERRY, VICE PRESIDENT,
RESOLUTION COPPER MINING**

Mr. CHERRY. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to speak with you today about this very important bill. My name is Jon Cherry, and I am Vice President for Resolution Copper Company, a United States corporation headquartered in Superior, Arizona, and a subsidiary of Rio Tinto, one of the largest mining companies in the world.

I am here today in support of H.R. 1904, which directs a land exchange to consolidate ownership of the land where we plan to invest over \$6 billion of private capital to develop a major copper mine, which would create more than 3,700 badly needed mining jobs in Arizona.

My desire today is to impress upon you three important reasons why the exchange deserves your support. First, the demand for copper is a critical building block for the national security, and our modern standard of living.

Second, the economic significance of this project for the local community, the State, and our country, and third, to give you confidence that we will operate in a responsible and sustainable manner, and that we can and will comply with all regulatory requirements.

Copper is fundamental to our modern society, and has an ever increasing role in the new green economy and green energy applications, as we cannot have electricity without copper. Unfortunately, the United States' dependence on foreign copper has been on the rise for many years.

In fact, we currently import about 30 percent of our demand. If we do not continue to explore and develop our domestic resources, our dependence on foreign resources will only increase.

The copper resource that we discovered and want to mine near Superior is one of the most significant copper resources to ever be found in North America. In fact, it is the third largest known undeveloped copper deposit in the world.

It has the capacity to meet 25 percent of the Nation's copper demand for many decades based on current demand and usage, which leads me to my second point, the economic importance of this mine.

Jobs are at the heart of this project. Earlier this year, Resolution Copper commissioned Pollack and Associates to update an eco-

conomic impact study to evaluate the benefits of our project on the local and State economy.

The study found that a \$6 billion investment to construct the mine will lead to 3,700 jobs and \$220 million in annual payroll. This does not include the benefits from the additional land that the Town of Superior will gain as part of the exchange, which means hundreds of additional jobs and millions of dollars of additional revenues and taxes.

Over its lifetime, it is estimated that the mine will have a total economic benefit to the State of Arizona of \$61 billion, and will generate tax revenue of nearly \$20 billion, of which \$14 billion is expected to go to the Federal Government.

While the economic benefits are significant, there are net environment gains as well. In exchange for the 2,400 acres of Federal land, Resolution Copper will transfer eight parcels of privately held land to the United States Forest Service and BLM, totaling about 5,300 acres.

These are highly desirable conservation lands that host the most important river basin and endangered species habitats. These lands were selected after consultation with the United States Forest Service, the Bureau of Land Management, The Nature Conservancy, Audubon, and other conservation groups.

It is worth noting that two of these parcels would be included in national conservation areas. On the other hand the Federal land Resolution Copper gains in the exchange is underlined and surrounded by current and historic mining operations, some of which are more than a hundred years old in an area known as the Copper Triangle, which is shown here on the map above you.

This map illustrates why it is called the Copper Triangle. You can see current and historic mining operations everywhere you look, including the historic site where the new mine is proposed.

Just as important are the existing infrastructure that are already in place at in the surrounding mine site. The point that I want to leave you with is that the Federal land that is part of this exchange is located in an area of a historic mining district that will continue to have mining and produce copper for many decades into the future.

Now for my third and final point. We are profoundly aware of the responsibility entrusted in us to be a good steward of the land. The mining industry has made tremendous advancements in recent years, both in technology and in the way that it approaches the social and natural environment, and I am proud to say that my company has been at the forefront of many of those changes.

We are completely committed to constructing and operating a safe and environmentally responsible mine. That is why we support and want everyone to be aware that prior to the land exchange being completed that compliance with all applicable Federal statutes is required, including most of the same ones that are required by NEPA.

Among others, this includes the National Historic Preservation Act, Section 106, Consultation with Native American Tribes; and Section 7, Endangered Species Act Consultation With the United States Fish and Wildlife Service.

In conclusion, we believe that we have a project that will produce a large domestic supply of a critical metal that is the fundamental building block for the modern world, and will create more than 3,700 desperately needed mining related jobs, generate more than \$20 billion in taxes, and benefit the economy of the State of Arizona by \$61 billion over the life of the project, and do all of this in an area with over a hundred years of historic mining activities, and in a way that minimizes impacts to the environment, and adds valuable avian and wildlife habitat to the Federal domain.

It is for these reasons that the land exchange embodied in H.R. 1904 should be advanced at its earliest possible date. Thank you again for the invitation to speak with you today, and I would be happy to answer any questions.

[The prepared statement of Mr. Cherry follows:]

**Statement of Jon Cherry, Vice-President,
Resolution Copper Company, on H.R. 1904**

Mr. Chairman and Members of the Subcommittee,

INTRODUCTION

Thank you for the opportunity to speak with you today about this very important bill. My name is Jon Cherry and I am Vice-President of the Resolution Copper Company, a U.S. Corporation headquartered in Superior, AZ and subsidiary of Rio Tinto, one of the largest mining companies in the world. Resolution Copper Company is the managing partner of the Resolution Copper Mining LLC, an LLC owned jointly between Rio Tinto (55%) and BHP Billiton (45%), and referred to as Resolution Copper throughout this testimony. I am here today in support of H.R. 1904, which directs a land exchange to consolidate ownership of the land where we plan to invest over \$6 billion of private capital to develop the third largest known underground copper deposit in the world, while creating over 3,700 badly needed mining jobs in Arizona.

Please note, as shown on my first display that we already own valid mining claims on roughly 70 percent of the land we are seeking to acquire. We estimate that the copper produced from this project will produce 25 percent of the U.S. copper demand (based on current demand) for more than 40 years from a secure and environmentally responsible domestic source.

THE LOGIC OF THE EXCHANGE

The land exchange of H.R. 1904 transfers 2,422 acres of National Forest land into our ownership which is underlain and surrounded by current and historic mining operations and mining claims, some of which are more than 100 years old. Simultaneously, Resolution Copper transfers approximately 5,300 acres in eight different privately held land parcels to the government to be managed by the USFS or BLM. With these eight properties, this land exchange will result in very significant net gains to the United States in:

- 1) river bottoms and riparian lands;
- 2) habitat or potential habitat for several threatened, endangered or sensitive plant and animal species;
- 3) areas identified as national and international important bird habitat by the Audubon Society and Bird Life International;
- 4) public recreational opportunities;
- 5) year-round water resources—a rarity in many parts of Arizona; and
- 6) protection of the important geographic feature of Apache Leap.

As a company we recognize that mining disturbs the land. However, we believe in a sustainable development approach to mining, and more than seven years ago began the process to identify and secure lands for long-term conservation and habitat protection as an offset and improvement to the federal land within the mining district that would be disturbed as a result of our operations. To accomplish this, we went first to the Forest Service, BLM, Nature Conservancy, Audubon Society, Trust for Public Land, Arizona Game and Fish and others interested in land conservation to ask them where mitigation lands might be located. As a result of their input, we now own eight parcels of land, totaling more than 5,300 acres which we will be conveying to either the BLM or Forest Service in the exchange. These include:

- the 3,050 acre **7B Ranch** running for 7 miles along both sides of Arizona's renowned San Pedro River. The Nature Conservancy is currently managing the 7B for us together with adjacent land it owns. The 7B lies along one of the most important migratory bird corridors in the entire United States and also has what may be the largest ancient mesquite bosque, or forest, in the entire southwest;
- the 940 acre **Appleton Ranch** which the National Audubon Society manages for us until it can be conveyed to the BLM for addition to the Las Cienegas National Conservation area. It is an extremely diverse area biologically, boasting more than 90 native grass species and 470 native plant species;
- a 640 acre **in-holding along East Clear Creek in the Coconino National Forest** near Flagstaff, including 2 miles of trout stream and other habitat for a variety of sensitive fish and wildlife species; and
- 5 other in-holdings in the Tonto National Forest that are long-time Forest Service acquisition priorities.

Lands were also identified to help provide the Town of Superior with the opportunity for economic growth.

The goal of the land exchange is quite simple. It consolidates our ownership of the land where we will be developing and operating the mine. As the map shows, the current fragmented land ownership pattern between Resolution Copper and the Forest Service is a logistical and regulatory jumble. It serves neither public nor private interests, and due to operational and safety considerations, continued Forest Service ownership of the land will not benefit the public, recreationally, or any other way, once the physical mining operation begins.

Display #2 is what is known as the Copper Triangle in Arizona. The three points of the triangle are anchored by the old mining towns of Globe/Miami, Hayden/Winkleman and Superior all of which have active copper mines except Superior. However, the old Magma mine at Superior is the platform from which Resolution Copper is launching its new mining project. Our project incorporates some of the old surface and underground workings and infrastructure of the Magma Mine, and is located right in the middle of the Copper Triangle. Running counter-clockwise, you can see Asarco's very large Ray Mine in the center of the triangle, then Asarco's Smelter and tailings in Hayden to the right, the Christmas Mine to the north of Winkleman, the Globe and Miami area open pit mines to the west, including the very large Freeport-McMoRan mine, BHP mine and Carlota and BHP Pinto Valley Mines—the latter of which is a possible location for the tailings from our mining operation, where we could fill up existing open pits and reclaim them.

Display #3 is a close-up of the Resolution Copper project site which shows even more of the existing infrastructure in detail, including all of the various drill holes that have been drilled in the area, including areas where 67 new exploratory holes have been drilled since 2001 shown by pink dots. The point I want to leave with you is that the federal land that is part of this exchange is located in an area of a historic mining district that will continue to have mining and produce copper for many decades into the future. Conversely, the land Resolution Copper would trade to the government is significantly larger and contains lands of much higher conservation and habitat value, but which also will benefit the public for generations to come.

Finally, I have three photos of the mine site which were taken just last month. The first shows the mine site in dead center, with the Town of Superior to the right, Asarco's very large open pit Ray Mine to the south. . . (it has been continuously producing copper since 1880). . . and other mines to the north. The second photo shows a closer view, with the mine site in the lower right. You can see our head frame and shafts and the numerous roads which cross the area. The last photo is a composite panorama which shows various other mines, roads, transmission lines, the large power substation near the mine and the Town of Superior. As you can see, one could not find a better place to build a new mine with all the existing infrastructure that already exists in the area.

ECONOMIC AND NATIONAL IMPACT

Earlier this year Resolution Copper commissioned Pollack & Associates to conduct a new economic impact study to evaluate the impacts of our project to the local and state economy. A copy of the executive summary of this report is included with the written testimony, but I would like to highlight a few important statistics from this report.

As a result of the \$6 billion dollar investment to construct and operate the mine, the following would occur:

- Jobs Created—over 3,700 jobs related to mining

- During our current engineering studies approximately 100 Resolution employees have full time jobs and more than 400 contractors are on site on a daily basis
- 1400 direct high-paying mining jobs would be created in the future
- More than 2300 indirect mining employment jobs would be created in the future
- Potential for hundreds more jobs in Superior from the land that the town acquires from the land exchange which will be used for economic development
- Economic Impact to the State of Arizona
 - \$61 billion life of mine impact from mining
 - \$960 million average annual impact from mining
- Taxes
 - \$19 billion in federal, state and local taxes over the life of project from mining
 - \$14 billion of which is in federal taxes

FAIR VALUE OF THE EXCHANGE

I should also mention that even though the proposed land exchange will utilize all aspects of the established Federal appraisal process, we have added Section 6 to the bill to ensure that the United States will not be short-changed if the appraisers are wrong about the volume of copper we will acquire in the exchange. Section 6 says that if we ever produce more copper from the land than is anticipated in the land exchange appraisal, we will make a value adjustment payment to the United States on any excess production. Thus, even if the Federal land appraisal is off to some degree, the United States will receive full economic value for the minerals it conveys to us. Conversely, if the land that Resolution Copper provides to the government as part of the exchange is determined to be more valuable than the land it receives, Resolution Copper will donate that difference to the government. In addition, Resolution Copper has secured an additional property to replace the Oak Flat campground and is working with the Town of Superior to ensure that recreational camping and related activities can continue in the area.

RESPONSIBLE MINING

Creating jobs, mining and protecting the environment are not mutually exclusive positions. Recognizing that society needs the metals and jobs that we produce as well as a healthy environment requires that appropriate study, planning and mitigation be considered and incorporated into any mine design. Resolution Copper has already spent more than \$33 million to date studying the hydrogeology in and around the mine project, and has drilled more than 30 holes in the area to assess the water resources. These activities so far show little if any impact to local water quantity or quality from the new operations, including no impact to the San Carlos Apache Reservation, the western boundary of which is located more than 20 miles further to the east of the project site, and which is also separated from our project by a 7,800 foot tall mountain range. We built a new \$10 million water treatment plant to treat water from the old underground mine workings that we are dewatering and are putting that water to beneficial use with local farmers for irrigation. We have spent more than \$30 million cleaning up and reclaiming the old mine site in Superior as part of a \$50 million reclamation program—work that by law isn't required to be implemented for decades. We have also purchased and banked approximately 240,000 acre-feet of water for potential future operations. We have conducted numerous flora, fauna and cultural resources studies. All of these data and studies will be incorporated into a mine plan of operations that will be submitted to regulatory agencies for the NEPA process as well as various federal, state and local agency permits.

As part of the land exchange, it is worth noting that Resolution Copper is also transferring more than 100 acres of privately held land to the government as well as foregoing any mining beneath the geographic feature known as Apache Leap to help secure long-term protection of and create a buffer for this important geographic feature.

CONCLUSION

In conclusion, our nation has been struggling through the worst economic downturn since the Great Depression. We have been losing many manufacturing jobs, raw materials production and tax revenues to overseas endeavors. Thus, we believe that when an opportunity comes along to develop a very large mine from a reliable domestic source that produces a metal that is vital to our national security and modern lifestyle. . .and that source is in a location where significant development infrastructure already exists. . .and where there appear to be minimal environ-

mental conflicts, we should avail ourselves of the opportunity. Copper, the metal that will be produced from this mine, is the fundamental building block for the new green economy including hybrid and electric cars, solar panels, wind turbines and smart grids.

We know that the temptation always exists for some to say “put it over there, not here”, and that there is no place where a large development can be located without some impact on the environment. However, you can only mine where the mineral is found and we believe we are truly fortunate to have found such a large mineral resource in an area where developing it will have minimal adverse impacts and at the same time such tremendous benefits.

Our project will:

- produce a very large amount of a critical metal right here at home that is the fundamental building block for the new green economy including hybrid and electric cars, solar panels, wind turbines and smart grids;
- create more than 3,700 mining related jobs that are desperately needed in an area of high unemployment; with hundreds of other potential non-mining related jobs
- generate more than \$19 billion in tax revenues to Federal, State and local government coffers;
- benefit the economy of the state of Arizona by \$61 billion over the life of the project from these mining related jobs
- add valuable avian, wildlife and plant habitat to the Federal domain; and
- do all of that in an area with over 100 years of historic mining activities and in a way that minimizes impacts to the environment.

If we as a nation are truly serious about creating new jobs with private investment, reducing long-term budget deficits, and producing here at home rather than abroad the base metals that serve our national interests, then the land exchange embodied in H.R. 1904 should be advanced at the earliest possible date. To do otherwise, and to continue to subject it to prolonged study and delay will only serve the interests of those who, while perhaps well intentioned, cannot see their way to any significant natural resource production, and in so doing ship our jobs, tax revenues and resource production overseas. I know that is a strong statement, but I believe it comports with today's realities.

Thank you again for the invitation to share our views with you today and I would be happy to answer any questions you may have.

Mr. BISHOP. Thank you. President Lewis.

STATEMENT OF HON. SHAN LEWIS, PRESIDENT, INTER TRIBAL COUNCIL OF ARIZONA, VICE-CHAIRMAN, FORT MOJAVE INDIAN TRIBE

Mr. LEWIS. Good morning. Thank you, Chairman Bishop, and Ranking Member Grijalva, and Members of the Subcommittee. My name is Shan Lewis, and I serve as President of the Inter Tribal Council of Arizona, which includes 20 Federally recognized American Indian Tribes, Nations, and Communities.

I am also the Vice Chairman of the Fort Mojave Indian Tribe. The Inter Tribal Council opposes H.R. 1904. In fact, tribes from all over the country have expressed their opposition to this bill because threats to our sacred sites in Arizona present a threat to all sacred sites across the country.

Mr. Chairman, I would like to announce several tribal leaders who are here from the San Carlos Apache Tribe, Chairman Terry Rambler, Councilperson Theo Ebsen, and former Chairman and current Councilperson Windsor Nelson, Senior. Also present from the Fort McDowell Yavapai Nation is Councilperson Treasurer Ms. Pamela Mile.

As written, H.R. 1904 would transfer 2,400 acres of tribal ancestral lands at Oak Flat to two foreign mining giants, Rio Tinto and BHP. Rio Tinto is owned in part by China. These lands are fundamental to the religions traditions and culture and, in fact, identify

the members of the Yavapai-Apache and Zuni Tribes, among others.

It is disturbing that the land exchange would take place and forego the trust responsibilities of the United States to Indian tribes as manifested in treaties, Executive Orders, Federal laws, and other policies that are intended to recognize and protect American Indian religion and culture.

While it may be difficult for non-Indians to understand, it is equally difficult for us to convey the profound importance of this area. As Yavapai and Apaches have explained, spiritual beings, Gah, exist within Oak Flat, and would be affected by this bill.

The Gah live and breath within this place. Under the bill, Oak Flat would become the property of foreign corporations. It is indeed shocking to us to consider that Congress would allow our ancestral lands to be wholly owned by foreign interests, who have no conception of Native American religious values, culture, and history.

H.R. 1904 calls for government-to-government consultation with Indian tribes, but only after the enactment of the Act. However, once in private ownership, Oak Flat would lose virtually all Federal protection and will face near certain destruction.

Under this bill no mitigation is possible, and alternatives would not be considered, and the views of Native Americans will have no impact. Essentially, consultation will be nothing more than a hollow promise for our people.

Every American understands that the desecration of any one religion affects all religions. The United States Constitution guarantees freedom of religion. Doesn't the religion of Native Americans deserve the same protection?

Fundamental to the integrity of the entire Oak Flat area is the presence of water. Water is life giving and has always been recognized, respected, and honored by our people. H.R. 1904 does not require any studies of the impact of their massive mining project on the regional water supply through depletion, pollution, and other harms caused by the project.

Water is more precious than copper, more precious than gold. Without water the entire ecosystem of Oak Flat will collapse and destroy the integrity of this place as a sacred site forever.

Some characterize H.R. 1904 as a jobs bill. However, we question the number and types of jobs to be created by this mine. Rio Tinto stated that the proposed mine will be highly automated. Automation of this type substantially reduces the number of workers that have in the past been needed for metal mining.

Regardless of Rio Tinto's promise of jobs, such jobs cannot replace Oak Flat. In conclusion, there are times that the government should just say no, and this is one of them. This type of mining in this location simply should not occur.

This mining proposal under H.R. 1904 raises too many questions. These questions will not be resolved, and may never be explored because the bill turns the land over to Rio Tinto before there can be a hard look at the consequences of this action.

Our children and future generations of all citizens of Arizona will suffer as a result. We urge this Subcommittee to not move forward with H.R. 1904. We have some additional information that we

would ask be submitted for the record. Thank you, and I would be happy to answer your questions.

[The prepared statement of Mr. Lewis follows:]

Statement of Shan Lewis, Vice Chairman, Fort Mojave Indian Tribe, and President, Inter Tribal Council of Arizona, on behalf of The Inter Tribal Council of Arizona on H.R. 1904

Mr. Chairman and Members of the Subcommittee:

Mr. Chairman, Subcommittee Members and Guests. Good Afternoon. My name is Shan Lewis, Vice Chairman, Fort Mojave Indian Tribe, and President of the Inter Tribal Council of Arizona (ITCA). My Tribe is a member of the Inter Tribal Council of Arizona.

I speak today on behalf of the Inter Tribal Council of Arizona which consists of 20 federally recognized American Indian Tribes, Nations and Communities with lands within the State of Arizona, New Mexico and California. We join together on matter of tribal, national, and statewide importance to the Tribes.

H.R. 1904, introduced on May 13, 2011, by Representative Gosar and various co-sponsors, would allow Resolution Copper—a joint venture of foreign mining giants Rio Tinto and BHP Billiton (collectively, “Rio Tinto”)—to secure private ownership of over 2,400 acres of U.S. Forest Service lands and the purported domestic copper supplies located underneath these lands in order to facilitate an unprecedented large-scale block cave copper mine in the Oak Flat region, which is bounded by portions of Apache Leap and Gaan (“Devil’s”) Canyon, and which includes the 760 acre Oak Flat Withdrawal (collectively “Oak Flat”), which is within the ancestral lands of Western Apache and Yavapai tribes. You should also consider that 9% of RioTinto, the controlling interest in Resolution Copper, is currently held by China, by and through its state-controlled Aluminum Corporation of China, known as Chinalco. If the exchange goes through, China will end up holding a 4.5% private interest in the ancestral lands of certain American Indian Nations in Arizona, so that they can mine this land with virtual impunity. A legislative transfer of land in essence to a **foreign government** as presented by H.R. 1904 is offensive to us and to the rest of the country.

The Oak Flat region remains today a place of profound religious, cultural, and historic significance to the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Fort McDowell Yavapai Nation, the Yavapai-Apache Nation, the Tonto Apache Tribe and other American Indian Nations.

Because of its importance to these American Indian tribes, nations and communities, the Oak Flat region, as well as specific places within the Oak Flat Withdrawal area, are eligible for inclusion in, **and protection under**, the Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* (“NHPA”). Further, Oak Flat meets the criteria to be identified as a “sacred site” within the meaning of Executive Order 13007, Indian Sacred Sites, May 24, 1996, 61 Fed. Reg. 26771 (“E.O. 13007”), as well as pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, *et. seq.* (“AIRFA”), and related laws, regulations and policies.

Oak Flat should not be transferred to the ownership of Rio Tinto in order to facilitate a block cave mine on and underneath these lands. Transfer of these lands to Rio Tinto for mining purposes will deplete and contaminate water resources from nearby watersheds and aquifers and result in the collapse of the Earth, irrevocably damaging the landscape of Oak Flat, and the wildlife, plants and other natural features of its ecosystems and, thereby, the very integrity of Oak Flat relative to its crucial role in American Indian religion, traditions, and culture. Our strong unity on these points is underscored in numerous ITCA Resolutions on this matter (see enclosed).

Through Congressional action, H.R. 1904 lifts the Oak Flat Withdrawal, which has protected these publicly owned lands for the American and American Indian peoples since 1955, when President Eisenhower signed BLM Public Land Order 1229. This Order specifically put Oak Flat off-limits to all future mining activity, despite its presence in a known mining district. In fact, although President Nixon issued BLM Public Land Order 5132 in 1971 to modify PLO 1229 he expressly precluded any form of appropriation of Oak Flat “under the U.S. mining laws.” These two executive orders—from two different Republican administrations—both mandated that these lands were to be preserved in perpetuity with special emphasis on prohibiting mining activities at Oak Flat. There is no compelling reason for these Orders to be overturned today, especially to benefit two foreign mining interests.

Although the Inter Tribal Council of Arizona is not opposed to mining in general, *this form of mining and mining in this location* is highly offensive to us, and would pose a danger to many important values of this region.

The 20 member Tribes of the ITCA therefore oppose H.R. 1904 and mining activities at Oak Flat.

Cultural and Religious Effects of the Proposed Exchange

Congress has enacted legislation to protect the religious, cultural and social integrity of Indian people. This was to ensure (among other things) that the policies and procedures of various Federal agencies, as they may impact the exercise of traditional Indian religious practices, are brought into compliance with the constitutional injunction that Congress shall make no laws abridging the free exercise of religion.

It is important to understand that the religious and cultural importance of the Oak Flat area does not only reside in isolated spots but also in the integrity of the ecosystem and environment of the area as a whole. Thus, impacts to **any part** of Oak Flat have an impact on the religious and cultural integrity of the area **as a whole**—both as a holy and religious place and as a place of continued traditional and cultural importance to Apache, Yavapai, and other indigenous people.

For example, Apache People call Oak Flat “*Chich’il Bildagoteel*,” or “a Flat with Acorn Trees” and it lies at the heart of *Tiis Tseban* Country, which is associated with at least eight Apache clans and two Western Apache bands—the Pinal Band and the Aravaipa Band. Oak Flat area is called *Gohwhy Gah Edahpbah* by the Yavapai people. Oak Flat has, for generations, played a crucial role in the exercise of Apache religious, traditional, and cultural practices, **and these practices continue to this day**. Since time immemorial these tribes have performed a variety of deeply ceremonial dances on these highly cherished grounds. Oak Flat has long been used—and is used today—for religious ceremonies and its existence continues to enhance the lives of Apaches and Yavapais.

The oak groves at Oak Flat have always provided an abundant source of acorns that serve as an important food source for the Apache people. There are also hundreds of traditional Apache plants and other living things in the Oak Flat area that are crucial to Apache religion and culture. Some of these plants are common and some are among the holy medicines known to and harvested by only gifted Apache herbalists. Similarly, Yavapais also have relied on the abundance of Oak Flat for physical and spiritual sustenance. While these plants can be gathered in other areas, only the plants within the Oak Flat area are imbued with the unique power of this area.

Allowing Rio Tinto to conduct block cave mining at *Chich’il Bildagoteel* (Oak Flat) will destroy the living things and ecosystems that are associated with the Holy Beings that Apaches depend on, in particular a certain kind of Gaan—all powerful Mountain Spirits—with whom the Oak Flat area is associated. These Holy Beings are among the most powerful, and they must be respected if the Apache people are to receive their power. Without their power, the Apache people cannot conduct their ceremonies and they become vulnerable to a wide variety of illness. The mining that will be facilitated by this land exchange legislation will also adversely impact the power of the plants that Apaches harvest and use within the Oak Flat area for ceremonial, religious, medicinal, and other purposes. The Yavapai are connected to this land in ways that cannot be expressed through the English word. The land and its presence is apart of who they are and defines them as a People. Their language reflects their consecutiveness to the land. Once the land is gone part of their language will die forever.

Oak Flat Should Not be Sacrificed In Exchange for Other Lands Selected by Rio Tinto and Offered to the United States

To build support to the block and cave mining operations, Rio Tinto proposes the acquisition and conservation of a handful of land parcels scattered in other locations within Arizona.

While some of these offered lands may have value for the American public, none of them have been recognized through their previous withdrawal by Executive Order, like the Oak Flat area, nor do they have the totality of values as a sacred site or traditional cultural property recognized by American Indians.

Moreover, if the offered parcels are as meritorious and deserving of conservation and public use, as Oak Flat was determined to be over 50 years ago by President Eisenhower, those who seek the conservation of these parcels should look for funding help from such potential resources as the Land and Water Conservation Fund, The Conservation Fund, The Nature Conservancy, The Trust For Public Lands, the Paul Allen Foundation and others—not by sacrificing lands at Oak Flat. No one should attempt to, nor can they, put a price on the value of an intact and healthy

ecosystem within the Oak Flat area or its adjacent lands, or on safe drinking water, or the protection of spiritual, religious, cultural, and archeological values. The United States, as Trustee for all American Indians should not attempt to trade away these priceless values in order to facilitate the cheapest method of mining, which in the end has exclusive benefit for Rio Tinto (including China) and BHP and their shareholders.

It is highly disappointing, and indeed disturbing, that H.R. 1904 has simply cast aside the valid concerns of American Indians regarding the need to protect the religious, cultural and traditional relationship of indigenous peoples to the Oak Flat region.

Block Cave Mining Impacts and the Collapse and Destruction of the Oak Flat Area

As noted above, and in prior testimony on this proposed exchange during the 111th Congress, the ITCA is not opposed to mining in general. We are, however, strongly opposed to block and cave mining **in this location**. Block and cave mining here would (among other things) collapse the surface area on public lands, destroy the integrity of the Oak Flat as a traditional cultural property and sacred site, and endanger the water supplies of Gaan Canyon, Queen Creek, Queen Creek Canyon, and the springs, seeps and other important water features in the surround countryside for miles around.

Rio Tinto has said that the reason for the block and cave mining approach is that it is “cheaper” for them. While bottom line considerations are clearly important to Rio Tinto, the Federal Government, our Trustee, must not let such factors pressure it into agreeing to destructive practices. Mining experts attest that there is no assurance once the ground starts moving in a block and cave mining operation that it will not “run with you”, or result in a collapse from the bottom of the operation up to the surface.

Despite the fact that Apache Leap has been removed from this land exchange in H.R. 1904, under the normal requirements for a land exchange in accordance with National Environmental Policy Act (“NEPA”) and the Federal Land Policy Management Act (“FLPMA”), Congress would require federal decision makers to conduct interdisciplinary studies and closely scrutinize the inevitable and destructive impacts of the mining project on Oak Flat, Apache Leap, and nearby Gaan (Devil’s) Canyon. They would be required to consult with American Indian Tribes and interested members of the public throughout the process, and would have the obligation to consider the impact of the surface collapse from the mine on Oak Flat and the landscapes found in this area as required by the National Historic Preservation Act (NHPA) and other laws. As part of this process, the federal decision makers would also be required to evaluate the impacts from the collapse of the surface at and throughout Oak Flat and the depletion and potential contamination of the region’s water supplies, and therefore, the resulting damage to the traditional cultural and religious elements of this landscape and the importance of Oak Flat as a sacred site and traditional cultural property. Rio Tinto and BHP Billiton seek to have Congress exempt them from virtually all of these important requirements of the law through H.R. 1904.

It should also be noted that while H.R. 1904 would purport to prohibit “commercial mineral extraction” from under the proposed conservation easement, it does not prohibit Rio Tinto from tunneling under Apache Leap or from conducting other below ground operations directly below the escarpment. In addition, nothing in H.R. 1904 or in the “NEPA” like review of Rio Tinto’s “mining plan of operations” would require Rio Tinto to cease its mining operations and block caving activities at Oak Flat should these operations and activities show signs of a more extensive surface collapse than anticipated, including the potential damage or violation of Apache Leap. Moreover, RCM makes no guarantees that they will prevent such a catastrophe.

Finally, Apache Leap is only part of the larger sacred site that is encompassed by the Oak Flat Under this proposed legislation, Apache Leap would eventually be bordered by thousands of acres of land that will be irretrievably harmed by the proposed mining project and the destruction to the healthy ecosystems of the entire Oak Flat Withdrawal area.

The Mining Project Will Dangerously Deplete Groundwater and Surface Water Supplies Throughout the Region

Water is a source of life for all people. The existence of water at Oak Flat, including life-giving springs, seeps and surface supplies, is fundamental to the health of Oak Flat’s ecosystems and therefore, to the religion, culture and very identity of both the Apache and the Yavapai people.

As noted briefly above, however, the massive mining operation to be facilitated by H.R. 1904, threatens to dangerously deplete surface and groundwater supplies throughout the region—water supplies that are already relied upon and desperately needed by others in Arizona. H.R. 1904 does not require Rio Tinto to perform any modeling or proper studies of the impact of their project on the regional water supply and hydrology, despite the fact that the 20 member Tribes of the Inter Tribal Council of Arizona and other Arizona tribes and nations, including the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation, have repeatedly requested that an independent agency of the federal government, like the U.S. Geological Survey or other federal agency or department, conduct such studies. This is particularly egregious since Arizona is in its 13th year of drought and the area water supplies in this region are under further pressure from growth.

The copper ore body is estimated at its highest point to be located 7,000 feet below the surface; however, because the actual surface at Oak Flat and Apache Leap already sits between 4,100 feet and 4,600 feet above sea level, the top of the massive ore body appears to be actually located at approximately 3,000 feet below sea level. Given the depth of the ore body throughout the 40 plus years of the mining project, Rio Tinto will have to aggressively conduct extensive “dewatering” activities in order to continually pump and remove the surface water and the groundwater from both the shallow alluvial aquifer at Oak Flat and the deeper aquifers which will increasingly migrate into the enormous cavity created by the removed ore and waste rock (and the extensive tunnel system needed for the mine), nearly **all of which will be located well below the elevation of the streams in the region, and will cut through the region’s groundwater aquifers. This also means the springs in the area that the Apaches and the Yavapai hold sacred will be destroyed forever.**

Surface water, tributary groundwater, and aquifers that are located above, beside, and beneath the copper ore body will be impacted by excavation to create the mining tunnels. Thus, throughout the mining process water will constantly migrate to and from the vacant ore body and mining tunnels. As this process continues over the decades long life of the project, the mine will deplete billions of gallons of water from the surface water and groundwater throughout the region, resulting in the loss of important seeps, springs and other surface water features, and resulting in the gross depletion, and likely contamination, of important and unique perennial pools in Gaan (Devil’s) Canyon, flows to Queen Creek and other surface water features, all of which is crucial to maintain the healthy ecosystem of Oak Flat and the surrounding area, and therefore the integrity of this place as a sacred site and traditional cultural property. Neither Rio Tinto nor BHP Billiton have the legal right to disrupt, deplete or contaminate this water under any law. Yet, **this legislation provides for an unprecedented water taking and condones water pollution.**

Further, the alteration of both the subsurface and the surface geological structure of this area as the result of the block caving process and the imminent surface collapse will alter the natural state of the aquifers and surface drainage of the watersheds throughout the region forever. Despite the fact that legislation has been pending off and on in Congress for almost six years, to date the Inter Tribal Council of Arizona has never seen any meaningful studies conducted by Rio Tinto or the federal government regarding these impacts to the water supplies of the region. These studies are crucial to ensure that the dwindling water supplies in Arizona are protected for communities and cities downstream including the Phoenix metropolitan area.

The gross depletion of the local aquifers and the local springs, seeps and other water supplies of the Oak Flat area, cannot be remediated by “banking” Central Arizona Project water elsewhere, including in storage facilities near Phoenix and in Pinal County.

Ironically, at the same time that Inter Tribal Council of Arizona and other Indian tribes, nations and communities have raised these and related concerns before Congress, Rio Tinto has succeeded in **changing laws and regulations** in Arizona which have been in place for decades in order to exempt itself from vital public safeguards and conditions normally used to protect Arizona’s water supplies. *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).

We ask that Congress maintain federal ownership of these lands and exercise its federal control necessary to ensure that the surface water and ground water supplies of this region are protected in both quantity and quality, and that federal, tribal, private, and public water rights are protected in perpetuity from the interference, diminishment and degradation presented by this massive mining project.

H.R. 1904 Requires that the Land Exchange be Consummated Without Advanced NEPA Review

There is nothing in H.R. 1904 that calls for Congress or the USDA/Forest Service to review the proposed land exchange itself, prior to Rio Tinto's acquisition of the Oak Flat lands. Section 4(i) of the bill provides that "the land exchange directed by this Act **shall be** consummated not later than one year after the date of enactment of this Act." (Emphasis added). In addition, Sec. 4(a) provides that when Rio Tinto offers to convey the non-federal lands to the United States, "**the Secretary** is authorized **and directed** to convey to Resolution Copper, all right, title, and interest of the United States in and to the Federal land." (Emphasis added).

Thus, H.R. 1904 fails to require or **even permit** the Secretary to take a "hard look" at the land exchange itself under NEPA or other laws, before the exchange is consummated, and seemingly fails to vest any discretion in the Secretary of Agriculture to consider possible alternatives to the exchange. H.R. 1904 also does not call for or permit the mitigation of impacts related to the land exchange and it would not permit the Secretary to avoid consummating the exchange should the Secretary determine under the FLPMA and other laws, that the exchange is a bad deal for the American taxpayer or the citizens or in the event he finds that the religious, environmental, cultural, water supply and other harms of the mining project are simply too great.

H.R. 1904 Contains Sham NEPA Requirements After the Exchange

The NEPA process outlined by Sec. 4(j) of H.R. 1904 (which is to be conducted after the lands are exchanged) is little more than a futile exercise on the part of the Secretary. Under H.R. 1904, the Secretary would have no discretion to exercise any meaningful authority over Rio Tinto's mining plan of operations or mining activities on private land after the exchange, absent a federal nexus. There is also no requirement in the bill for the Secretary to examine the direct, indirect and cumulative impacts of interim exploratory activities, pre-feasibility and feasibility operations, or mine facility construction that will be conducted by Rio Tinto after the exchange, but before production of commercial quantities of minerals. Sec. 4(f) mandates that the Secretary "shall" provide Rio Tinto with a special use permit within 30 days of enactment of the Act to engage in mineral exploration activities underneath the 760-acre Oak Flat Withdrawal and, within 90 days, the Secretary is required to allow Rio Tinto to begin mineral explorations within the Oak Flat Withdrawal itself.

In fact, under H.R. 1904, the integrity of Oak Flat could be harmed so substantially by exploratory activities before the limited NEPA requirements found in Sec. 4(j)(2) are triggered, that any NEPA review conducted upon the submission of the mining plan of operations would have little to no benefit in any event. Similarly, the Secretary would also seemingly lack any authority under this bill to even consider alternatives to these interim activities, which may include alternatives necessary to protect the integrity of Oak Flat as a traditional cultural property and sacred site, including its water resources, landscape, plants and ecosystems. Allowing the immediate exploration on and under Oak Flat prior to the NEPA review contemplated by Sec. 4(j) of the Act will constitute an "irretrievable commitment of resources" in contravention to NEPA.

It is also critical to understand that under H.R. 1904, there is no definition of "mining plan of operations", and there is nothing to make clear what form the "plan of operations" required by Sec. 4(j)(1) of the bill would take, as this term is not tied to the requirements of 36 C.F.R., Part 288. There no guarantees that the "plan of operations" will be sufficiently detailed or contain a complete description of the type of mining to be conducted on the lands, the subsurface information for the area, the length of operations, or the measures that Rio Tinto will take to meet the environmental and cultural resources protections that would normally be required by the law if these lands were not exchanged into private ownership. Furthermore, Rio Tinto may well change the mining plan **without public review** after the initial plan is submitted that could significantly alter the way the mine is operated. Such changes could pose an even more serious threat to this area.

Deputy Chief of the USDA/Forest Service, Joel Holtrop, has warned in response to prior legislation for this land exchange, that a plan of operations which contains, in particular, subsurface information is "**essential in order to assess environmental impacts, including hydrological conditions, subsidence, and other related issues.**" See Deputy Chief of the USDA/Forest Service, Joel Holtrop, August 2009, written response to questions by the Senate Subcommittee on Public Lands and Forests on S. 409. However, H.R. 1904 would not provide the Secretary with authority to reject the plan of operations submitted by Rio Tinto if the informa-

tion contained in the plan is insufficient to conduct even the limited review called for under Sec. 4(j)(2) of the bill.

The Secretary is also only given 3 years under H.R. 1904 to conduct his review after submission of a “mine plan of operations.” Under this limited time frame, the Secretary would have little time to demand that Rio Tinto refine its plan, even if this was necessary to conduct a meaningful review.

Indeed, USDA Secretary, Thomas Vilsack, has previously objected to similar sham NEPA provisions contained in previous legislation for this land exchange (S.409, 111th Congress), warning:

The purpose of a requirement [in S.409] that the agency prepare the EIS after the exchange, when the land is in private ownership, is unclear because **the bill provides the agency with no discretion to exercise after completing the EIS.** If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency retains the discretion to apply what it learns in the EIS to its decision about the exchange. **It seems completion of the exchange prior to the EIS would negate the utility of the EIS.** (Emphasis added).

Finally, H.R. 1904 does not allow for the preparation of a supplemental Environmental Impact Statement (EIS) document if additional review is called for in order to examine the direct, indirect and cumulative impacts of future activities by Rio Tinto. Sec. 4(j)(2) of the Act makes clear that the Secretary may only use the **single environmental review document** which is to be prepared within 3 years of the plan of operations as the basis for **all future** “decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations related to the proposed mine or plan of operations.”

In sum, the “NEPA” provisions contained in H.R. 1904, do not comply with the purposes of NEPA and they fail to vest any real discretion in the Secretary of Agriculture to address, or even meaningfully consider, the many concerns presented by the block cave mining operation proposed for the Oak Flat Withdrawal area.

Rio Tinto's Promise of Significant Jobs Creation in the Local Economy is Unsupported

Resolution Copper has circulated various economic and job figures related to their mining project. These numbers are highly speculative and unsupported as Rio Tinto does not have a Mining Plan of Operation (MPO). Since an MPO may be a decade or more away from completion, it is impossible at this time to determine with any certainty the total number of jobs or the types of jobs that might be created by the mine. In fact, Rio Tinto has acknowledged that exploration will take years and will not be completed until 2020, at the earliest. This offers little help for the needs of the local economy today. Even with the exploration complete, there is no guarantee that Rio Tinto will build the mine given the depth of the ore body and other factors. There is also no guarantee that the mine will provide the large number of jobs that Rio Tinto has promised, due to the potential automation of the project and other factors.

Rio Tinto has recently launched a prototype of a fully automated “mine of the future” in the iron rich Pilbara region of Australia. This “mine of the future” operates eleven mines with robotized drilling, automated haul trucks and driverless ore trains, all of which are controlled from an operations center 800 miles away. The aim of Rio Tinto’s prototype is to lower production costs by eliminating the need to hire a substantial number of workers. By Rio Tinto’s own admission “some of the roles currently based at the mine [Pilbara Mine] site will, in the future, be based in a city thousands of kilometers away [approximately 600 or more miles away]” and “employees will work like air traffic controllers.” See “*Mine of the Future.*” *riotinto.com. Rio Tinto, n.d. Web. 2011.* Rio Tinto’s Eagle Ore Mine in Marquette, Michigan also plans to use a fully automated system which may make mines safer, but at the cost of requiring fewer workers. This reduced labor force is a major reason why typical ‘mining jobs’ are rapidly declining industry-wide. As production and company profits continue to rise (and automation becomes operational), labor statistics show that the (mining) industry is expected to lose roughly 104,000 additional jobs between 2008 and 2018. See *U.S. Department of Labor, Bureau of Labor Statistics. Career Guide to Industry. 2010–2011 Edition.* <<http://www.bls.gov/oco/cg/cgs004.htm#outlook>>

Rio Tinto and Resolution Copper executives openly admit they plan to implement similar automated technology at the Rio Tinto Mine in Superior, Arizona. In Resolution Copper’s 2010 Sustainable Development Report they state, “Rio Tinto will use, today’s improved understanding of caving processes and advanced technology will

allow us to employ more automation and mechanization than were available in the past.” See *Resolution Copper Mining. 2010 Sustainable Development Report 201* <<http://resolutioncopper.com/sdr/2010/environment>>

This technology would allow Rio Tinto to operate the mine from anywhere in the world, substantially reducing the need for manpower and skilled and unskilled workers in the Superior region. Rio Tinto boasts that in their mines of the future (which will include the Resolution Copper Mine): “Humans will no longer need to be hands on as all this equipment will be “autonomous”—able to make decisions on what to do based on their environment and interaction with other machines. Operators will oversee the equipment from the ROC (Remote Operation Centers).” See *Rio Tinto. Rio Tinto chief executive unveils vision of “mine of the future”*. 18 January 2008. <http://www.riotinto.com/media/5157_7037.asp>

Once fully operational, the Remote Operation Center for Rio Tinto’s Resolution Copper Mine is unlikely to be located in rural Superior, Arizona. Rather, the ROC will be “metropolitan based” and “the future miner will be required to have a higher degree of education in mechatronics, supercomputing or artificial intelligence”, See *Cribb, Julian. Rio Tinto. Miners of the Future. Review. September 2008*. This would, of course, leave the Town of Superior in the same economic situation it faces now. Rio Tinto’s own workers acknowledge a decrease in the need for manual labor due to automation, stating “[p]eople frequently ask whether we have anyone working here at all.” *Coopes, Amy. “Robots, space technology run Australia’s mining miracle”*. *Physorg.com*. <<http://www.physorg.com/news188967104.html>>

Even today, Rio Tinto generally does not employ local drill operators or drill rigs for its exploration activities, rather, it chooses to bring in outside subcontractors from Utah, Canada and elsewhere to work on the project. This lack of local job creation will result in limited payroll, sale, and other tax revenue for the Town of Superior and the State of Arizona. This in turn limits local business growth and development, stunts housing growth and does little to infuse money into the local economy.

Lastly, it should be noted, that if Rio Tinto **does** build and operate the mine as they propose, the potential impact to the local economy through a loss in recreation and tourism, particularly ecotourism and heritage tourism, could be substantial, as the area of Oak Flat and the surrounding lands of the Tonto National Forest will be disturbed and degraded by the mine. In 2009 alone, detailed direct travel impact estimates for Pinal County totaled \$421 million dollars, with over \$16 million spent by those visiting the nearby campground areas. See *Arizona Travel Impacts 1998–2009p, July 2010 Report, Arizona Office of Tourism, Phoenix, Arizona*. Many of those dollars were spent in and around the area of this proposed mine. Of course, in the long run, the loss to the economy could be even greater, as the mine is likely to deplete and contaminate billions of gallons of water from the Superior area, potentially leaving Superior and other nearby communities with a limited water supply, without which, any hope of future economic development will have little chance.

The Past Environmental and Human Rights Record of Rio Tinto and BHP Billiton Provide a Frightening Window Into the Future of Resolution Copper

The dismal environmental track record and historical disregard for human and labor rights practices by Rio Tinto and BHP Billiton are well known.

Both companies’ operations over the years have left a wake of environmental destruction, human rights complaints, and lawsuits filed worldwide. Here in the United States, the Greens Creek Mine in Alaska (owned by Rio Tinto and two other companies) is alleged to be that state’s second largest discharger of toxic waste, releasing 59 million pounds of toxic chemicals in one year, and violating the Clean Water Act 391 times. In the United Kingdom, Rio Tinto’s Capper Pass smelter dropped an estimated 1.3 pounds of lead and other emissions on area residents each week during its operation, leading to a settlement agreement with hundreds of claimants in which the company refused to accept blame, but provided compensation to those with cancer and other illnesses.

On the other side of the world, current and former residents of Papua New Guinea were compelled to file suit in United States federal court against Rio Tinto, alleging violations of international law, including war crimes and crimes against humanity in Rio Tinto’s operation of a large-scale mine in that country. In relation to another mining operation in Papua New Guinea, villagers sued BHP Billiton for more than \$4 billion in damages for the destruction of the Ningerum people’s traditional lands in which they have lived since time immemorial. BHP Billiton eventually was forced to abandon the destructive mining project after studies showed that the operation was causing great environmental harms, but the company is accused of failing to oversee that the project was properly managed upon its departure. Villagers are

no longer able to safely eat locally harvested fish or food grown from their own gardens. It is estimated that it will take 300 years to clean up the area.

More recently, Rio Tinto locked out 570 miners from its borates mine in Boron, California. For 107 days, the miners and their families struggled to make ends meet without a paycheck from Rio Tinto. The company allegedly locked out the miners in retaliation for their refusal to agree to a contract that threatened to turn decent, family and community-supporting jobs into part-time, temporary or contracted jobs. Rio Tinto brought in replacement workers to do the jobs of long-time, experienced miners, some of whom have worked at the mine and processing plant for 30 to 40 years. It appeared that Rio Tinto was simply using the replacement workers to help the company starve out the locked-out families. However, after Rio Tinto got word that their product would not be shipped out of the docks because it was "scab" cargo, they decided to negotiate with the miners and on May 24, 2010, the miners returned to work.

In summary, the historical conduct of Rio Tinto and BHP Billiton provide no assurances that these companies will keep their promise to protect the Oak Flat area, or their employees and families, or for that matter, to protect the environment and respect the traditional culture and religious values of American Indians. The 20 member tribes of ITCA strongly oppose H.R. 1904.

Mr. BISHOP. Thank you. Mr. Featherstone.

**STATEMENT OF ROGER FEATHERSTONE, DIRECTOR,
ARIZONA MINING REFORM COALITION**

Mr. FEATHERSTONE. Thank you for inviting me to testify on H.R. 1904. This legislation would benefit two foreign mining giants, one of whom is owned in-part by China, and will have profound negative impacts on the people of America, especially our country's Native Americans.

The Arizona Mining Reform Coalition holds mining operations to the highest environmental and social standards to provide for the long-term environmental, cultural, and economic health of Arizona.

Members of the Coalition include the Sierra Club, Earth Works, The Concerned Citizens and Retired Miners Coalition, the Concerned Climbers of Arizona, and other groups. Giving away Oak Flat well before Rio Tinto has determined that a new mine is even feasible is not a sound business deal for America.

There are many financial and environmental risks from this land exchange. The loss of environmental freedom for Native Americans and the loss of the historic Oak Flat Camp Ground are incalculable.

Risks include the loss of water from the entire Oak Flat ecosystem due to fracturing and the eventual sinking of the surface of the proposed Black Cave mine. There is the loss of recreational activities at Oak Flat as a world class climbing location, and from other forms of recreation, such as hiking or birding.

There would be negative costs to local, State, and Federal infrastructure and services. Water used by a mine would be unavailable for homes or farms. H.R. 1904 does not require Rio Tinto to keep copper and other metals within the United States.

The bill could increase China's strength, while weakening national security and the long-term competitiveness of our country. H.R. 1904 calls for an income capitalization approach and analysis.

This approach requires the appraiser to use a multitude of indicators, facts, and variables that cannot be demonstrated without a detailed mining plan. Without this information the final appraisal

of Oak Flat will ultimately be zero, and the American taxpayer would once again be shortchanged.

The bill language forbids the Federal Government from reopening the appraisal process. Therefore, if and when it becomes apparent that the appraisal was too low, there would be no opportunity for the United States to negotiate a better deal.

This legislation mandates that the exchange be completed within a year. One year is not enough time to complete a mineral report, the appraisals, and its verification. Due to automation, modern mines generate more product with fewer workers.

When the Magma Mine shut down in 1982, 1,400 people were laid off in a single day. When the mine reopened in 1989, 400 people were employed, and the production rates were roughly the same. Rio Tinto talks about high levels of automation for this mine, making it possible to control most of the operation from anywhere in the world.

Oak Flat could be mined by a remote operating center in Utah, just as Rio Tinto's Pilbara Mine is controlled from 800 miles away in Perth, Australia. Very little employment would come from local hires or from workers that would move to the local area.

Since Rio Tinto does not plan to mine for at least a decade, there is little immediate job creation offered by this mine, denying any economic benefits to Arizona right now. H.R. 1904 would allow Rio Tinto to begin mine construction before completing the mining plan of operation.

Once the plan is written the NEPA review is limited to three years. This NEPA document would be the only document prepared to guide Federal officials regarding Federal actions or authorizations related to the mine.

There is a process in this country that all other mining companies use to permit large mines on public lands. A mining company writes a mining plan of operation. The Federal Agencies then engage the public and conduct a public review process.

This review gives everyone a chance to make the project better and safer. However, Rio Tinto is not willing to abide by this American process, and is going straight to Congress to gain private foreign ownership of the land.

Rio Tinto should stick with the process that all other mines go through. Then if it is determined that a land exchange is necessary, a bill could be submitted to Congress. Stop, look, and listen. Anything less is a guarantee that the American taxpayer and their land will be damaged and shortchanged in the process. Thank you.

[The prepared statement of Mr. Featherstone follows:]

**Statement of Roger Featherstone, Director,
Arizona Mining Reform Coalition**

On behalf of the Arizona Mining Reform Coalition I appreciate the opportunity to express our views about H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011 (Oak Flat Land Exchange). Several of our member groups have submitted their own written testimony and we support and incorporate their testimony into ours.

The **Arizona Mining Reform Coalition** works in Arizona to improve state and federal laws, rules, and regulations governing hard rock mining to protect communities and the environment. We work to hold mining operations to the highest environmental and social standards to provide for the long-term environmental, cultural, and economic health of Arizona. Members of the Coalition include: the Grand Can-

yon Chapter of the Sierra Club, EARTHWORKS, Save the Scenic Santa Ritas, the Dragoon Conservation Alliance, the Groundwater Awareness League, Concerned Citizens and Retired Miners Coalition, Concerned Climbers of Arizona, the Center for Biological Diversity, the Empire-Fagan Coalition, Environment Arizona, and the Sky Island Alliance.

Introduction

Resolution Copper Company—a wholly foreign-owned subsidiary of Rio Tinto and BHP-Billiton, two of the largest mining companies in the world—is seeking to develop an underground copper mine. Rio Tinto seeks to acquire Oak Flat, Apache Leap, and surrounding public lands for its private use through this land exchange bill. There are many significant problems posed by this unusual bill. For example, if approved, 2,406 acres of the Tonto National Forest will become private property and will forever be off limits to recreationists and all those who enjoy public lands. Privatization of this land would end public access to some of the most spectacular outdoor recreation and wildlife viewing areas in Arizona. If a mine is developed, this land would be affected by massive surface collapse subsidence, leaving far-reaching and permanent scars on the landscape, among other ongoing harms to this entire area.

Similar versions of this bill have been introduced in Congress since 2005. None of these previous bills have been approved by either chamber of Congress. Previous Congresses have recognized that this exchange is simply not in the best interest of the American public.

The Oak Flat Campground was recognized by the Eisenhower Administration as an important recreational resource in 1955 under Public Land Order 1229, as amended, and 760 acres of Oak Flat were specifically placed off limits to future mining activity. This unique area is a world-class natural resource for birding, hunting, hiking, camping, rock climbing, bouldering, canyoneering, picnicking, responsible off-highway vehicle driving, and other recreational uses. Oak Flat receives tens of thousands of visitors each year who enjoy the peace and beauty of this landscape, while at the same time infusing needed tourist dollars into the surrounding area of Superior and Globe. Gaan (known also as Devil's) Canyon and the waters of Queen Creek border the Oak Flat area. These important surface waters represent two of the crown jewels of Arizona's state trust lands, with some of the finest remaining riparian habitat in the state.

The Oak Flat Campground, Apache Leap, and the surrounding area are also very important for recreation, and shade from the large Oak trees at Oak Flat and the fantastic scenery have long served as a respite to the citizens of the town of Superior and those who travel along nearby Highway 60. Many Superior residents oppose the Oak Flat Land Exchange. Oak Flat, Apache Leap, Gaan Canyon, and the surrounding area are also important religious sites for Western Apaches and Yavapai, including the San Carlos Apache Tribe, the White Mountain Apache Tribe, and the Fort McDowell Yavapai Nation. The religious and traditional use of Oak Flat by Native Americans continues to this day. The Tonto National Forest has "discovered" at least a dozen archeological sites in and around Oak Flat. Making Oak Flat private land would forever eliminate these traditional cultural and religious uses of that unique area and the destruction of this area by the mining project would eliminate any meaningful access that Native Americans have to this important place. According to well known lore from the area, Apache Leap is an historical land known as the Apache's Masada. It is hallowed grounds where many dozens of Apaches leaped to their deaths when trapped by the U.S. Army.

H.R. 1904 is wholly inadequate to protect the important values of this unique landscape. In fact, the bill contains no provisions for meaningful environmental or cultural review or public input. Furthermore, Rio Tinto would not even be required to file a mining plan for years and it has offered scant and often conflicting information about (1) what will become of Oak Flat, Apache Leap, Gaan Canyon and the surrounding environs; (2) where the massive amount of mining tailings will ultimately reside; (3) where it will obtain the enormous amounts of water needed for mining or what will have to be dewatered for the mining activity to be maintained deep below the Earth; (4) how endangered species such as the Arizona hedgehog cactus, (*echinocereus triglochidiatus arizonicus*) and Sonoran ocelot, (*Leopardus pardalis sonoriensis*) will be protected and preserved; and (5) how necessary religious and cultural resources will be protected. Importantly, the bill makes no mention of the surface collapse of the area which is certain to occur if Rio Tinto is allowed to mine this area as it intends. Much has yet to be addressed regarding environmental considerations.

This bill is at best premature. Before an informed decision can be made on the merits of any land exchange for mining purposes, the public must review and debate

a plan of operation for an actual mine. Only if, after full review of a plan of operations and alternatives, a decision is made to move forward with a mine, should a potential land exchange be considered, if at all.

For this, and other reasons listed below, we oppose H.R. 1904 in its current form.

Economic and Other Risks

It is well known that mining companies do not pay royalties on mined federal properties thereby significantly fleecing the American taxpayer. However, under the terms of the legislative land exchange proposed in H.R. 1904, (which would cede control of what may be one of the larger copper deposits in North America to foreign interests), very few of the financial benefits touted by the mining company would be realized by the American public. Giving away Oak Flat to Rio Tinto at this stage, well before Rio Tinto has even determined that a new mine at Oak Flat is even feasible, is not a sound business decision and is unfair not only to the taxpayers, but to the tribes and recreational users who depend on this area. Rio Tinto's own literature stresses that a mine at Oak Flat would be technologically challenging and that further assessment is needed before the company decides to fully commit to building a mine. Indeed, Rio Tinto is presently only in the pre-feasibility phase of exploration of this area, and feasibility studies are not yet scheduled to commence until at least 2013 or 2014.

There are considerable financial and environmental risks and losses for the American people if the land exchange is to be approved and that must be examined before a determination can be made regarding whether or not this land exchange is in the public interest. There is the loss of religious freedom for Native Americans, the loss of unique public lands for the American public, and the loss of the treasured Oak Flat Campground to the citizens of Superior and others that are incalculable. Risks include the potential loss of the entire Gaan Canyon ecosystem due to drawdown of the water table or the collapse of portions of the Oak Flat area and Apache Leap due to stress fracturing and the eventual sinking of the surface from the proposed block cave mine. With the death of a young wild-born endangered ocelot right next to Oak Flat, we now have possible evidence of endangered mammals that would be affected by the land exchange and a new mine. This risk of loss before we even know the extent of ocelot use and occupancy of Oak Flat is also incalculable. The loss to other unique animals found at Oak Flat due to the mine should also not be treated lightly. Oak Flat is home to a diversity of unique and valuable wildlife. (See Jacobs & Fleisch, "Vegetation and Wildlife Survey of Devil's Canyon, Tonto National Forest" (2007); Jacobs, Vegetation and Wildlife Survey of Devil's Canyon, Tonto National Forest" (2009)). The Oak Flat area also contains nesting and wintering habitat for a number of birds listed on the United States WatchList—a joint project between the American Bird Conservancy and the National Audubon Society.

There are also costs that are difficult, but not impossible to calculate. For example there is some estimate on the economic value of the loss of recreational opportunities at Oak Flat as a world class climbing location, but there are less data on the economic loss from other forms of recreation such as hiking or birding. A recent report on the economic value to Arizona from human-powered recreation (birding, climbing, hiking, etc.) shows that human-powered recreation in Arizona provides more than 86,000 annual jobs and provides 12 percent of Arizona's retail economy. It also shows that more than 1 out of 4 Arizonans climb, hike or canyoneer. It would be difficult, but we could also calculate the value of water lost for other uses by a new mine at Oak Flat and could calculate the cost to Arizona to clean up after Rio Tinto if the company leaves behind a mess as has happened with numerous other mines.

It is certain that a new mine at Oak Flat would cause environmental damage. There also would be additional negative costs from a mining operation to the local, state, and federal infrastructure (roads, utilities, bridges) and services (fire, police, schools and healthcare). These costs could more easily be calculated if there was a mining plan of operation that could be used to help those who will be most directly impacted by this exchange and massive mining project (and you the decision-makers) in deciding whether this land exchange is truly in the public interest.

Given the current economic conditions the state of Arizona is facing, the sponsors of H.R. 1904 are characterizing this legislation as an economic development bill. In reality, too many unsubstantiated facts and unanswered questions remain regarding the overall economic feasibility and benefit of this exchange to the American taxpayer. For example, Resolution Copper, while a joint venture of foreign mining giants, is registered as a Delaware based Limited Liability Company (LLC). Notably, nine percent of Rio Tinto is owned by the state-controlled Aluminum Corporation of China, also known as Chinalco. As past events have shown, Rio Tinto is very willing to do business with China and it is very likely that China's share in any

mine at Oak Flat would increase. Indeed, in recent years, China has attempted to double its interest in Rio Tinto, just as it has purchased other mining interests across the world for its purposes. In essence, approving this land exchange would give China a stake in land now owned by the American public—lands that were once within the exclusive occupation of Western Apache and Yavapai people, and which remain central to their religion and culture today.

While press releases and other statements issued upon the introduction of H.R. 1904 imply that the copper and other metal resources purportedly found below Oak Flat will be sold to and used by the United States, in fact, there is nothing in H.R. 1904 that would actually require Rio Tinto to sell these resources to the United States. Indeed, it must be reasonably assumed the copper and other important metals that could come from a mine at Oak Flat would not stay in the United States and be used to create U.S. manufacturing jobs and further, that most of the profits of a mine at Oak Flat would be shipped off-shore and not held within the United States based on these companies mining operations, holdings, and performance.

While China (and other developing nations) are stockpiling copper and other important resources, Congress would, through H.R. 1904, turn over exclusive control and ownership of purportedly one of the larger copper ore deposits in North America to the foreign owned companies of Rio Tinto (owned in part by China) and BHP Billiton. In doing so, it would seem that Congress would be increasing China's strength, while weakening the national security of the United States. Undermining the long-term competitiveness of U.S. companies has obvious adverse impacts on the United States' economy and job growth potential.

In December of 2009, the United States government nixed a plan for China to invest in a Nevada mining operation on the grounds of national security. One would think that Congress would pause and examine with great interest this land exchange for similar reasons.

Appraisal and Royalty

H.R. 1904 calls for an appraisal report that would include an income capitalization approach analysis, in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), of the market value of the federal land. Since much of the information needed to accurately appraise value of the public land in question at Oak Flat by using the income capitalization approach could only be obtained by preparing a detailed mining plan of operation and other supporting information, mandating that this appraisal method before a mining plan is written basically assures that the land exchange would be a taxpayer rip-off and not in the best interest of the American people.

The income capitalization approach often requires the appraiser to use a multitude of indicators, facts, and variables, the accuracy of which cannot clearly and easily be demonstrated by direct market data [See *Foster v. United States*, 2 Cl. Ct. 426 (1983)]. This is particularly true when discounted cash flow analysis or other forms of yield capitalization are employed in the analysis. Furthermore, within the UASFLA there are several specific requirements to assess values, including the need for a detailed mining plan for the property, which according to the bill would not be available until long after the appraisal is complete and the land exchange consummated. UASFLA requires that production-level estimates should be supported by documentation regarding production levels achieved in similar operations. Again, without a comprehensive mining plan at the time of the appraisal, it would be difficult, if not impossible for an appraiser to determine which other operation could be used for comparison. The annual amount of production and the number of years of production are more difficult (and speculative) to estimate, and require at a minimum, not only physical tests of the property to determine the quantity and quality of the mineral present, but also market studies to determine the volume and duration of the demand for the mineral in the subject property. However, it is unknown at this time what the true production estimates are as specific mining plan details have not been forthcoming from Rio Tinto. In addition, the true quality or quantity of the material is unknown and the extraction technology for this mining operation at a 7000-foot depth has not been developed and thus not currently available. This fact is further underscored by the lack of available information on production levels being consistent with a mining plan's labor and equipment.

In further examining UASFLA, the income capitalization approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life-span of the project and a determination of the Net Present Value (NPV), including the NPV of the profit stream, based on a discount factor. The NPV of a future income is always lower than its current value because an in-

come in the future assumes risk. The actual discount factor used depends on this assumed risk. A proven technology carries a lower risk of non-performance, and thus, a lower discount rate, than a technology being applied for the first time.

Given the evaluation standards prescribed by the UASFLA, coupled with the lack of factual data and uncertainty of the technology described above, the final appraisal of this massive ore body could ultimately net zero, meaning that the valuation of the federal lands exchanged for the benefit of RCC would not reflect the value of the copper and other saleable minerals these lands contain. The American taxpayer would once again be short-changed.

To compound the problem, the bill language forbids the federal government from reopening the appraisal process. Therefore, if and when it becomes apparent that the appraisal was too low, there would be no opportunity for the United States to negotiate a better deal for the taxpayer.

Rio Tinto must be required to provide additional information and pay for additional research in order to generate an appraisal that is fair and equitable to the people of the United States, and any such appraisal should occur after the technology exists to mine this particular ore body and a plan of operations has been created.

Moreover, since the federal government has yet to perform a substantive economic evaluation of the lands along with the copper and other minerals to be exchanged to RCC, it is also impossible for the Congressional Budget Office (CBO) and/or Office of Management and Budget (OMB) to effectively evaluate H.R. 1904. The public interest requires that a complete and fully informed appraisal and equalization of values be performed prior to Congressional passage of H.R. 1904. Rio Tinto has asserted that there may be over 1.34 billion tons, containing 1.51 percent copper and 0.040 percent molybdenum to be removed over the 66 years of the mine's life. Although the current value of all minerals present on these federal lands is not provided by Rio Tinto, estimates have ranged from \$100 to \$200 billion. Thus, even the company's own self evaluation of the ore body underlying these public lands is orders of magnitude greater in value than that of the non-federal parcels offered in exchange to the public.

Section 4(i) of the legislation requires that the exchange and other critical documentation be completed within one year after congressional passage. Given the rationalizations above regarding the complexity of such analysis, it is incredulous that one year is sufficient time for the completion, and subsequent thorough examination and review of all reports and appraisals. Indeed, Michael Nedd, then Assistant Director of Minerals and Realty Management for the Bureau of Land Management, stated in his previous testimony on this matter that he and the BLM did not believe a one year provision was sufficient time for the completion and review of a mineral report, completion and review of the appraisals, and final verification and preparation of title documents. Yet, the sponsors of this bill have chosen not to heed the government's own experts' advice and counsel on mineral appraisals.

Once Rio Tinto has completed its evaluation and analysis, we urge Congress to require an independent, third party review of all the reports, including the engineering report, for this operation. This must be accomplished in consultation with all affected parties prior to this legislation moving forward. At this time, relying on Rio Tinto's current information and other reports or the Departments of Agriculture and Interior review of these reports is insufficient. Only a third party certification can help assure that the taxpayers get a fair return on the minerals they are giving up in this land exchange.

In examining the royalty provisions found in H.R. 1904, which are based on the same faulty assumption made in Section 4 of the bill, it is highly likely that trading these federal lands into RCC's private ownership will result in unquantifiable, inequitable, and effectively zero royalties being provided to the United States taxpayer.

Job Claims

Since the first Oak Flat land exchange bill was introduced by former Congressman Rick Renzi, proponents of the land exchange have substantially inflated the number of jobs they claim a mine would provide. In March 2005, newspaper articles appearing in the *Arizona Republic* and the *Tucson Citizen* reported that the mine would create 450 jobs. Today Rio Tinto's job number claims range from 1,200 to 6,000. However without a detailed Mining Plan of Operations, estimates on the number of jobs that would be created by a mine at Oak Flat are pure speculation.

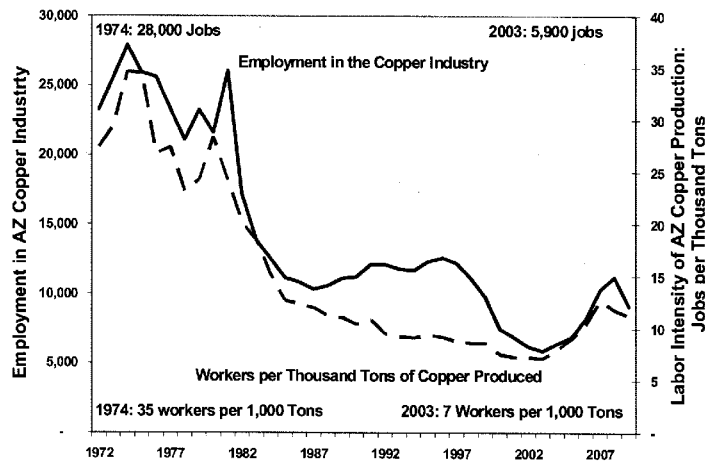
While Augusta Resource Corporation commissioned a report that was widely optimistic about jobs and economic growth in southern Arizona from a proposed copper mine south of Tucson, Arizona, this report has been heavily criticized for inflating the number of indirect jobs created, at least Augusta's analysis was based on a real

mining plan of operation. Here, Congress and the American public are being asked to take, essentially at face value, an economic and job forecast done in part by some of the same institutions that did the Augusta report, without the benefit of a mining plan. One has to question the credibility of job claims that have ranged so widely.

Trends in the mining industry are very clear. Modern mines generate more product with fewer workers. For years, mining companies have relied on the increased use of technology to cut labor costs. For example, when the Magma Mine shut down in 1982, 1,400 people were laid off in a single day. When the mine reopened in 1989, 400 people were employed and the production rates were as much or more as when the mine shut down in 1982. (Of this new labor force, less than 100 of these employees resided in Superior and the economic benefit to the community at that time was minimal.)

The following graph shows downward trends in mining employment in Arizona while production levels remain high.

Declining Labor Intensity and Employment in Arizona Copper Industry



From *Analyzing the Local Economic Impacts of a Large Copper Mine: Including Both Benefits and Costs* by Dr. Tom Power, Professor Emeritus, University of Montana

Rio Tinto has been talking about high levels of automation for this mine. Rio Tinto and its partner at Oak Flat, BHP Billiton, have been pioneers in the production of automated trucks, driverless trains and other automation features. Rio Tinto just announced the addition of an additional 10 driverless trucks at its highly automated iron mines in the Pilbara region of Australia. Starting next year, for the first time, Rio Tinto's driverless trucks will be hauling ore in addition to waste.

Much of the operations of the Pilbara mines are controlled from the city of Perth, 800 miles away. This level of automation is increasingly common and is intended to cut costs along with the number of workers needed for mining activities. Based on current technology it would be possible to control most of the operation of a mine at Oak Flat from anywhere in the world. In fact, much of Rio Tinto's mining and Resolution Copper's business addresses for tax records are based in Utah. It is not unlikely that this mine could easily be controlled by a remote operating center in Utah, just as the Pilbara mine is controlled from 800 miles away in Perth, Australia. If the U.S. military can control drone aircraft operating in Afghanistan from Nevada, it is not unlikely that a mine at Oak Flat could be controlled from Utah or even Perth.

The workforce of a modern mine has also changed dramatically. When the Magma Mine closed in 1982, the town of Superior had 6,300 residents. By the time the mine had reopened in 1989, the town's population had dropped to 3,200, and only 100 of the mine's workers lived in Superior. If a mine was to open at Oak Flat, according to current trends and given the educational requirements for this automated mine, it is probable that even those workers who worked on site would live in Phoenix

or its suburbs and commute to Superior rather than live there and add to the town's economic prosperity. One only needs look at the license plates of the trucks parked at the drilling rigs or at the Rio Tinto office in Superior. Many are from Utah, Mexico or other places rather than from Arizona. Since modern mines require highly skilled operators, there is a small labor pool that travels from mine to mine to work but never settles permanently near the mine.

What all of this means is that there would be increased employment if a mine is built at Oak Flat, but very little of that employment would come from local hires or from workers that would resettle in the local area. The extensive equipment needs of a mine would also not be manufactured locally, as it is more likely that this equipment would be made overseas as is most new equipment used in modern mines.

Lastly, when it comes to the issue of jobs, since Rio Tinto's plans call for it to be at least a decade before a mine is built, there is simply no immediate job creation offered by this mine, making any enhancement to the immediate local needs of Arizona minimal at best.

Some have said that the opening of a mine at Oak Flat would lead to a revitalization of the town of Superior. However, while Rio Tinto has employed 100—200 people for the past half dozen years for exploration, shaft sinking, and other duties, the population of Superior has dropped another 400 people according to the latest census data. There is no reason to believe this trend would change as a result of the land exchange and mining project to be facilitated by H.R. 1904.

Environmental Review

A previous version of the land exchange gave the Secretary of Agriculture the power to determine whether the land exchange was in the public interest and in the case that the Secretary found it was not, the Secretary was able to stop the exchange. That provision is entirely missing in this bill. H.R. 1904 leaves the sole decision-making authority for approving the land exchange in the hands of Congress without providing for, as detailed above, the plans and studies to show that the exchange is in the public interest, and that the American taxpayer is getting a full return on the sale of precious public assets.

The bill mentions the National Environmental Policy Act (NEPA) but then takes the teeth out of the federal decision-making process. The language states that prior to commencement of mining in commercial quantities, Rio Tinto must submit a mining plan of operation to the Secretary of Agriculture and that the Secretary must complete a NEPA review of this plan within three years. It does not say what this mining plan should include nor does it mention what the Secretary can do if the plan is inadequate or incomplete. It says that this NEPA document would be the **only** document prepared to guide federal officials regarding federal actions or authorizations related to the mine. Never mind that NEPA is a law meant to give federal land managers a chance to "look before they leap" and that this exercise in futility would already have a mandated outcome. Never mind that the plan would not have to be written until the mine was already built, and never mind that the land in question would be private property, so there may never be a federal nexus that would trigger NEPA. It is unlikely that the U.S.D.A. Forest Service could do a full NEPA analysis in three years, even if Rio Tinto was 100 percent cooperative with them. Rio Tinto's current plan, which has changed many times and probably will continue to change, eliminates any federal nexus if the land exchange is enacted. In that case, the federal government would have spent three years and a lot of taxpayer money to write a meaningless document that would never be taken off the shelf and used.

Previous information released by Rio Tinto led the public to believe that the company was planning on storing the mountain of waste a mine would generate and doing most of the milling at the nearby Pinto Valley Mine owned by BHP Billiton. In fact, one of the purposes of the pre-feasibility exploratory drilling that was recently approved was to allow Rio Tinto to conduct testing to see where a tunnel to the Pinto Valley Mine could be placed. However, new information is pointing to a Rio Tinto plan to move ore and waste from their proposed mine out under Apache Leap through an existing tunnel, and perhaps new tunnels, through the town of Superior and then disposing of the tailings to the west near the proposed Superstition Vistas housing development. Should that be Rio Tinto's plan, it would eliminate any federal nexus from the project since the company already owns the necessary rights-of-way through National Forest public lands. Again however, until a mining plan of operations is written, no one except perhaps Rio Tinto knows for sure what it is planning and the company isn't talking.

If the land exchange is passed and consummated, State of Arizona mining laws would apply. Arizona has the weakest state mining laws in the country. Not only

would the state permitting process make it much more likely that a bad mine design be approved, but state rules leave enforcement of its laws up to the companies themselves. In addition, a critical component of any mining plan is the closure plan. A good mine design plans for closure from day one. However, the Arizona process does not require a mining company to submit a closure plan for review until no less than five years before closure is contemplated. This not only flies in the face of good mine design, but severely hampers both the company and the state from closing the mine in an environmentally responsible manner.

A key feature of any good mining permit is adequate bonding to insure that if something goes wrong or a company goes bankrupt before reclamation is complete, there is enough money in hand to fully close, remediate and protect the public at the company's—not taxpayers'—expense. However, Arizona allows mining companies to self-insure their bonds by using a corporate guarantee. This works only if a company is solvent and intending to stay in the state, but Resolution Copper, the wholly owned subsidiary of Rio Tinto and BHP, is chartered as a limited liability corporation in the state of Delaware. If something went wrong with a mine at Oak Flat, the parent companies could strip Resolution Copper of all its assets, similar to what Grupo Mexico did with ASARCO a few years ago. If that happens, the state of Arizona would be responsible for picking up the pieces and the burden would surely fall on the taxpayer. Federal bonding provisions, on the other hand, require cash or other liquid security to be held by the federal government to better assure that the taxpayer is not liable if a company skips out on its obligations.

This lack of good and enforceable state laws is another factor that must be considered in weighing whether this land exchange is in the public interest.

Water

A block cave mine such as the one Rio Tinto has been talking about would use in the neighborhood of 40,000 acre-feet of water per year. That amount is roughly equivalent to the amount of water used by the city of Tempe (160,000 people). Rio Tinto has no water rights necessary to develop and operate the mine being proposed or to process ore. Rio Tinto has been less than transparent in telling the public where it intends to secure the water necessary to operate its mine. Water is in short supply in all of Arizona and due to the increasing pressure from housing; BHP has received approval for the construction of 35,000 homes on its private lands near the San Pedro River just above the Seven B Ranch that is part of this proposed land exchange. Those homes could use as much as 20,000 acre-feet of water per year. This would not only dewater the Seven B Ranch and put additional pressure on the San Pedro River, but also take that amount of water out of the regional pool that Rio Tinto would also try to draw from should they build a mine at Oak Flat. In addition, the Superstition Vistas proposed development west of Oak Flat would also use enormous quantities of water. Superior and Oak Flat are also at the headwaters of much of the Phoenix water supply. The Carlota Mine is also pumping large amounts of groundwater. Putting all of this in context, the region is facing a serious water shortage without a new mine at Oak Flat. Building a mine that uses the amount of water as the city of Tempe would create serious water shortages. The federal mine permitting process would expose and examine these water problems. However, H.R. 1904 would bypass that process and give away Oak Flat to Rio Tinto before an examination of water quantity problems could be undertaken and the cumulative impacts analyzed.

So where will Rio Tinto get this water? (Note, in Arizona, there are very few laws regulating groundwater pumping by mining companies.) Historically, mines just drill wells that are deeper than their surrounding neighbors' wells. Such deep water wells dry up neighboring wells, de-water surface waters and impact the entire region's water needs. As the members of this Subcommittee are aware, water is a critical resource in the State of Arizona. Rio Tinto has previously "banked" water from the Central Arizona Project (CAP), but with looming shortages of water in the Colorado River basin, that water cannot be counted on. Only a complete NEPA review before the decision on whether to proceed with the land exchange is made will provide answers to the critical issues surrounding Central Eastern Arizona's water resources and needs in the area of the proposed Resolution Copper Mine.

Mines pollute groundwater and surface water even when they predict they will not. Acid and heavy metal mine drainage leaking into groundwater and surface waters are a common result of copper mining. Mines pollute surface water and groundwater with toxins and carcinogens, requiring more expensive surface reclamation and long-term water treatment. Rio Tinto is dewatering an old mining shaft that has flooded. The water in that shaft is contaminated and loaded with heavy metals. In order for that treated water to be reclaimed and be re-used, it has

to be diluted with 10 parts of CAP water to each part of treated water prior to being transported to the New Magma Irrigation District for use on crops.

Gaan 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. Gaan 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. Gaan Canyon is an area enjoyed by hikers and climbers and those seeking some relief from the heat. Sycamores and Arizona alders thrive on Gaan Canyon's water and also provide valuable habitat for wildlife. Considering its proximity to the proposed mine, the depth of the mine and the associated water pumping that will occur to dewater it, the risks of dewatering Gaan Canyon are significant.

Subsidence

Rio Tinto wants to mine at Oak Flat using a method of underground mining called block cave mining. Block cave mining is cheaper and perhaps more efficient than other forms of underground mining, but every block cave mine built has caused the surface above the mine to sink and has caused fracturing of the surface and sub-surface rock above the mine.

The fracturing of the rock above the mine causes a cone of depression that transports water from the surface down into the mined area. Gaan Canyon, Oak Flat and the surrounding area are watered by a shallow aquifer, which thus far has been largely separated from deeper aquifers. However, block caving would fracture the rock protecting the surface aquifer. That would cause the surface water to drain through the fractures well before the surface sinks due to subsidence. If and when this happens, Gaan Canyon would dry up, the oaks would die and the ecosystem would be severely impacted. Once cracking near the surface occurs from the effects of block caving, there is no turning back. Again, there are no provisions in this bill to study the impacts of subsidence before the land exchange was consummated.

Protection of Apache Leap

While there is language in the land exchange that would seem to protect Apache Leap, there are loopholes in the bill that allow Rio Tinto to do work under Apache Leap so long as it does not commercially extract ore from under the Leap. This allows the company full access to existing tunnels that now exist under Apache Leap. Should the company decide to move ore through Superior to the west, the company would have free rein not only to use its existing tunnels but to drill new ones as long as it does not commercially extract minerals. Not only is the bill language weak on assuring that block caving does not impact Apache Leap from the east, but this loophole would also allow Rio Tinto to undermine Apache Leap.

Oak Flat Campground

Removing President Eisenhower's Executive Order withdrawing Oak Flat from hard rock mining, as this bill would do, is no small detail. Not only is Oak Flat Campground an important parcel of public land for the myriad of reasons outlined above, not the least of which is religious freedom, but it is an important part of President Eisenhower's legacy. The Congress would be giving that legacy to two foreign mining companies. Another part of Eisenhower's legacy is the interstate highway system. Giving away Oak Flat is akin to giving away portions of I-10 in Arizona in the hope those foreign interests would somehow feel benevolent and use the interstate for the public good. The only sure way to protect the public values and prosperity that Oak Flat now provides is to keep it as it is: an oasis of green in a sea of mined lands free and open for all Americans and our visitors to enjoy.

How the Mine Permitting Process Is Supposed to Work

There is a process in this country that all other mining companies, including Rio Tinto and BHP, use to permit large mines on public lands. This process is to fully explore a mining prospect and determine whether it is economically, environmentally, and socially feasible. Once that decision is made, a mining company writes a detailed mining plan of operation and submits it to whichever federal agency manages the public land for which it would like permission to use (usually either the Forest Service or the BLM). The federal agency, using the provisions laid out in NEPA, engages the public and other agencies and decision-makers, and conducts a public review process that involves both a draft and a final environmental impact statement. This review gives the public, the mining company, and government agencies a chance to make the project better and safer. Once this process is complete, the federal agencies almost always grant the mining company a permit to mine after requiring adequate liquid bonding to ensure that everything will go according

to plan. Often, the permit will mandate mitigation measures that also are designed to make the mine design better and safer. If the mining company wants to make major changes to the mine design or new information comes to light, there are provisions to reopen the review process, again to make the mine better and safer.

However, in this case, Rio Tinto is not willing to abide by this American process, and is going straight to Congress to gain private, foreign ownership of the land and bypass this process.

Conclusion

This special interest legislation, which would benefit two foreign mining companies at the expense of the American public, is not needed. Rio Tinto should stick with the process all other mines go through and write its mining plan of operation first. Then, if it is determined that a land exchange is necessary and the exchange needs to be done by federal legislation, a bill can be submitted and debated in Congress. Anything less is a guarantee that the American taxpayer and their land will be damaged and shortchanged in the process.

Mr. BISHOP. Thank you. Chairman Talgo.

STATEMENT OF HARRISON TALGO, FORMER CHAIRMAN, SAN CARLOS APACHE TRIBE

Mr. TALGO. Before I do my formal testimony, I would like to introduce my wife, and the people who came with me here from San Carlos. It is Apache custom to know where you are from, where you come from, and to introduce yourself in the gathering of such.

My ancestral clan, Hohokam, inhabited the Roosevelt Tonto Basin. They inhabited the Pinal Mountains, which exist today, where many mining operations are operating in Arizona. This is where the proposed site is that is being presented here today.

My father's clan, Hohokam, is a slender tall people, descended from the Aravaipa Canyon, Chief Espinsin. I am a cousin to Ola Casador. My wife here is a descendent, and she is of the White Water people. She is a descendent from a famous Apache scout named John Roe.

He was the interpreter during the treaty establishment of our reservation. She was born to Estaha Arat, the Northern Ridge people. Also with me is Elias Miles, who represents the next generation, with his mother, who is Cheryl, an educator from San Carlos.

Now for my formal testimony. Mr. Chairman, Members of the Subcommittee, my name is Harrison Talgo, Senior, and I am a Member of the San Carlos Apache Nation. I am a former tribal chairman, and I have served as a member of the San Carlos Apache Tribe Council for 16 years.

Today is the National Flag Day, and I am proud to say that I am a veteran of the Marine Corps, and served my country with honor and duty in Vietnam. I am also a tribal elder. As tribal chairman, I established the Tribal Elderly Council, a currently successful program.

Many times I have come before Congress as an official representative of my government to present issues affecting in the best interests of the San Carlos Tribal Government. But today I come before you as a concerned private citizen of Bylas, Arizona.

I am here to vote and voice my support of H.R. 1904. My wife, Eloise, and I raised seven children on the reservation. I understand the Apache way, and I am respectful of the traditions of my ancestors.

I know that the tribal leadership does not share my position. I have tried very hard to understand why they oppose this project when we are in such desperate need of jobs and industry.

We are one of the poorest Indian tribes in the Nation. Seven of ten eligible workers in the tribe are unemployed, and I am one of them. Almost 80 percent of our people live in poverty.

Alcoholism, drugs, are rampant and our suicide rates are high. The average Apache male lives 54 years, about 20 years fewer than the average American male. Without jobs our children are forced to move to neighboring communities, or into cities to find work.

Not many of them return, and with each passing generation a piece of apache identity and culture is lost. I can tell you as a father and a grandfather, and one who grew up in the traditional ways, and learned the language of my fathers, that is heart-breaking.

Even though our newest reservation boundary is about 20 miles away from the Resolution project, and our nearest community is about 40 miles away from the highway, that is a reasonable distance to travel for a job, especially when you consider the high wages and the benefits that the mining jobs provide.

Many Apaches worked at the former Magma Mine that is the base area of the new mine. The issue today is not about our reservation land, our sovereignty, our heritage, our self-respect. These are not for sale.

This is about putting my people, a lot of people, to work. I believe economic development should be our leadership's top priority. I have previously testified before Congress in support of economic projects. I have done so in the face of oppositions from other leaders who have opposed these same opportunities on or near the reservation.

Some of those projects experienced costly delays as such results of the council's opposition, but they were all built eventually, and they have all hired Apaches. I respect and support the tribal council's desire to protect sites that have cultural and historical significance.

But Oak Flat is a long way from us, and I believe strongly that it is possible for our traditional values to coexist with economic progress. In fact, I don't believe that one can survive without the other. Economic progress and prosperity leads to a better standard of living, better health, better service, better education.

It increases our capacity to learn and expand our cultural horizons. It gives us additional resources to explore and study our past to protect what we should hold sacred, and to showcase and display those things that are culturally important, and to help the outside world to better understand and appreciate the stories, and the traditions of our fathers, because many members of the San Carlos Apache—

Mr. BISHOP. Mr. Chairman, I am going to have to ask you to summarize.

Mr. TALGO.—rely on the Tribal Government for assistance. They do not speak out against Council's decisions in fear of losing their benefits. I am not afraid to speak out. I can assure you that I do not stand alone as a Member of the San Carlos Apache Nation in supporting the Resolution Copper Mine.

I made personal phone calls to as many as 2,000 people, and a majority of them responded in favor. I respectfully urge the Congress to pass this bill. Thank you, Mr. Chairman, and I welcome any questions that you and the Committee may have.

[The prepared statement of Mr. Talgo follows:]

**Statement of Harrison Talgo, Member, San Carlos Apache Nation
and resident of Bylas, on H.R. 1904**

Mr. Chairman and Members of the Subcommittee:

My name is Harrison Talgo. I am a member of the San Carlos Apache Nation. I am a former Tribal chairman, and I served as a member of the San Carlos Apache Tribal Council for 16 years. This is National Flag Day and I am proud to say I am a veteran of the Marine Corps and served my country with honor and duty in Vietnam. I am also a Tribal Elder.

Many times I have come before Congress as an official representative of my government to present issues affecting and in the best interest of the San Carlos Apache Tribal Government. But today, I come before you as a concerned private citizen of Bylas.

I am here to voice my support of HR.1904.

My ancestral clan inhabited the Pinal Mountains in Arizona, the same region where many mining operations exist today and not far from the mining project proposed by Resolution Copper. My wife Elouise and I raised 7 children on the reservation. I understand the Apache way and am respectful of the traditions of my ancestors. They were proud and independent people.

I know the tribal leadership does not share my position. I have tried very hard to understand why they oppose this project when we are in such desperate need of jobs and industry. I believe that traditional Apache values are not mutually exclusive with economic development.

We are one of the poorest Indian tribes in the nation. Seven in ten eligible workers in the tribe are unemployed. Almost 80 percent of our people live in poverty. Alcoholism and drug use are rampant and suicide rates are high. The average Apache male has a life expectancy of 54 years, about 20 years shorter than the average American male.

Obviously, this places a tremendous strain on personal and family relationships and a heavy burden on social services—services the tribe struggles to provide.

Without jobs, our children are forced to move to neighboring communities or into the city to find work. Not many of them return. With each passing generation, a piece of Apache identity and culture is lost. I can tell you as a father and grandfather and one who grew up in traditional ways and learned the language of my fathers, that is heartbreaking.

Those who stay on the reservation face a bleak future. Only education and training and opportunities for good-paying jobs can improve that picture.

Even though our nearest reservation boundary is about 20 miles away from the Resolution project and our nearest community is almost 40 miles away by highway, that is a reasonable distance to travel for a job, especially when you consider the high wages and benefits that mining jobs provide. There also are opportunities for San Carlos residents to start businesses much closer to home that will supply and service a large mining operation like Resolution Copper. In discussions with Resolution, I have discovered the company is ready and willing to discuss these kinds of opportunities with San Carlos. Many Apaches worked at the former Magma Mine that is the base area for this new mine.

The issue today is not about our reservation land, our sovereignty, our heritage, our self respect—these are not for sale. This is about putting our people—a lot of people—to work. I believe economic development should be our leadership's top priority. I have previously testified before Congress in support of economic development projects. I have done so in the face of opposition from other leaders who have opposed these same opportunities on and near the reservation. Some of those projects experienced costly delays as a result of the Council's opposition, but they all were built eventually. And they have all hired Apaches.

I respect the Council's desire to protect sites that have cultural or historical significance. I want that, too. But Oak Flat is a long way from us, and I believe strongly that it is possible for our traditional values to co-exist with economic progress. In fact, I don't believe one can survive without the other. Economic progress and prosperity leads to a better standard of living, better health, better services and better education. It increases our capacity to learn and expands our cultural horizons. It gives us additional resources to explore and study our past, to protect what we

hold sacred, to showcase and display those things that are culturally important, and to help the outside world better understand and appreciate the stories and traditions of our fathers.

Because many members of the San Carlos Apache Nation are dependent on the tribal government for food, utilities, and a limited number of available jobs, they often do not speak out against Council decisions in fear of losing those benefits. I am not afraid to speak out. I can assure you I do not stand alone as a member of the San Carlos Apache Nation in support of the Resolution Copper Mine and the jobs and prosperity it will create. I made personal phone calls to many people within my community of 2,000 tribal members and the majority of them responded in favor of this project.

I respectfully urge Congress to pass this bill. Thank you, Mr. Chairman. I welcome any questions you and the committee may have.

Mr. BISHOP. Thank you. I appreciate that. I think the only question that I would have is if your wife had seven children, she looks much too young to have possibly done that. That must be a miracle that took place. I would like to yield to Representative Gosar my time.

Dr. GOSAR. Thank you, Mr. Chairman. Mr. Cherry, how does this bill avoid any possible damages to Apache Leap? That keeps coming up so would you address that for me?

Mr. CHERRY. I would be happy to. First of all, Apache Leap is still under the protection and oversight of the United States Forest Service. In addition to that, one of the land parcels that Resolution Copper is donating to this exchange goes to the Forest Service, and it becomes a part of Apache Leap.

We also give up our commercial mining rights underneath that, as well as our mining project, which is to the east of Apache Leap, and starts farther to the east, and slowly works to the west, with additional monitoring of progress. We guarantee that we will not disturb Apache Leap.

Dr. GOSAR. Mr. Chairman, I would like to submit a letter submitted on May 14 for the record in regard to Apache Leap.

Mr. BISHOP. Without objection, so ordered.

[NOTE: The letter submitted for the record on Apache Leap has been retained in the Committee's official files.]

Dr. GOSAR. Mr. Cherry, in Mr. Featherstone's testimony, he states that very few financial benefits touted by our company will be realized by the American public, and that is a rip-off of the American taxpayer.

This could not be farther from the truth. Is there any possibility that this mine would be operated remotely from China?

Mr. CHERRY. Absolutely not.

Dr. GOSAR. Can you briefly discuss the current jobs related to this operation?

Mr. CHERRY. We currently employ 500 people on this project right now, and as a matter of fact, in Congressman Grijalva's district, we are already spending \$500,000 a month. We have 100 full-time Resolution employees, and we have 400 contractors on-site on a daily basis.

And we are spending almost \$100 million a year on our various studies and engineering work that we are doing.

Dr. GOSAR. So how well do these jobs pay? What is the average pay?

Mr. CHERRY. The average pay for a mining job is about \$60,000 a year.

Dr. GOSAR. So well below the 21,000 jobs that we have been seeing marketed across the country for job gains, right?

Mr. CHERRY. Like I said, our jobs will be \$60,000 a year or better.

Dr. GOSAR. I would like to talk about the royalty issue. Is it not true that Resolution will pay a severance tax to the State of Arizona and a royalty to the Federal Government on mineral production?

Mr. CHERRY. That is correct. We will be paying fees for these minerals that are out there under the Department of Justice Federal Appraisal Guidelines. It is a process and an appraisal that is dictated by the Federal Government. It is operated and conducted by the United States Forest Service, and we support that process.

Dr. GOSAR. And more specifically under the Department of the Interior, right?

Mr. CHERRY. Correct.

Dr. GOSAR. So lots of Federal oversight in regards to this, and if I am not mistaken, it could be percentages based on monthly production. So very unidiomatic and very sensitive to fluctuations?

Mr. CHERRY. And then very transparent, yes.

Dr. GOSAR. Thank you. Chairman Talgo, thank you so very much for coming. My first question to you is that in your testimony, you say that economic development would be the number one priority for the leadership of the San Carlos Tribe.

And in fact you point out that the tribes traditions and cultures can only be sustained with the kind of economic development that this land exchange is expected to foster in Southeastern Arizona.

What do you see as the future of the San Carlos people for whom you dedicated years of your life if this project is not given the green light?

Mr. TALGO. Currently, the reservation is surrounded by many mining operations from the west, and the east has Morenci, and the south has Catamount Mining. So our tribe, our members, some of them are already employed, and this will provide additional jobs in the future.

Not only that, it will provide scholarships and other opportunities for the tribe if they have a good relationship with the mining company, and they will establish that.

Dr. GOSAR. I am also intrigued by your comment that the tribal leadership does not support H.R. 1904, but that many of the tribal members that you have spoken to do support it. What do the members of your community think about you coming here to testify today?

Mr. TALGO. It is just like I am exercising my rights like anybody coming here to present my case on their behalf, too.

Dr. GOSAR. OK. So now you said that the land exchange would bring some economic dignity and development for the San Carlos Tribe. Currently, if I am not mistaken, the unemployment rate is approaching 75 percent. From the perspective of a former tribal leader what has this systematic poverty done to the community?

Mr. TALGO. In the previous Water Rights Settlement, the tribe was supposed to build an infrastructure toward economic develop-

ment, but currently it is devastating, and a disappointment to the structure that is being built for the future.

Right now the tribe is currently building a major hospital and other major developments. However, some of these—like the industry, there is no such big industry like a cattle company, or the cattle industry, and so I think mining will be sort of the industry that will help support our economic future.

Dr. GOSAR. Thank you, Mr. Chairman, and I will wait for my turn again.

Mr. BISHOP. Thank you. Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. Deputy Director Burke, let me ask you a question. Part of the enticement of this land exchange is the acreage that is being exchange in the San Pedro as a conservation area, and adding to that conservation area.

Let me ask you a question. If BHP, which is one of the parents of Resolution, presently has plans to build out their housing project up to approximately 5,000 units. What impact and value to the conservation would that have in terms of the 7B ranch, which is the area, and this is downstream from the San Pedro as well, this housing development, and part of this is the whole area.

I think the huge buildup that has happened has done more to devastate that area than anything else. But let me ask you what would the housing impact of that magnitude have on the enticement?

Ms. BURKE. We have not looked specifically at that housing development proposal. What we know is that the acquisition of these lands would help us maintain downstream surface flows, but I don't know what impact a residential development would have on that flow.

Could you provide the Committee with a summary of what 5,000 units would do downstream of the proposed acquisition in an exchange?

Mr. BURKE. Can I give you that in a written answer later?

Mr. GRIJALVA. Yes.

Mr. BURKE. Thank you.

Mr. GRIJALVA. Thank you. To the Forest Service, if I may, if the land is exchanged within the year as stipulated in the legislation, how can anything that drives out of the NEPA process be applied to the land that has already become private?

Mr. BURKE. Well, the time requirements in the bill provisions would be difficult if the NEPA process was followed in advance of the exchange. To your point, if analysis was conducted after the exchange, it would be most relevant on National Forests to the ancillary activities associated with the mining, power lines, roads, those types of activities.

Mr. GRIJALVA. But in the land that is involved in the trade, the public land, once that year is up, what can you do about NEPA findings that apply to that land once it is already in the hands of Resolution Copper.

Mr. BURKE. The bill provisions would have that land be in the hands of Resolution Copper, and it would be private land at that point in time. We are advocating for NEPA to be conducted in advance of the exchange to go to your points, and to be able to dis-

close effects, invite public comment, conduct formal tribal consultation, mitigate impacts, and inform the decision.

Mr. GRIJALVA. I know, and given that recommendation, the reason that I am asking the question is that once it is in private hands, regardless of what comes out of the NEPA process, there is not much that can be done.

Mr. BURKE. The Federal—

Mr. GRIJALVA. The nexus is gone.

Mr. BURKE.—Government would not be making a requirement on the private land, correct.

Mr. GRIJALVA. So this is one where in the different bills that we have seen on this issue, if that process would have gone forward instead of having to deal with one legislative initiative after another, then perhaps some of the questions that are lingering would have at least been addressed, and they have not to this point.

One other question. Resolution Copper admits that there are billions and billions of dollars' worth of minerals in the ground, of which the United States will probably receive no benefits.

Thus, even in Resolution Copper's own self-evaluation of the ore body underlining these public lands is on the orders of magnitudes greater in value than that of non-Federal parcels offered in exchange by RCC.

My question is we are not only talking about surface issues in terms of the land exchange, but with the Forest Service, and with the Interior, is there any evaluation of the actual mineral rights that go with that exchange?

Mr. BURKE. My understanding of the bill provisions is that a mineral report would be required, and a valuation would be put on the copper ore body in consideration for the exchange, and a cash equalization payment, or additional compensation, could result.

Mr. GRIJALVA. After the fact or before the fact?

Mr. BURKE. As a consequence of consummating the land exchange.

Mr. GRIJALVA. And so that would be good information to have, but it would not deal with the value of the exchange, correct?

Mr. BURKE. It would contribute to equalizing the exchange.

Mr. GRIJALVA. I will wait until the next round.

Mr. BISHOP. We will have another round. Representative Gosar.

Dr. GOSAR. Mr. Cherry, you said that 70 percent of the land that you want from the United States is under claim by your existing mining claims if I am not mistaken. If Congress had not imposed a ban on claiming patents in 1994, do you believe that much of the land that you are seeking would already be yours under the mining laws?

Mr. CHERRY. Yes, we do. Over the last 10 years, we have been actively pursuing mining interests in that area, and those would have been patented, and we would have picked those up in that area.

Dr. GOSAR. My friend on the other side made mention that the Federal Government would not benefit from this. I am really getting kind of—I want to make sure that I am understanding this. That we are going to get compensation through royalties through this, plus additional royalties if it goes beyond the ascertain of the mine. Am I not true?

Mr. CHERRY. There is the land appraisal process, and the cash equalization, which have already been discussed. So that portion gets contributed to the United States, but just as importantly the \$20 billion in tax revenue to the Federal Government, State, and local governments, the jobs, and the taxes on the jobs, et cetera, and the \$220 million annual payroll, those are all benefits that go into the community as well.

Dr. GOSAR. I am a big steward of my environment, and so I just heard something also that bothers me from my friend on the other side, which is value for value. The San Pedro River, Ms. Wagner, could you put a price on that as an ecosystem? Could you price that for me? Give me a price in dollars.

Ms. WAGNER. I think both the Department of the Interior and the Forest Service, and the Department of Agriculture, have testified to the importance of the non-Federal parcels, the ecological values, natural resource values, and the importance of those properties, no, I could not put a value on it.

Dr. GOSAR. It would almost be infinite because it is a giving process, and because we are restoring an ecological balance within the whole ecosystem, and so that is unbelievably much more valuable in regards to it.

So I hope that we don't go back and look at the value exchange here in another aspect. Mr. Featherstone, have you benefitted or been awarded funds from the Equal Access to Justice Funding?

Mr. FEATHERSTONE. No.

Dr. GOSAR. Thank you. Mr. Lewis, the same question.

Mr. LEWIS. No.

Dr. GOSAR. OK. Mr. Cherry, you showed us a display of the copper triangle, and have in another in your written statement that shows the drill holes and large infrastructures that already exist near the mine. Can you please pull these displays back up and highlight this infrastructure again?

Mr. CHERRY. I think they are going to put it up on the screen for us here.

Dr. GOSAR. And with particular emphasis on the existing roads and highways, and power transmissions that the gentle lady actually talked about these, because most of this, we are not adapting new ones. We are just utilizing stuff that is already there am I not? So would you just highlight those for me, Mr. Cherry?

Mr. CHERRY. As soon as they pull the map up here for us.

[Pause.]

Mr. CHERRY. I will try to point these out. The pictures are a little small, but there is a better picture in the packet in the written testimony. This is the Copper Triangle and the laser pointer isn't showing on LCD screen here, but shown in the map on the bright blue lines, those are existing high voltage transmission lines that are guarding the area. So that infrastructure already exists, and we would tie into that.

The white lines are major highways that go through the area. There is also a rail line in the area that we can tie into to transport product from the site. There are also a myriad of roads and other developments that we can use to develop this project.

Shown in kind of the three corners of the triangle are three existing large mining operations that have been there for nearly a hun-

dred years and producing. We are located right in the middle of that.

So infrastructure is everywhere around us, and that is one of the great advantages to having this mine located where it is, and we are using the old Superior mine site as a platform to launch and build a new one, using a lot of the above-ground and underground infrastructure that is already in place.

Dr. GOSAR. Thank you. Mr. Featherstone, I want to go back to my question again, and so you said that you did not take equal access or had received Justice funding, but your coalition members have, have they not?

Mr. FEATHERSTONE. Not that I know of.

Dr. GOSAR. I would like to have a report submitted in the 10 days, please, sir.

Mr. FEATHERSTONE. I am sorry, what?

Dr. GOSAR. I would like to have a report on that, because according to our records, your coalition members have.

Mr. FEATHERSTONE. Whatever.

Mr. BISHOP. Mr. Grijalva, the second round.

Mr. GRIJALVA. Thank you. Just out of curiosity, and following up on the nice tone set by my colleague, have any of the witnesses been employed by Resolution Copper, or any of their subsidiaries, or any of the numerous consultant lobbyists that work for the firm? [No response.]

Mr. GRIJALVA. Good. Thank you. Mr. Cherry, in the two good points, in terms of the argument for this legislation that you made, and let me follow up on it. One was the domestic production issue, and the consumption that the American people should have, and the other one was the jobs generation, 3,700 I think was the number that you indicated initially.

On the issue of the jobs, the calculation for those jobs is based on what, the mining plan of operation, or the feasibility study that the firm you hired? What is the basis of that?

Mr. CHERRY. The employment estimates are based on a couple of things. We are in the pre-feasibility design stages right now. That is based on 1400 direct employees.

Mr. GRIJALVA. Does that pre-feasibility include the area of the Federal piece?

Mr. CHERRY. It includes the entire comprehensive mine plan, yes. Fourteen hundred direct employment jobs, and additional service sector and indirect jobs that would also be created for that, and that is how we get to those calculations.

Mr. GRIJALVA. And what is the present level of employment based on the activities that are ongoing right now in terms of the company?

Mr. CHERRY. We have approximately 100 full-time Resolution Copper employees, and 400 contractors working on-site on a daily basis.

Mr. GRIJALVA. And so I imagine that the population of Superior is booming, right?

Mr. CHERRY. Since I have been around, and since I originally looked at the site as early as 2004, the redevelopment on Main Street is actually quote impressive.

Mr. GRIJALVA. Good. I was going to ask you, and I have also talked to residents in Superior that feel that—well, that's why you are having the political turmoil that is going on because there is some question as to the legitimacy of the job numbers, and the mine itself, but that is another issue.

I was also going to ask you about the domestic consumption issue, which I think is a pervasive point, because we are importing what, 30 percent of our copper right now?

Mr. CHERRY. Approximately.

Mr. GRIJALVA. So the assumption being that—well, is that an assumption, or is it something that you are going to put in place, and is the copper generated and extracted from this operation will not be exported out of the country?

Mr. CHERRY. Copper is a commodity that is traded like any other metal that is out there, but the process by which we produce a final product, we will produce a copper concentrate from the mine site, and that will go to smelters to be turned into pure metal.

We will be looking to fill up any excess capacity in the United States. Our projections are that we will produce enough concentrate that we will potentially exceed smelting capacity, and if that were to occur, we would then have to look potentially overseas, but that is probably 10 years from now. So we will be watching the capacity of those smelters.

Mr. GRIJALVA. OK. Well, what about China? I saw that they have a major stake in your parent company, Rio Tinto. What percent do they own?

Mr. CHERRY. They own less than 10 percent.

Mr. GRIJALVA. And part of the negotiation before all that other problem happened in China with some of the employees of Rio Tinto, there was the issue of locking in the bulk purchase of copper for the future by China because they are eating up that raw material very, very quickly because of their growth, the growth of their industry and the development in their country.

What percentage do you anticipate exporting, whether it is to China or other foreign entities?

Mr. CHERRY. We don't have those projections at this time. We need to look at the smelting capacity of the market as we get closer to producing our product.

Mr. GRIJALVA. So hypothetically it could be major exportation to outside the country, and there is no guarantee that the domestic claim that you made is where the primary utility is going to be?

Mr. CHERRY. We will produce enough copper to meet 25 percent of the United States domestic demand. Our intent is to use as much of the United States smelting capacity as we possibly can to make that happen.

Mr. GRIJALVA. I will wait for another round.

Mr. BISHOP. You do have more questions?

Mr. GRIJALVA. Yes.

Mr. BISHOP. All right. Do any of the other Members have questions here as well? All right. Let me take a couple of minutes and go with some of mine as well. Mr. Cherry, can I start by asking you, and as I understand it, the mine that would be opened here exists where a previous mine was, and it would be reopening and deepening a former mine?

Mr. CHERRY. The ore body is adjacent to the previous workings, but we will be utilizing many of the underground and existing workings and infrastructure that are already in place.

Mr. BISHOP. So how long was that earlier mine open?

Mr. CHERRY. It operated for almost a hundred years.

Mr. BISHOP. And how many people did you employ during that time like just at its peak operations?

Mr. CHERRY. We purchased that from a different mining company, and I don't have the specific numbers, but I would be happy to get those for you.

Mr. BISHOP. I am under the assumption that the San Carlos Apache Tribe had many of those jobs at that time?

Mr. CHERRY. There were San Carlos Apaches that did work for that mining operation, and I should probably note that we have seven San Carlos Apache that are working for us on our project today.

Mr. BISHOP. Has the Tribal consultation occurred with you?

Mr. CHERRY. We have reached out to the tribe on a number of occasions, and asked, and are open to having meetings. We have not yet been afforded that privilege yet, but I do know that Congressman Gosar has met with them several times, as has Senator McCain.

Mr. BISHOP. I am assuming, and maybe, Representative Gosar, you could answer this. Does the legislation have language dealing with consultation in it?

Dr. GOSAR. Yes, it does.

Mr. BISHOP. Mr. Cherry, what was the intent of the Eisenhower era Oak Flat withdrawal that we had, was that to be a permanent withdrawal?

Mr. CHERRY. My understanding is that back when that happened in the fifties that this was one of a number of sites that was taken out of mineral entry basically to afford camping areas and recreational opportunities across the country.

Mr. BISHOP. Either Major Hing or Supervisor Martyn, but back in 2007, when the Forest Service's testimony was that the Department supported the exchange, as well as the evaluation provisions, and believed that this was in the public interest. Do either of you still feel that this is in the public interest?

Mr. MARTYN. Thank you, Mr. Chairman. The Pinal County Board of Supervisors feels that this is completely within the public interest of not only Pinal County, but the State of Arizona.

Mr. HING. And I have to agree with that, Mr. Chairman, that it is in the best interests of the public, but I do want to make a comment about what Congressman Grijalva made earlier concerning this political turmoil that he claimed that exists in Superior.

Since I have been the mayor for the past nine years, every council that I have served on where we have been dealing with this project have been a hundred percent in unanimous support of the operation.

We just had recent elections and the same people that support that operation has been a hundred percent unanimous. Mr. Grijalva was referring to this turmoil because we do have like in these little communities little spats that go on, but that is a side issue.

When it comes to the mining operation the company has been—and the councils, and even the regional councils, as well as neighboring town councils, have been very supportive and have sent resolutions of support of the operation.

And in response to Congressman Grijalva's question, since I have been working on this project, and I do not work for the Resolution Cooper—

Mr. BISHOP. Hold on for one second here.

Mr. HING. He mentioned the political turmoil here, and I didn't understand what he was referring to.

Mr. BISHOP. Thank you. Mr. Grijalva will have a chance to go through that again with you, and I have perhaps have time for one last question to Chairman Talgo. Has there been a resolution from the San Carlos Tribal Council in opposition to this project?

Mr. TALGO. I am not aware of that. My last position with the tribe was back in 1994, and so since then, I have not really been involved with tribal politics.

Mr. BISHOP. All right. That is kind of concurrent with what I have heard, that there was not a resolution specifically from that particular council, but thank you for that. I am going to yield back the rest of my time. We have been joined here by another gentleman, the Representative from Arizona, and under prior UC, we have allowed others to join us here, and participate. Do you have questions that you wanted to ask?

Mr. SCHWEIKERT. Mr. Chairman, I appreciate you letting me sort of sneak in on your Committee. Mr. Cherry, and this is actually for you and anyone else, but I am blessed actually to have a district that is somewhat to the west, and I actually had someone text me a question.

Apparently there is a lot of—and I know that this is a very small population, but some of these are my friends, but in recreation, and you have some of the great climbing areas, and the technical climbing areas around you.

But with the landholdings that you have presently, do you allow those folks on your land?

Mr. CHERRY. We do, and we just recently signed a license agreement with the Queen Creek Climbing Association.

Mr. SCHWEIKERT. You beat me to it, which I think I have to disclose I am a member of.

Mr. CHERRY. Very good. We would like to see you out there climbing.

Mr. SCHWEIKERT. No, trust me, you don't want to see me climbing anymore. There was a time, but now I am about 20 pounds heavier and it is not pretty, and is it your intention to allow that type of recreation, because you know that we have one of the big competitions in those things out in that area every year.

Mr. CHERRY. There are two parts to this aspect. One is that the land that we currently own, the private land. We have entered into a license agreement to allow them to come out and climb, and participate in recreational activities out there.

We are also working on an agreement as to the lands that would be traded that would become Resolution property. Those lands would then enter into the same agreement to afford access to those sites, as long as it is always safe to do so.

Mr. SCHWEIKERT. OK. Mr. Chairman, one other question for Mr. Cherry. How many years has this discussion been going on with you now?

Mr. CHERRY. This particular land exchange has been in the works for six or seven years.

Mr. SCHWEIKERT. And forgive me, because I sit on Financial Services, but why do I feel that I have heard a half-a-dozen of these hearings going on around me?

Mr. CHERRY. Because you probably have. That is about how many there have been over the years on this land exchange.

Mr. SCHWEIKERT. And if I step back in history in this same area, haven't we had discussions of other mining properties over the last couple of decades?

Mr. CHERRY. I am only familiar with this particular one.

Mr. SCHWEIKERT. OK. Having been sort of in and out of Arizona politics over the years, I feel like I am looking at a map and saying I swear that I have seen this on a board before. Mr. Chairman, thank you for letting me visit. I got the answer that I need, and so my fellow rock climbers will be happy with me.

Mr. BISHOP. Are you a concerned climber?

Mr. SCHWEIKERT. I actually have a technical lead certificate, and no, I am not that good.

Mr. BISHOP. Mr. Denham, you have not had a chance to ask any questions on this bill. Do you have questions on this particular bill?

Mr. DENHAM. Mr. Chairman, I would like to yield time to Mr. Gosar.

Mr. BISHOP. We will just go to your time, Mr. Gosar.

Dr. GOSAR. Thank you. Mr. Cherry, I want to address the mining with robotics. We commented earlier in the last couple of years in regards to the tragedy in the coal mine in the Western United States, or Eastern United States, and some of this stuff is very dangerous.

And so we do use the robotics for that very process, do we not, for safety reasons?

Mr. CHERRY. We are always looking to improve safety of our operations in our mines that are out there. One of the main things that we are looking at in terms of the automated, and which they are more appropriately called in this case, remotely operated, is to get the robotic equipment that can operate at the working face in a way that is maybe a little bit quicker.

But those still need remote operators. They may not be sitting on the piece of equipment at the operating face, but they will be off some distance, and they are still the folks that maintain it and other jobs associated with that.

Dr. GOSAR. And I am aware that the Native Americans—I mean, I was a dentist, and so the eye-hand combination skill set for Native Americans is by far higher than anybody else, and so I had hoped that you would continue looking at the Native Americans for those job skills.

Ms. Burke and Ms. Wagner, can you tell me the average time-frame for a NEPA in District One?

Ms. WAGNER. I can't specific to the district, but I would be happy to look into that and provide you that information.

Dr. GOSAR. I can actually tell you. It is almost six years. That is inappropriate, and that is why I had to face my constituents up in Northeast Arizona that is burning, and I hope that everybody puts them in their prayers, because that is the only way that fire is going to stop, is because we have lacked common sense.

And so I want to come back to that NEPA process, and have you owned a business?

Ms. WAGNER. No, sir.

Dr. GOSAR. Well, part of business is that when you own something, then you can pay for something, and that is what this detail does, is that if I don't own a piece of property, then why would I pay for the process, the environmental impact statement, and those kinds of processes.

And what this basically does is that it does not shirk that responsibility, but what it does is the company is going to pay for that instead of the American public. That is what is key here.

There is no difference. They are going to have to be under the same rules, the same laws, and nitpicky all the way through. So I just want to make sure that we understand that, and part of the problem is that in this NEPA process with which we are talking about, and why I had Mr. Cherry outline it for us, is that most of these infrastructures are already here.

Most of these roads, the drilling parts are already done, and the NEPA process should not have to take so long. I am a common-sense kind of guy, and I think that the people of Superior, and I think the people of Arizona, and I think the people of this country, want to get back to common sense.

And I think that this is where we have to go, and that is why we put some limitations, because we have to change. We have to be more nimble, and I am a steward of my environment, but we should have already had this stuff done.

It shouldn't take a rocket science, and it shouldn't take six years to do a NEPA process. So I want to make sure that I am heard in regards to that and in that process, and I am sure that we are going to be looking at this NEPA process, and the environmental impact statements, because we have to start looking at it in stewardship.

Because what we lost in Northeast Arizona is an atrocity. It is not cataclysmic by nature. It was cataclysmic because of man. We forgot about common sense, and I am told about it every day, particularly when we have an industry that is out there wanting to provide jobs, and to be in stewardship with their community, and we fail to acknowledge them.

In fact, in this forest determination, it takes a super human effort by the head of the Forest Service and me just to get an RFP out that should have been out two-and-a-half years ago.

And that is why we put some dictations. I want to make sure that when we have a bill that we live by those accountability measures. That is not just the private industry, but that is the Federal Government.

It is communications with local and city, and so those are the things that we had. We went through extraneous measures to have dialogue with the Governor, with the land department in the State of Arizona, to make sure that all the taxpayers, the stewards of

this area, were going to get their fair share, and that is what it has been here.

And I want to applaud Bryan and Mayor Hing to come here, because I have to tell you that this actually shows us that with our banking industry and the shams that it is, I want to applaud our ideas of natural resources bringing in revenues to start up industry and start up rural America, because we deserve nothing less.

We deserve this appropriately and so thank you so very much for all your stewardship in the business community. Thank you.

Mr. BISHOP. Mr. Grijalva.

Mr. GRIJALVA. Thank you very much. If this legislation moves forward, the question, Mr. Cherry, goes back to the issue of exportation because China is one of Rio Tinto's principal customers—if not their largest customer.

I think that a lot of the ore that comes from Australia ends up there, and they are in search of that commodity across the world, and not to single that out, but in all developing nations that don't have access to this resource are doing that.

So my question is on the issue of exportation of the ore, and we should benefit the American people if we are using the natural resources of the American people, but will there be a prohibition for exportation of this ore out of the country?

Would you entertain that, and would the company entertain that?

Mr. CHERRY. The copper that we will produce will be sold on the competitive market. There is a huge demand for copper in the United States, and as Congressional Gosar mentioned earlier, the new green energy economy, and with the wind turbines, and the solar panels, the electric hybrid cars, those all use a lot more copper than the conventional needs today.

There is going to be a significant demand for copper—not only from China, but from the United States—and we'll be competing in the United States to sell that product.

Mr. GRIJALVA. In the legislation, you have a series of definitions, and there is Resolution Copper, and there is all defined, and successors, and so I am anticipating that there will be a change, let's say, in the ownership of the parent companies which came close in the past.

And so when you say successors, having read the legislation, what does that imply to you, Mr. Cherry, that some other entity could be the responsible party of this legislation down the road?

Mr. CHERRY. We don't anticipate that in any way, but that is standard legal language to have in there to ensure that anyone that would take over this, if that were ever to occur, they would have to live up to the same obligations that we committed ourselves to.

Mr. GRIJALVA. And that could be foreign ownership, and it could be local ownership? I mean, American ownership, right?

Mr. CHERRY. Yes, it could be American owners.

Mr. GRIJALVA. It has to be?

Mr. CHERRY. No, I said it could be.

Mr. GRIJALVA. But it could be foreign as well?

Mr. CHERRY. It could be anyone.

Mr. GRIJALVA. OK. Mayor and Supervisors, thank you for being here. I appreciate it, and Mayor, when I said turmoil, I was trying to be—and not trying to get into an explanation about it, but I thought it was well worth pointing out, and I appreciate you correcting me if I needed correcting. I don't think I did, but whatever.

But anyway let me ask a couple of questions. Having been in the position that you are in as a local elected official, county supervisor, and I haven't been in any city or that jurisdictional part, let's talk about value.

The hypothetical situation, and it is not that hypothetical, and somebody comes to the county, and says—or to the city, and says that I would like to purchase this piece of public land for X-project.

And so you can either sell it, and you can sell that at the value that is on the surface of the land, or what is underneath the land, minerals, et cetera. Would you go for the highest value, or the highest return for your taxpayers, or would you do as we are doing with this legislation, only deal with the surface issue?

Mr. HING. Let me comment on that, Congressman Grijalva. When I look at when they keep bringing up this value issue, and I know that in the past that they talked about the royalties back to the Untied States, or the people, and that is something that you have to figure out.

But when I look at the surface right now is the economic development that would take place, because this is a resource that is there. It is not overseas, and it is in the back yard of Superior, and so that you can't move that ore body.

So the product is there, and you will bring production, and you will hire people locally in the region to build an economic base, and that is why I am saying that is important. You are the ones that will figure this out, the price, and that's why that is your job, but when I look at it from a service level, that is important.

Mr. GRIJALVA. Thank you. Supervisor.

Mr. MARTYN. Mr. Chairman and Mr. Grijalva, thank you. Obviously we look for the highest value for our constituents, and highest value for our constituents in my opinion represents the increase in educational opportunities, and increase in the quality of life, and increase in jobs, increase in economic benefits to the State of Arizona, versus what we have done in the past six years, which is nothing.

You have contributed zero to the Arizona economy by doing nothing on this. There is great value available to us immediately. Thank you, Mr. Chairman.

Mr. BISHOP. Mr. Gosar, did you have some more questions? All right. Mr. Gosar.

Dr. GOSAR. Chairman Talgo, can you name some examples of the way that the San Carlos Apache Tribe have embraced forward thinking ways of economic development while respecting their great traditions?

Mr. TALGO. Well, every Administration has their own philosophy on how they run their own government. I know and think that the tribe is working toward developing a strategic plan based by the Water Rights Settlement that will provide better future plans.

I really don't have much information from the tribal government, but it does see a better future. Like in the gaming industry, right

next to the Grove City is a casino. Just imagine if they built and had 3,500 to 4,000 people on the payroll, what kind of dividend would the gaming industry bring to the San Carlos Apache Tribe.

These are some of the answers that should be coming from the leadership, which they need to confront this because this stimulus package will bring to their reservation. So to me I see that in a better sort of economic structure that is going to provide jobs.

Right now seven out of ten are unemployed, and so I think that they are the ones that should have an answer.

Dr. GOSAR. Thank you, and I think another one that came to mine is the support of the Mac Ground Telescope as well. So there are things on the horizon. Value. Commissioner Martyn. You know, this is easy to talk about, and why I keep bringing it up natural resources is that the state of banking for small banking in Arizona, can you give me an example of how stable that banking situation is?

Mr. MARTYN. Mr. Chairman, and Dr. Gosar, I can't speak to the stability of the banking industry in the State of Arizona, or in the United States at this time.

Dr. GOSAR. It is pretty hard to get a loan isn't it?

Mr. MARTYN. Yes, it is.

Dr. GOSAR. In particular, the Federal Government has restricted the capital, and so I want to get back to this natural resource. I am aware that when you have a natural resource job, and we talk about the support of green energy, and all these jobs, and I guess that I saw a headline today talking about the dwindling effects within green energy because some of the oomph is not behind it.

It circulates in a local community 4 to 5 times if I am not mistaken, and within a State, 7 to 8 times, and it is an infusion of new money. So it actually breeds new jobs does it now?

Mr. MARTYN. Amen, it does. It does.

Dr. GOSAR. And this isn't just—we are not just talking about this in Pinal County, because I realize that we have a big farming aspect do we not?

Mr. MARTYN. We do. This impacts far more than just Pinal County and neighboring Hela County, and the San Carlos Tribe, and Arizona, and it actually affects the entire Southwest United States, and ultimately the United States of America.

Dr. GOSAR. So when you are talking about value, we want to have consolidated recreational areas, and we want to be able to keep pristine areas intact—you know, like the San Pedro River—for everybody to enjoy, but also have economic diversity. Do you see that?

Mr. MARTYN. I do, Dr. Gosar. I see a critical balance that must be met relative to the wants, needs, and desires of all of our citizens of Pinal County and Arizona.

Dr. GOSAR. Good. One last thing. Mayor Hing. I want to make sure that we come back to this discussion, because in the past, Congressman Schweikert brought up a number of meetings and hearings that we have had over the years around here. Can you tell me who has all come to Superior to learn about this, and do you know in consultation with you with the tribes?

Mr. HING. Well, I appreciate Senator Kyl and Senator McCain visiting the site, as well as members of our delegation, but my con-

cern was with Congressman Grijalva, who has been opposed to this, has not set foot in the Town of Superior since this project was underway, and I continue to invite him to come out, because he needs to meet the people.

He hears a handful who go and knock on his door, and he needs to come out to the Town of Superior and meet the people. Dr. Gosar, you don't understand. When we talk about economics, our community went from 7,000 people to under 3,000 now.

Under 3,000. Do you know how you live through that? Have you ever been in a community where it has got boarded up, and just the life just taken out of Main Street, with just a spur of what is a possibility has put a little bit of life into the community.

But we have not recovered. I mean, it has been over a decade now. You come and live in that community, or should we just desert that, and should we just wipe the Town of Superior off the map, and that it is not going to make it anymore?

My granddad came in the 1920s from China to make a living. He raised 10 kids in that family. My dad raised seven of us. I am raising four. I care about the environment. I am a very strong environmentalist, but I know that there is a balance.

We have a chance to hold Rio Tinto accountable to the environment. Why not do it in Superior?

Dr. GOSAR. And isn't it about common sense?

Mr. HING. It is common sense. I asked everyone to come out. We had Secretary Vilsack, Secretary Salazar come out, and we said walk the town. They were heartbroken to see that, the community, and what we went through. So I invite anyone from the Committee to come out, and we will give you Mexican food. Don't worry.

Mr. BISHOP. I like Chinese food here. All right. Representative Grijalva.

Mr. GRIJALVA. Thank you very much. Let me—well, on one of the issues that Rio Tinto brags about—and going back to the issue of jobs, because the urgency, and that this will be the revitalization, and shot in the arm that the region needs, and certainly the fine people of Superior.

So let's talk about job, and let's lock that job estimate down, because I am sure that the good mayor here would not want to be promising the residents and his constituents a number of jobs, and economic development, and then not see it happen.

And so the guarantees that he has received, let's talk about the guarantees in public. Realizing that they are mines of the future, which will include on their promotional materials, Resolution Copper, humans will no longer need to be hands on as all of our equipment will be autonomous, and able to make decisions on what to do base don their environment and interaction with other machines. Operators will oversee the equipment from a remote operation center.

Once fully operational the remote operations center is unlikely to be located in Superior, Arizona. So, let me ask you the question, Mayor. Would that change at all your support for this project if, let's say, you are going to these automated systems now, and in doing so, Mayor, the remote center would go to where their headquarters is, which is in the Chairman's State, in Utah, because it can be run at a distance, this technology, high end.

Does that in any way affect your support for the copper mine if that were not to come true?

Mr. HING. Well, you know, I can't speak on behalf of the company. All I can speak right now to is what they have done and shown the Town of Superior. The partnership that they have created with the community, and—

Mr. GRIJALVA. Well, I am asking you a specific question, Mayor, and I am saying if that remote—

Mr. HING. I would not be in favor of that, of course not. I would not be in favor of that, of course not.

Mr. GRIJALVA. All right. Thank you. The other thing that I wanted to ask if I can to Mr. Firestone. There will be a tailings pile for this mine. Do we know where it is going to be located, how it will be cleaned up, what will be the cost of cleaning up the site once mining operations stop, and does the bill specify who would pay the cost?

Mr. FEATHERSTONE. You are asking me that?

Mr. GRIJALVA. Yes, sir.

Mr. FEATHERSTONE. No, we do not. We do not know any of those things. The company may know that, but until a detailed mining plan is written, the answers to those questions, we have no idea, but we can speculate.

At one point in time the company was taking about dumping their tailings over in the Pinto Valley mine, and now they are perhaps talking about dumping those next to Supersita and Vista.

We really don't know until we have something in writing from the company and the mining plan of operation.

Mr. GRIJALVA. And under this legislation the land exchange would be completed before the mining plan of operation is produced, and the carriage before the horse, or however that saying goes, and I think it would be important, because everything about this is not about in pending, or stopping something. It is about making sure that there are no unintended or intended consequence to an operation of this magnitude.

I want to enter into the record from the last hearing, Resolution Copper responded to many questions that were raised, and in the submittal, Mr. Chairman, there are also the contradictions about things that have been taken out in this current legislation that were part of the bragging points that the company sent us the last time that they were here.

Mr. BISHOP. Without objection so ordered.

[NOTE: The information submitted for the record has been retained in the Committee's official files.]

Mr. GRIJALVA. Thank you. And so the unintended consequences are very important. The jobs issue, and let's get a firm number, and let's tie that number to something that cannot be changed, whether it is a remote operations center, the number of people that will be working at that site, let's get a number.

So that way the good people of the region know exactly what it means. The issue of exportation and our issues of strategic reserve and in terms of this very valuable ore for our own Nation's security and stability, and I think those answers need to be answered.

And the consultation that is not only owed to, but obligated by Executive Order, that has to happen with the Native Peoples in the region needs to happen before this is done.

This is your right. This is about the fourth or fifth hearing on this, and every hearing these same questions are asked, and then the company goes to the Senate, and gets them punted, and nothing happens.

And so the questions persist, and they are going to continue to persist all the way up to a mark-up, and all the way to the Floor, and all the way up to the Senate. It behooves the company, and it behooves the Administration, to answer these questions, and to consult with the tribes, do the full NEPA review before, and do the mining plan before, and deal with those consequences so that the American people will know the issue of value.

Is the American taxpayer getting his or her fair share out of this deal. Those questions will persist because there are no answers to them. This company has been trying to ram this through one way or another now for five years, and they can try again.

Those questions are going to persist, because there are no answers to them, and there must be in order for us to be transparent, and to give the American taxpayer a fair shake. I yield back.

Mr. BISHOP. Actually, we have spent a long time on this bill, but this is the purpose of having committees in the first place. Mr. Grijalva, do you have any other questions that you want to ask on this one?

Mr. GRIJALVA. No.

Mr. BISHOP. All right. Mr. Gosar, do you have any other questions that you want to ask on this one? If not, then let me give you the last five minutes and then we will move on to the last bill if that is OK, unless you change your mind, and you get the last word.

Mr. GRIJALVA. It depends on the five minutes, you know.

Dr. GOSAR. You know, I am sad to say, but I am actually happy that we are actually talking about jobs. I mean, jobs, jobs, jobs, jobs, jobs, jobs.

And it has been a fairly of the Federal Government in everything that we have touched, from the stimulus to the banking, to produce jobs. And it is about time that we started empowering the States and local communities to get back into this aspects and work.

And I think that we have highlighted the NEPA process, and that it should be a streamline process, particularly in these regards. But, Mr. Cherry, my colleague brought up some wonderful questions in regards to details, and being a dentist, I am very detailed oriented.

In fact, I have gone through my stewardship looking at different environments, and also our natural resources, to make sure that we are compensated appropriately. Are you in dialogue with the State of Arizona at all with where we are talking about deposits of these tailings?

Mr. CHERRY. We have had discussions with the State of Arizona on that.

Dr. GOSAR. Good, and they will be under full compliance under the State, as well as the Federal jurisdiction as well?

Mr. CHERRY. Anywhere. We are looking at multiple sites, but anywhere that we put our tailings, or any part of our mining project, it will all be in compliance with all applicable rules and regulations.

Dr. GOSAR. Let me ask you a question. In consultation with the tribes, and with the government, and I am a servant of the government, and I talk to private industries, have you had the opportunity to speak with the tribes?

Mr. CHERRY. I have not.

Dr. GOSAR. Actually, they have refused have they not?

Mr. CHERRY. I have sent a letter and asked for meetings, and have been politely told that they are not interested at this point.

Dr. GOSAR. So the consultation process—you know, I have gone several times, and I have also extended that hand, and we still try to ignore that, and are still playing up that flag.

So my suggestion is that there are no absolutes, but it is obvious to me that when we are working in good faith, that we sit down and communicate, and that is for all parties to consider.

And number two is that that includes the Federal Government. The Federal Government working with the State and local entities, which has not happened. In fact, it has just been stalled.

And that is why I brought up frankly the Access to Justice Funding, because what we found out is that we can wait until the last minute, and put a stamp, and have it filed on a day, and have it hold up the whole process.

And there is something wrong with that process, and I think that America is tired of it. Absolutely tired of it. And they want good faith, and they want some common sense put back in place.

And so would you, Mr. Cherry, be open to discussions should the tribes want to talk to you?

Mr. CHERRY. Absolutely, at any time, and anywhere.

Dr. GOSAR. And do you think that there should be a benefit, or are you willing to help with the culture of the Apaches, and your company, and not only today, but in the future?

Mr. CHERRY. Absolutely.

Dr. GOSAR. And, Bryan Martyn, how about you? How about the dialogue between Pinal County and the San Carlos?

Mr. MARTYN. Dr. Gosar, I can't speak to that. The County Board of Supervisors has not met directly with the San Carlos in this situation. We, of course, are available to all constituents throughout Pinal County and the State of Arizona relative to projects, and the invitation is always there.

Dr. GOSAR. Mayor Hing, how about you?

Mr. HING. We have asked many times to speak to Chairman Knowles at the time, and as they stated, they only have consultation directly with the Federal Government, government to government, even though I am a local government. They refuse.

Dr. GOSAR. Well, thank you, and that is the end of my questions.

Mr. BISHOP. Thank you. I will recognize Mr. Grijalva for the last set of questions.

Mr. GRIJALVA. Thank you. To my colleague, and it is not reacting to just anything, but a couple of corrections. I think that the Mayor—and the one point that I was going to make, is that when

we talk about consultations with native people, it is government to government.

There is an issue of sovereignty, and unless Resolution Copper has become a national government in the last few years and that I didn't know about, there is no need to consult there.

The consultation is with the Interior on this issue, and it is with the Forest Service on this issue, and that is the point that is being made, and that is the one area that has been ignored throughout this process, formal government to government consultations.

And not company to tribe consultations, and not individual cities to tribe consultation. Federal Government to tribe consultation, and that is what is demanded by the law.

And I also want to for the record, and I will submit all those resolutions, the San Carlos Tribe continues to be opposed to this mine, and they do that in the form of a resolution with the new Administration that is in place as well, and I will be entering those and other resolutions for the record, and thank you, Mr. Chairman.

[NOTE: The resolution submitted for the record has been retained in the Committee's official files.]

Mr. BISHOP. Thank you. Well, this ends our non-controversial bills. I thank all of those that are witnesses in this particular one, and the Members who deal with this. We have one bill still to be considered, which is H.R. 869, the Lower Merced River Flood Control Project.

Ms. Burke, we would ask you to remain for this one, and as we make this change, I also invite Mr. Brian Kelly, who is the Director of Regulatory Compliance and Government Affairs from the Merced Irrigation District; and Mr. Ronald Stork, who is the Senior Policy Advocate for Friends of the River, to join us at the table.

[Pause.]

Mr. BISHOP. So, welcome, Mr. Kelly, Mr. Stork, who is making his way there. As we do on the Floor, we are grateful for our guests, and we would ask them if they would exit quickly and take the conversations to the hallway, because like any good legislative body, we don't do any work here until everyone is gone.

This particular bill is brought to us by Congressman Denham from California. Congressman, I will recognize you for the first five minutes to introduce your bill.

**STATEMENT OF HON. JEFF DENHAM, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. DENHAM. Thank you, Mr. Chairman, for allowing me to bring this bill up before the Subcommittee today. This legislation before the Committee today is a simple common-sense bill that will provide for much-needed water storage during wet years in the Central Valley of California.

This bill has bipartisan support in Congress, from California water organizations throughout the State, cities, counties, labor, and recreationalists, as well as the Central Valley Coalition of Republicans and Democrats.

This past winter was considered a wet water year for California. Currently, dams are in flood control operations and releasing thousands of acre-feet of water due to the lack of sufficient storage.

The Central Valley of California is home to the world's most productive farmland, and the economies of most communities in the Valley are buoyed by the agriculture production that occurs throughout the Valley.

I would like to submit for the record a chart that shows the direct correlation to jobs, and the amount of water that the Central Valley receives. It clearly shows that a lack of water means that there are a lack of employment opportunities.

My district continually suffers from unacceptable high unemployment, and currently unemployment is hovering around 18 percent, which is double the national average. We are dependent on water for jobs, and communities to be sustainable, and livelihoods of farming operations.

H.R. 869 is as simple a piece of legislation that can be drafted to create desperately needed water storage. Simply stated the bill will allow for the Merced Irrigation District to raise the level of Lake McClure by 10 feet for 60 days during a wet year.

With this legislation the Merced Irrigation District will apply for relicensing with FERC, with the proposed spillway modification included in their application. Their application will still be subject to the full FERC review process once the application is filed.

This legislation will provide up to 70,000 new acre-feet of additional water, which can serve 1700 homes and generate roughly 10,000 megawatt hours of clean renewable electricity on an annual basis.

There is no simpler or more logical a proposal to create jobs, and much needed water storage where both are so greatly needed. Let me also inform this Committee that this legislation will not cost any State or Federal funds.

Again, let me thank the Chairman for bringing H.R. 869 before this Committee, and let me thank Mr. Bryan Kelly for flying out from the Merced Irrigation District to help fully convey what the bill does, and how much it is needed.

Mr. BISHOP. Thank you. Ms. Burke.

**STATEMENT OF MARCILYNN BURKE, DEPUTY DIRECTOR,
BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE
INTERIOR**

Ms. BURKE. Good afternoon, and thank you for the opportunity to testify today on behalf of the Department of the Interior on H.R. 869 concerning the Merced River. This bill would amend the Wild and Scenic Rivers Act to increase the allowed level of Lake McClure in Central California.

The BLM does not support H.R. 869 because it conflicts with previous Congressional direction requiring the BLM to preserve and protect the lower reaches of the Merced River under the Wild and Scenic Rivers Act.

The lower Merced River is noted for having some of the most outstanding scenery and whitewater boating opportunities in California. This bill would impact many other marketable values that make the lower Merced suitable for Wild and Scenic River status.

H.R. 869 would for the first time authorize the inundation of a previously designated segment of the Wild and Scenic River sys-

tem. This would result in a wild river segment becoming more like a lake than a river, and compromises the integrity of the Wild and Scenic River system, the purpose of which is to preserve rivers and their free-flowing condition.

The BLM supports a careful review and determination on how best to balance both the protection and use goals of the Merced watershed. Thank you again for this opportunity to testify, and I would be happy to answer any questions.

[The prepared statement of Ms. Burke follows:]

Statement of Marcilynn Burke, Deputy Director, Bureau of Land Management, U.S. Department of the Interior, on H.R. 869, Lower Merced Wild & Scenic River Modifications

Thank you for inviting me to testify on H.R. 869, a bill amending the Wild and Scenic Rivers Act to increase the allowed level of Lake McClure in central California. The Bureau of Land Management (BLM) does not support H.R. 869 because it conflicts with previous Congressional direction requiring the BLM to preserve and protect the lower reaches of the Merced River under the Wild and Scenic Rivers Act. The full implications of H.R. 869 are not clear, and the BLM believes further study and consideration are necessary before final action is taken. The BLM supports a careful review and determination on how best to balance both the protection and use goals of the Merced watershed.

Background

Section 1 of the 1968 Wild and Scenic Rivers Act (Public Law 90-542) sets forth Congress' vision for management of the Nation's rivers:

"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or section thereof in their free-flowing condition to protect the water quality for such rivers and to fulfill other vital national conservation purposes."

From its headwaters in the snow-fed streams of the Yosemite National Park high country, the Merced plunges thousands of feet through boulder lined canyons before emptying into Lake McClure. Over 122 miles of the Merced River in central California have been designated by Congress as components of the National Wild and Scenic River System.

In 1992, Public Law 102-432, extended the previously designated Merced Wild and Scenic River by an additional eight miles to the 867 feet spillover level of Lake McClure. The BLM manages the upper five miles as a recreational river and the lower three miles as a wild river. Under the provisions of P.L. 102-432, the level of Lake McClure may not exceed an elevation of 867 feet above mean sea level, a level intended to balance water and power needs of the local community with protection of the outstanding remarkable values of the lower Merced River.

The lower Merced River is noted for having some of the most outstanding scenery and whitewater boating opportunities in California and the nation. Every summer over 10,000 whitewater enthusiasts test their skills on the river. The BLM currently permits 12 commercial businesses, which guide most of these recreationists on this section of the Merced River.

The communities of Mariposa and El Portal benefit from these whitewater boaters who contribute to the local tourism economies. Boaters generate important economic activity during the traditionally lower visitation times of spring and early summer, expanding the length of the Yosemite region tourism season. This river-dependent tourism provides a greater level of economic and employment stability for these communities.

H.R. 869

H.R. 869 provides for an increase in the allowed lake level, from the currently permitted 867 feet to 877 feet for a period not to exceed 60 days, along with a 30 day draw-down period. This elevated level would occur from May 1 and July 31,

which coincides with peak recreation season for the corridor. It is our understanding that the intent is to provide additional power and water supplies for home and agricultural use in the Central Valley of California during wet years.

The full implications of H.R. 869 are not clear and the BLM recommends the bill's ramifications be more fully explored before the Committee moves forward. Potential impacts from inundation could be substantial to both natural resources and local economies. It appears that approximately one-half mile of the Merced Wild and Scenic River corridor would be inundated by an increase of the McClure Lake by ten feet above current levels.

Among the potential resource implications of this inundation are habitat loss for both the limestone salamander (a California designated Fully Protected Species) and the elderberry longhorn beetle (a federally listed threatened species under the Endangered Species Act). The BLM Limestone Salamander Area of Critical Environmental Concern (ACEC) would be at least partially flooded. Impacts may also include loss of riparian vegetation and degradation of the scenic values of the corridor. Additionally, significant cultural and historic resources in the area, including the remains of the Yosemite Valley Railroad and historic gold-mining sites would be degraded.

A variety of recreation activities within the river corridor could also be impacted by the legislation. For whitewater boaters, inundation would add another half-mile to an already arduous paddle across flat water to an alternate take-out. In addition to boaters, the canyon is becoming increasingly utilized as a recreational destination for hikers, mountain bikers, and equestrian riders who could be displaced by a likely inundation of five miles of the existing Merced River trail.

H.R. 869 would authorize for the first time the inundation of a previously designated segment of the Wild and Scenic River System. Such an unprecedented action would result in a wild river segment becoming more like a lake than a river and could compromise the integrity of the Wild and Scenic River System, the purpose of which is to preserve rivers in their "free-flowing condition."

Conclusion

Before further action is taken on H.R. 869, the BLM recommends that all of these implications of changes to the level of Lake McClure be more fully explored. Thank you for the opportunity to testify.

Mr. BISHOP. Mr. Kelly.

STATEMENT OF BRYAN KELLY, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. KELLY. Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, my name is Bryan Kelly, and I am the Director of Regulatory Compliance and Government Affairs—Water, for the Merced Irrigation District.

Thank you for the opportunity to testify in support of H.R. 869. I would like to begin by thanking Congressman Denham and the cosponsors of H.R. 869 for introducing this bipartisan bill that could improve the precarious water supply situation in California's San Joaquin Valley at no cost to the Federal Government.

The Merced Irrigation District owns and operates hydroelectric facilities on the Merced River, consisting of the New Exchequer Dam and Reservoir, and Lakes McClure and McSwain.

They are located in the western foothills of the Sierra Nevadas, approximately 23 miles northeast of the City of Merced. The water managed by MID flows west through Lakes McClure and McSwain, and continues down the Merced River and through over 700 miles of canals, to serve over 2200 growers in Merced County.

The water supplied by the New Exchequer Dam supports approximately 3600 jobs, and \$120 million in agriculture. The majority of those served by MID are family farmers, with an average parcel size of 30 acres.

The hydroelectric facilities operate under a license from the Federal Energy Regulatory Commission, or FERC. That license is up for renewal in 2014 and is part of the relicensing process that MID has developed a New Exchequer spillway modification project.

The project would increase the height of the existing spillway gates on Lake McClure and raise the crest elevation of the existing ungated spillway by approximately 10 feet to allow for additional storage capacity in wet years.

MID would be able to take full advantage of this additional storage about once every three years, capturing up to 70,000 acre-feet of water in a single wet year. MID would pay the estimated \$40 million cost of the spillway modification project, and no Federal funding is required.

But the Federal legislation is necessary to allow FERC to consider the merits of the project. That is the purpose of H.R. 869. In 1992, Congress amended the Wild and Scenic River Act to add the lower Merced River to the Wild and Scenic River System.

The Act set the downstream boundary of the Wild and Scenic designation at the normal maximum operating level of Lake McClure at 867 feet above sea level. This means that the Wild and Scenic designation extended into MID existing FERC boundary for Lake McClure.

The Act also contains a provision for flood control operations. This provision is important because during high snow melt conditions the river at the upper end of Lake McClure is actually higher than the lake level at the dam, with water levels above the 867 foot Wild and Scenic boundary.

This happens on a regular basis during wet years, and it is happening now. This month the water level in the Wild and Scenic portion of the river contained within the FERC boundary was about at an elevation of 884 feet, while the water surface at the New Exchequer Dam was 824 feet.

The Act also says that FERC may only relicense MID's hydroelectric project to a maximum normal operating level of 867 feet. This provision prevents FERC from considering MID's spillway project, which proposes to occasionally maintain a lake level up to 877 feet.

H.R. 869 is intended to allow FERC to consider the project on the relicensing process, and sets limits on the time and duration of the temporary inundation of the Wild and Scenic area.

And I want to be absolutely clear on this. MID supports the Merced River's Wild and Scenic designation above Lake McClure. This designation helps to ensure MID's water sources is one of the most pristine in California.

It is important to note that H.R. 869 does not mandate, authorize, or in any way prejudge the merits of the proposed project. It simply allows the project to undergo a rigorous examination by FERC and other Federal and State Agencies in a public process.

The process would address all potential impacts in accordance with NEPA, CEQA, ESA, and California ESA. MID has discussed the proposed project with conservation groups, and is aware of their concerns about H.R. 869, and setting a precedent for altering the Wild and Scenic Act.

MID is open to discuss ways in which to address this with them. However, a project that can provide tens of thousands of acre-feet of new water in the San Joaquin River Valley at no Federal costs certainly bears consideration by FERC.

Every urbanized area in Merced County is a disadvantaged community. Our unemployment rate continues to hover around 18 to 20 percent. Agriculture remains the largest employer in our community, and agriculture depends on water.

According to a 2009 study, each 100,000 acre-feet of water supports 1200 local jobs and \$40 million in agriculture revenues. H.R. 869 is simply intended to allow FERC to consider a project that will create jobs and further support Merced County's economic base.

We ask that the Subcommittee and the House Natural Resources Committee support H.R. 869. Thank you for your time and consideration.

[The prepared statement of Mr. Kelly follows:]

Statement of Bryan Kelly, Director of Regulatory Compliance and Government Affairs—Water, Merced Irrigation District, on H.R. 869

Chairman Bishop, Ranking Member Grijalva, and members of the Subcommittee, my name is Bryan Kelly and I am the Director of Regulatory Compliance and Government Affairs—Water for the Merced Irrigation District (MID). I am pleased to be offered this opportunity to testify in support of H.R. 869, legislation that would allow the Federal Energy Regulatory Commission (FERC) to consider proposed improvements to the spillway at New Exchequer Dam that will provide additional water supply to Merced County and the San Joaquin Valley of California.

I'd like to begin by thanking Congressman Denham and the cosponsors of H.R. 869 for introducing this bipartisan bill that could improve the precarious water supply situation in California's San Joaquin Valley without major environmental impact and at no cost to the federal government.

The Merced Irrigation District is a California Public Agency under the California Irrigation District Law. MID owns, operates and maintains hydro-electric facilities on the Merced River, consisting of the New Exchequer Dam and Reservoir (Lake McClure) and McSwain Dam and Reservoir (Lake McSwain). They are located in the western foothills of the Sierra Nevada mountain range, approximately 23 miles northeast of the City of Merced. Lake McClure has a storage capacity of 1,024,600 acre-feet, while Lake McSwain has a storage capacity of 9,730 acre-feet and is operated principally as a regulating reservoir for MID's hydroelectric generation facilities at New Exchequer Dam (FERC Project No. 2179).

The water managed by MID flows west from Lakes McClure and McSwain through the New Exchequer Dam hydroelectric plant creating over 100 megawatts of clean, renewable energy. The water then continues down the Merced River or through more than 700 miles of canals for irrigation use by more than 2,200 Merced County growers. The average 300,000 acre-feet of irrigation water supplied by New Exchequer Dam directly supports approximately 3,600 jobs and \$120 million in agriculture revenue. The majority of those served by MID's water are family farmers, with the average farm size being 30 acres.

Proposed New Exchequer Dam Spillway Modification Project

MID's hydroelectric facilities are operated under a license from the Federal Energy Regulatory Commission. That license is up for renewal in 2014, and as part of the relicensing process MID has reviewed potential project enhancements, including increased storage in Lake McClure. In many years, runoff exceeds the reservoir's storage capacity and additional capacity would allow for the capture of excess runoff for use during future dry years. 2011 has been a very wet year, and MID will most likely completely empty the equivalent of Lake McClure's full capacity to provide storage space required to accommodate run off from a record-setting snowpack.

To be able to store at least some of this wet-year bounty, MID has developed *The New Exchequer Dam Spillway Modification Project* (the Project). The Project would increase the height of the existing spillway gates on Lake McClure and raise the crest elevation of the existing un-gated spillway by approximately 10 feet to allow

for additional storage capacity in wet years within the existing FERC Project Boundary.

Based on known hydrology, we estimate that MID would be able to take full advantage of this additional storage about once every three years, capturing up to 70,000 acre-feet of water in a single wet year. This occasional, short-term boost in storage will provide water supply benefits year after year by allowing higher carry-over storage. We estimate that the project would increase average critical (dry) year water supply by 15,000 acre-feet. The additional water would also enhance MID's groundwater storage and conjunctive use opportunities, provide incidental flood control benefits and provide greater flexibility in meeting the needs of agriculture and the environment within MID and in the San Joaquin Valley as a whole.

The additional water would also generate up to an additional 10,000 mega-watt hours per year of clean, renewable energy, enough power to serve 1,700 homes.

MID would pay the estimated \$40 million cost of the Spillway Modification Project. No federal funding is required. But federal legislation is necessary to allow FERC to consider the merits of the project during the relicensing process. That is the purpose of H.R. 869.

Wild and Scenic River Implications

In 1992, Congress amended the Wild and Scenic River Act (P.L. 102-432) to add the lower Merced River to the upper reaches of the Merced as part of the Wild and Scenic Rivers System. In all, more than 120 miles of the Merced River from Yosemite National Park to the upper end of Lake McClure is protected as Wild and Scenic.

The 1992 Act set the lower boundary of the Wild and Scenic designation at the normal maximum operating level of Lake McClure: 867 feet above sea level. This means the Wild and Scenic portion of the river extended into the existing FERC boundary for MID's hydro-electric facilities (including Lake McClure). MID supported the 1992 legislation after it was changed to ensure that the Wild and Scenic designation would not affect the continued operation and maintenance (including flood control operations) of the New Exchequer Project. The provision for flood control operations is important because during certain flood-water "surcharge" conditions, the upper end of Lake McClure is actually higher than the lower end at the dam, causing water levels to rise above the 867-foot Wild and Scenic boundary. This happens on a regular basis during wet years. It's happening now. This month the water level at the upper end of Lake McClure and within the Wild and Scenic portion of the river contained within the FERC boundary, was at about elevation 884 mean sea level (MSL), while the water surface elevation at New Exchequer Dam was approximately 824 feet MSL.

The 1992 Act says that FERC may only relicense MID's hydroelectric project to a maximum normal operating level of 867 feet above sea level. FERC has determined that this provision prevents it from considering MID's proposed Spillway Modification Project as part of its relicensing effort. MID's engineers estimate that during wet years, the project would cause the reservoir to rise up to 10 feet and extend approximately 1,800 feet laterally into the Wild and Scenic corridor (but still within the FERC boundary). These inundations would occur about once every three years, typically in mid-summer and last from two to eight weeks. As noted above, this inundation occurs regularly. MID is simply proposing to store some of this excess flow for a short period of time so that it can be put to beneficial use.

H.R. 869 is intended to allow FERC to consider the Spillway project during the relicensing process and the bill sets limits on the timing and duration of the temporary inundations of the Wild and Scenic area that would be caused by the project.

I want to be absolutely clear on this: MID supports the Merced River's Wild and Scenic designation above Lake McClure's FERC boundary. This designation has helped to ensure that MID's water source is one of the most pristine in California by prohibiting new discharges, mining and other activities that have historically degraded water quality.

H.R. 869 does not mandate, authorize or in any way pre-judge the merits of the proposed spillway modification project. It simply allows the project to undergo a rigorous examination by FERC and other Federal and State agencies in a public process that will identify and address all potential impacts in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

MID has discussed the proposed spillway project with conservation organizations and we are aware of their concerns about H.R. 869 setting a precedent for altering Wild and Scenic boundaries. We take those concerns seriously, and MID is open to discussing ways to address them in a manner that would allow the spillway project to get a fair hearing before FERC. But MID believes that the merits and the bene-

fits of the project should be weighed against philosophical objections to making a tiny adjustment to a boundary line. A project that can provide tens of thousands of acre-feet of new water to the San Joaquin Valley at no federal cost certainly bears consideration by FERC even if it would cause the reservoir to occasionally stray 1,800 feet into the 122-mile-long Wild and Scenic River corridor.

Economic Benefits

The significance of any new water supply for the Central Valley cannot be overstated.

In California's Central Valley, we often refer to ourselves as "The Other California." We don't produce movies, nor do we produce microchips: we produce the vast majority of the nation's fruits, nuts and vegetables. In fact, we produce more than \$30 billion per year in agriculture. In most simple terms, Merced County's economy depends on agriculture and water. Agriculture remains the largest employer in our community and agriculture depends on water. According to a 2009 U.C. Davis study, each 100,000 acre-feet of water supports 1,200 local jobs and \$40 million in agriculture revenues.

Merced County continues to be ground zero in this economic recession. Every urbanized area in Merced County is a Disadvantaged Community, including incorporated cities and unincorporated communities, based on the criteria defined in California Water Code § 79505.5(a). We have experienced the housing bubble at its worst and remain within the top 10 in the nation for foreclosed properties. Our unemployment rate continues to hover around 20 percent, placing Merced also within the top 10 for the highest rate of unemployment.

H.R. 869 is simply intended to allow the Federal Energy Regulatory Commission to *consider* a proposed project that will create jobs and further support Merced County's economic base. We ask that the Subcommittee and the House Natural Resources Committee support H.R. 869.

Thank you for your time and consideration.

Mr. BISHOP. Thank you. Mr. Stork.

**STATEMENT OF RONALD STORK, SENIOR POLICY ADVOCATE,
FRIENDS OF THE RIVER**

Mr. STORK. My name is Ron Stork. I am the former Executive Director of the Merced Canyon Committee at the time that the Federal agencies under Ronald Reagan were making their recommendations to designate this river.

I was also the principal staff person at Friends of the River who testified before the Congress and was involved in those Congressional discussions, and the discussions with the Merced Irrigation District in Mariposa County, that led to the support of the original designation by both the District and Mariposa County, Friends of the River, environmental groups, and Congress, a bipartisan Congress, back in 1992.

H.R. 869 allows for a reservoir to inundate a National Wild and Scenic River. The National Wild and Scenic River System was established to protect and preserve free-flowing rivers for the benefit of present and future generations. It is not the National Reservoir and Protection Act, nor is it the National Protect A River for 20 Years and Then Turn It Into a Reservoir Act. Needless to say, this would be the first time, if enacted, that the U.S. Congress has broken the contract that it has made with the American people about the purpose of the National Wild and Scenic River System.

We urge the Committee to reject this bill. This legislation was worked out over quite a number of years ago by Senators Seymour and Senator Wilson, and Congressman Coehlo, and Coehlo, and Condit, Mariposa County, and the Merced Irrigation District.

The Merced Irrigation District did not object to this bill for the same reasons that you have just heard at the time, and in the end,

we all reached an accommodation, which was ratified by the Congress, in which there was glowing praise by the Republican leadership of this Subcommittee in the Congressional record for having done so.

That agreement did not include reservations that in 20 years that we would come back and undo the agreement that we had reached. There are wider consequences to this issue. Clearly business certainly is something of concern to this Congress. Regulatory certainty.

The Wild and Scenic System is a stable contract, and there are businesses, recreation businesses, that have invested and continue to do business in this National Wild and Scenic River, on the basis of the fact that it is indeed a protected river.

The notion that we would unprotect it is certainly not something that builds confidence in the business community about regulatory certainty associated with this statute. I think that it is important to understand that the water yield associated with this project—I don't know, 10,000 acre-feet per year—is something.

The ground water overdraft in the San Joaquin Valley, as Mr. Denham certainly knows, is about two million acre-feet per year. There are quite a few hundreds of thousands of acres that could be watered in the San Joaquin Valley if water was available.

This amount of water is decimal dust with regard to those perceived needs. So needless to say Congress was aware of that at the time in 1992, and made the judgment that protecting these lands was the appropriate balance to strike, and it was a stable commitment with the American people, that we would protect and preserve this river, and this section of river, for the benefit of present and future generations. So that concludes my remarks. Thank you.

[The prepared statement of Mr. Stork follows:]

**Statement of Ronald Stork, Senior Policy Advocate,
Friends of the River, on H.R. 869**

Mr. Chairman, members of the Subcommittee,

Thank you for the opportunity to testify today. I am the senior policy advocate for Friends of the River. Founded in 1973, Friends of the River is California's statewide river conservation organization. In the past, I served as executive director of the Merced Canyon Committee and later as principal representative for Friends of the River in the Federal agency planning efforts that resulted in recommendations to protect the river. I was subsequently involved throughout Congress's deliberations that culminated in the 1987 and 1992 Merced River designations from the headwaters in Yosemite National Park to the present Lake McClure Reservoir. The Merced River canyon is the year-round gateway to Yosemite National Park, and it is one of America's best known and most beloved rivers. We oppose H.R. 869 and urge you to continue to preserve and protect our river heritage for the benefit of current and future generations.

Effect of H.R. 869

H.R. 869 proposes to amend the National Wild & Scenic Rivers Act to redefine reservoir storage operations of a potentially expanded Lake McClure Reservoir as flood-control operations, and allows the modification of the dam complex to allow the reservoir to invade the Wild and Scenic River upstream for these defined purposes. H.R. 869 is in fundamental conflict with the major purpose of the National Wild & Scenic Rivers Act: to ensure that no project works impound waters that convert a free-flowing river into a reservoir. For the sake of the integrity of our National Wild and Scenic River System, Congress should reject H.R. 869.

Background of Merced National Wild & Scenic River

The current reservoir/wild and scenic river boundary and associated boundary policy definition was proposed by the U.S. Forest Service, Bureau of Land Manage-

ment, and National Park Service under President Ronald Reagan in 1986. California Republican Senator Pete Wilson introduced the first bill to designate the river/wild & scenic river boundary at its present location in 1987. The framework of the final bill with its accommodations for Mariposa County and for the Merced Irrigation District was fashioned by Rep. Tony Coehlo, who on his retirement concluded that his work to save the Merced River was his most personally meaningful achievement in his time in Congress.

An agreement on the final language of the bill designating this reach of the Merced National Wild & Scenic River was reached among the Senate Energy Committee, California Republican Senator John Seymour, Senator Alan Cranston, the House sponsor of the bill, Gary Condit, the Merced Irrigation District (MID), Friends of the River, and the Wilderness Society in 1991. The resulting bill was co-sponsored by Senator Seymour and signed by President George H.W. Bush in 1992.

H.R. 869 seeks to reverse the Reagan-era agency recommendations and the consensus agreements fashioned by the authors of the legislation that originally created the Merced National Wild & Scenic River.

Purpose of the National Wild & Scenic River System

The National Wild and Scenic River System was established to protect and preserve a portion of our nation's dwindling stock of free-flowing rivers that has been substantially reduced from extensive development of dams, reservoirs, levees, and diversions. Congress did not create the national wild and scenic river system as a national reserve for future reservoirs but as a system to protect living free-flowing rivers for posterity. Since the creation of the system, the United States Congress has never removed the protections from dams and impoundments so central to the Act from a previously designated national wild and scenic river. It should not do so now.

H.R. 869 proposes to allow expansion of a reservoir to inundate a free-flowing river of national significance, an action that would be in fundamental conflict with the purposes of the national system that "selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in **free-flowing** condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and **future** generations." (§ 1b Wild & Scenic Rivers Act)

When it created the National Wild and Scenic River System, Congress made an explicit pact with the American people: "The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes." (§ 1b Wild & Scenic Rivers Act). At full pool, twenty-four miles of the Merced River downstream of the designated wild & scenic river lie under MID reservoirs licensed by the Federal Energy Regulatory Commission. Upstream, the Merced River is protected by the National Wild & Scenic Rivers Act from dams and reservoirs all the way into Yosemite Valley and beyond.

The certainty of protection afforded by a National Wild and Scenic River also creates regulatory certainty in the business environment. The reliance on the Merced National Wild & Scenic River has been important to tourism businesses around Yosemite National Park. For example, one of the whitewater rafting companies who serve customers on the Merced recently wrote the following to Mariposa County:

Zephyr Whitewater is only one of several rafting companies that utilize this section of the river for our late season trips. Additionally, the proposed Merced River Canyon bike trail would be another feather in the cap for Mariposa County's "things to do". It would be a much more popular trail if it followed a free-flowing Merced River instead of an expanded reservoir. When we operate our late season trips on this lower section, we currently hire local people to "tow" our rafts to Bagby through the existing reservoir. An expanded reservoir would probably stop our operations, as this would make an already "long" tow out probably "too long". Additionally, the "dead zone" which always exists with rising and lowering upper reaches of reservoirs would render this section of the river unattractive and would set-back Mariposa County's growing reputation as an outdoor destination.

Legislative Considerations

(It's *deja vu* all over again, or there is nothing new under the sun)

The Federal agencies did not recommend and the Congress did not establish the Merced National Wild and Scenic River without careful deliberation. In addition to

recognizing the obvious scenic, recreational, and natural resources of the Merced River, the implications of the designation on MID were considered.

Water

Consistent with the language of §1b of Wild & Scenic Rivers Act above, it was noted that for year after year after the construction of its 1960s-era giant dams on the Merced River, the Merced Irrigation District reported in its annual reports that “[t]he District now has virtual control of the waters of the Merced River as long as such waters were put to beneficial use, and is assured of an adequate irrigation supply for the foreseeable future.”

It has been said by some today that the significance of *any* new water to the San Joaquin Valley cannot be overstated. However, the meaningfulness of that general statement needs to be guided by the numbers. Even then, this was the subject of Congressional testimony in 1991. Using standard storage-to-yield ratios for new storage in already diverted watersheds, this project might be expected to increase yield to someone and for some purpose by an average of perhaps 10,000 acre-feet per year—some years more, most years none or less. The consumptive water rights and average annual consumptive diversions associated with MID’s project works amount to over half a million acre-feet per year. Project deliveries of the federal Central Valley Project are around six to ten million acre-feet per year. MID’s project idea, even if constructed, is not going to provide any meaningful amount of new water to the San Joaquin Valley or even to MID, which does not hold the most senior water rights on the portion of the San Joaquin River system where water still finds its way to the Delta. The marginal yield of such a project was noted in testimony before the Congress in 1991. That has not changed. Today, the adverse precedent contained in H.R. 869 that our National Wild and Scenic River System can be used as reservoir sites is far more meaningful.

Floods

It was noted in testimony then (as now) that New Exchequer Dam has never filled and spilled.

Dam Safety

At the time that the Federal agencies were considering finding wild and scenic river designations for the Merced River, I asked Tim McCullough, the then general manager of MID, whether the District had any plans to enlarge the Lake McClure Reservoir rather than build a new dam upstream. He leaned back in his chair and laughed, saying he had no interest in putting more water against a dam that had such a long history of through-dam seepage.

The project that H.R. 869 is designed to facilitate, as presently conceived by MID, is to construct operable gates on top of the emergency spillway. Emergency spillways are generally conceived of as the last line of defense against overtopping and potential failure of a dam. Dam-safety officials generally prefer that the last line of defense operate regardless of mechanical failures, human error, control-system failures, flood-debris disruption, other mishap, or even terrorists in control of the operating features of a dam. Again, as noted in testimony before Congress in 1991, it could be very expensive to raise and perhaps stabilize the whole dam/spillway complex so that the existing margins of safety for through-seepage and design to prevent the reservoir from flowing over structures not designed to be overtopped—such as the main dam—are maintained with a higher Lake McClure Reservoir. The national wild and scenic river legislation for the Merced River enacted by the Congress and supported by MID at the time wisely took the reservoir-expansion option off the table as part of establishing a protected free-flowing river.

Wild & Scenic River eligibility

For much of the time the designation was being considered by the Reagan-era Federal agencies and the Congress, MID did argue that the wild and scenic river designation boundary should be moved somewhere upstream, arguing that a river in flood pouring into a surcharged reservoir—by definition spilling over the top of its ungated spillway—would be inconsistent with the proposed wild and scenic river designation. The Federal wild and scenic river managing agencies and the Congress had previously (and have subsequently) rejected that view in other similar designations. They again rejected that view in 1986 and 1992 since MID cannot physically or meaningfully impound water that was flowing freely over the top of its long ungated spillway and only Providence (not the Congress) could predict how high such a hypothetical flood would be. Contingent on the acceptance of language to make this operational position clear in the statute, the MID board of directors voted 4–0 to support the legislation that ultimately was enacted into law. All was well. The river and the river-based recreation there has prospered.

Reflections

We urge members of the Subcommittee to visit the Merced River canyon on your next trip to Yosemite National Park. Just take Highway 140 from the City of Merced and drive up to the river. The canyon is magnificent. The spring wildflowers are magnificent. The river is a wonder. Get out of your car. Hike or boat down the canyon. Perhaps some day your young and adventurous college-age sons or daughters will mountain bike to Yosemite Valley up the proposed Merced to Yosemite multi-use trail. This is why we have national wild and scenic rivers. Experience it.

Conclusion

H.R. 869 breaks the agreements and understandings that created the Merced River wild and scenic river. The project that it seeks to facilitate will not provide any meaningful project benefits and offers dangers to downstream communities. It disturbs the economic fabric of businesses reliant on the certainties that wild and scenic river designations create. Perhaps most important at all, it tells the American people that Congress is unable or unwilling to abide by the commitments it has made to set aside certain selected rivers and protect them for future generations.

The pact with the American people for the Merced River was made a generation ago with leadership from Republican and Democratic legislators and by Republican presidents. The actions that this Congress takes to defend our country's premier river-protection system are vital to the future National Wild and Scenic River System and have important consequences to our National Park System as well as the Wilderness Preservation System.

Please reject H.R. 869.

Thank you for your consideration today.

Mr. BISHOP. Thank you all, the three witnesses, for your testimony. Questions. Mr. Denham, I will yield my five minutes to you.

Mr. DENHAM. Thank you, Mr. Chair. First of all, Mr. Stork, you just in your testimony discussed about the two million acre-feet of overdraft that we would see in the Central Valley, and I don't dispute that.

You know, we see a lot of areas throughout the Valley that water tables are very, very low, and farmers certainly out of work. If you visited Mendota and seen the 44 percent unemployment and stood on those food lines, you certainly know how bad of a situation that our Central Valley is in now.

Now, I don't believe that—assuming this bill passes and assuming FERC is able to see it in their wisdom to raise the Exchequer Dam by 10 feet—I certainly don't think that this is going to solve all of our problems in the Central Valley.

But don't you think that it helps? Don't you think that the 70,000 new acre-feet of water at least helps the situation?

Mr. STORK. It may not help the District much. The District has a fairly secure and stable water supply, and manages to serve its agricultural areas. It does sell water from time to time to Mr. Costa's Westlands Water District, which has—

Mr. DENHAM. Which is in the Central Valley, correct?

Mr. STORK. It is in the Central Valley, and it also has drainage and impaired lands that are worsened by having more water added to them. But it is a small amount of water.

Mr. DENHAM. So, 20 percent unemployment in the Valley, and areas in the Valley that have 44 percent unemployment, 70,000 acre-feet of new water doesn't help the unemployment issue?

Mr. STORK. We are not sponsoring 70,000 acre-feet of water. You are mixing up storage with yield.

Mr. DENHAM. OK. Any new water storage, you don't think helps the jobs in the Central Valley?

Mr. STORK. Any new water storage? There are also the jobs in Mariposa County associated with the recreation industry that depend on the security of the National Wild and Scenic System.

So I think that we do have a balance here. This is a very small amount of water. It does not solve any water problems with—

Mr. DENHAM. I agree that it does not solve the problem, but it certainly helps with jobs and it certainly helps with water storage, and the availability of water. Do you think that it helps with jobs in Mariposa County?

Mr. STORK. No, I think it hurts jobs in Mariposa County.

Mr. DENHAM. So the project itself will not create any new jobs, the reason that IVW supports the bill? Do you think that they are wrong, and that this does not create any jobs just on the project itself?

Mr. STORK. Well, of course, we are speaking about a hypothetical project that has not even been approved by anyone.

Mr. DENHAM. Well, you are testifying on a hypothetical project, and so it must have some validity.

Mr. STORK. I don't think that a project that raises—

Mr. DENHAM. I would prefer that you just answer the question.

Mr. STORK. No.

Mr. DENHAM. So do you think that IVW is wrong and that this will create no new jobs. How about on the recreation side? I have a number of letters of support here from boating companies that think that this is going to create recreation jobs, and that there will be greater recreation in the area. Do you disagree with that as well?

Mr. STORK. Yes. The boating companies agree that protection of the National Wild and Scenic River System will help create jobs.

Mr. DENHAM. I am just asking about jobs right now. I would to at least like to nail that piece down, and see if we have any agreement. If there is new water storage, which we have documentation that new water storage will help with the farming industry, and new recreation, which boating companies agree will create jobs within the recreation industry, and new construction, which IVW supports because they believe that it is going to create new jobs, but somehow you don't find that there is going to be any job impact in an area that has over 20 percent unemployment, double the Nation's average, and you don't somehow see that there are going to be any new jobs created?

Mr. STORK. I think you have a factual problem with your statement. The boating companies support the National Wild and Scenic System.

Mr. DENHAM. I am not stating a number right now, because I am sure that we would dispute the number back and forth, but any jobs?

Mr. STORK. I don't know the answer, because we are talking about net jobs. Are you talking about net jobs or jobs in one sector taking jobs away from another sector, because that is the issue here.

Mr. DENHAM. Thank you. Mr. Kelly, in simplest terms MID is proposing to raise a spillway by 10 feet. How much water storage do you think this will create?

Mr. KELLY. This will create up to 70,000 acre-feet of storage in a wet year, such as this year. Right now all of the reservoirs in the Central Valley are spilling flood control. It would be great to be able to capture some of that for years, like in 2008 and the drought that we just came out of.

Mr. DENHAM. And 70,000 new acre-feet, I have seen very few people other than today, and I have seen nobody else that is disputing that this 70,000 acre-feet—well, 70,000 new acre-feet will create how many agricultural jobs in the Central Valley?

Mr. KELLY. Oh, gosh. Well, the U.C. Davis study that I quoted, stated that every 100,000 acre-feet of water supports 1200 local jobs. So, roughly 70 percent of that.

Mr. DENHAM. And on the facility itself expanding the dam, assuming that we get to that point, how many jobs would that create?

Mr. KELLY. To raise the spillways that we are proposing, that would be approximately an 18 month long project, and so a full construction crew out there for 18 months, and as you know construction crews in the Central Valley were pretty much shut down with the housing crisis that we have experienced, and so I am sure that they would look forward to that, which is why the IVW is supporting this project.

Mr. DENHAM. Thank you. And the question—

Mr. BISHOP. We will come back to another round for you. Mr. Gosar, do you have questions on this bill?

Dr. GOSAR. I would yield my time to Mr. Denham.

Mr. DENHAM. Thank you, Mr. Gosar, and thank you, Mr. Chair. On the flood control issue, there have been some that said that this somehow won't control floods. Could you expand on that on whether it will or it won't?

Mr. KELLY. Well, I would like to be very clear. This is not a flood control project. This is a water storage project. When we talk about it, we talk about the incidental benefits, and there will be incidental flood control benefits, but that is not the purpose of why we are proposing this project.

Mr. DENHAM. Can you explain what is happening on the Merced River right now today?

Mr. KELLY. Well, on the Merced River right now today, we have large amounts of snow melt coming down. The area that we are talking about where the Wild and Scenic boundary overlap the FERC boundary—and I could not say today because we don't have monitors, but a couple of weeks ago, we went up there and I don't think much has changed.

It was inundated above the 877 elevation that we are talking about. It was at approximately 880-something, and so that area already becomes inundated naturally. And we are anticipating—and this is really a nervous year for reservoir operators because of the amount of snow melt up there.

It has been fairly cool, and so it has not been coming down a lot. There is a lot of water that is going to be coming down, and pretty much be a waste to the ocean.

Mr. DENHAM. And I would agree, and I want to reach out of the Fresno Bee, this morning's paper, that the rising Merced River today may force some Yosemite Valley campers to higher ground,

the National Park Service says. Park officials say that they are telling more than 1600 campers near the river about the risk. We are currently having water flow through that area.

We are certainly in a flood type situation as we were back in 2006, and so it is my belief that this will certainly help us out with both of those situations, especially when in 2006 that we had to have FEMA come into the Merced area.

Mr. KELLY. Yes, sir, and additional spillway capacity height would definitely allow the Army Corps of Engineers and all the other reservoir operators in the Central Valley to have a little more flexibility in urgent situations like this.

Mr. DENHAM. Thank you. And, Mr. Stork, in your testimony, you said that this project would inundate a free-flowing river. We are actually talking about 1800 feet. I know that the Merced River is much longer than 1800 feet.

And on your website, you say that this bill causes a historic new low in the assault on the Nation's environmental laws. Eighteen hundred feet is an assault on the Nation's environmental laws, in an area that is already flooded today, and has flooded several other times, and in an area that we had to have FEMA come in and help out the County of Merced during flood years?

Do you really believe that 1800 feet is something that is going to be an assault on the Nation's environmental laws?

Mr. STORK. Mr. Denham, the land that is being flooded today is the riverbed, and it is being flooded by a free-flowing river as it was intended by the U.S. Congress.

So, no, I am not terribly concerned that water is getting a riverbed wet. What is of concern, and we don't know the exact numbers of the inundation area because it has not been formally surveyed yet, but let's not worry about that. The issue is—

Mr. DENHAM. Well, wait a minute. I am worried about it. You said first that you are not concerned about the jobs, which is a huge issue in the Central Valley, and now you are not concerned about the flooding, which we had to have FEMA come in during 2006, and flooding right now.

And I just read you the Fresno Bee about 1600 campers that are going to be forced to move to higher ground. We obviously have an issue here.

Mr. STORK. Sixteen hundred campers in Yosemite Valley. Mr. Denham, The New Exchequer Dam and the McClure Reservoir are way downstream of the Yosemite Valley. Your project, the Merced Irrigation Project, is not intended to reduce overbank flows in the Merced River and Yosemite Valley.

Mr. DENHAM. So I will go back to the original question. Eighteen hundred feet is all that we are talking about. You do agree that 1800 feet is all that we are talking about here, right?

Mr. STORK. I don't know the number, and as Mr. Kelly knows, we are in the relicensing stage right now, and we don't know the number specifically.

Mr. DENHAM. Let me ask Mr. Kelly. Are we talking about 1800 feet?

Mr. KELLY. Yes, sir.

Mr. DENHAM. And not the entire river?

Mr. KELLY. No, sir.

Mr. STORK. For the purpose of this hearing, I will concede 1800 feet. The question is and which is in front of this Congress, is that for the first time in the history of the National Wild and Scenic River System, has the U.S. Congress decided to allow a reservoir to inundate a National Wild and Scenic River. This is the issue in front of us.

Mr. DENHAM. But just so I understand your position. Regardless of the jobs, regardless of the flood control, your issue is that if we move 5 feet, or 100 feet, or 1800 feet, that moving it at all—if you move it a foot, then you are infringing on a Wild and Scenic, and that could actually open the door to other projects around the Nation?

Mr. STORK. That is correct.

Mr. DENHAM. Thank you.

Mr. BISHOP. Let me ask Mr. Kelly a question of questions if I might so that I understand this properly. First of all, what is the status of this spillway project right now?

Mr. KELLY. The status is that we have performed some high level feasibility analyses. We have not performed any detailed design work due to the uncertainty of FERC being able to consider it.

Mr. BISHOP. So the current level by law is 867?

Mr. KELLY. Yes, sir.

Mr. BISHOP. And this would change it to 877?

Mr. KELLY. Correct.

Mr. BISHOP. So you are telling me that right now it is at almost 890?

Mr. KELLY. Yes, sir.

Mr. BISHOP. So naturally this occurs every so often and you go well above the 877 level?

Mr. KELLY. Yes, sir. It is based on the amount of snow melt in the mountains and sometimes it just does that.

Mr. BISHOP. And FERC says that any change would be messed up simply because of the 1992 Act, and therefore an amendment would be necessary?

Mr. KELLY. Yes, sir. FERC cannot consider relicensing our project above the 867 level because of the specific language in the Act.

Mr. BISHOP. So, Mr. Stork, when you say the purpose of the Wild and Scenic River is to preserve this river for future generations, can I ask for what?

Mr. STORK. As a free-flowing river.

Mr. BISHOP. Why? How does that help future generations?

Mr. STORK. The National Wild and Scenic System's very purpose was to protect Wild and Scenic Rivers free-flowing rivers. That is the purpose. That was considered and still is considered to be the purpose of that system.

Mr. BISHOP. But if the free-flowing process already does not happen—I mean, you already flooded out—what difference does it make? What have you done to future generations?

And besides that, two years ago, we already screwed up the Wild and Scenic River with the Tonto River project, but let's forget that for now. What good does it do if what you are doing is already creating a situation that does what already happened?

Mr. STORK. I think you have a confusion in the testimony. The reservoir is well below the spillway at this time. The river upstream of the reservoir has water in it, and that water has an elevation. The reservoir, the flat water, is way downstream.

Mr. BISHOP. So you just don't want the reservoir, per se?

Mr. STORK. Right. This is not the National Wild and Scenic River Reservoir System. It is a river system.

Mr. BISHOP. So even if the reservoir helps people, it is not worth it?

Mr. STORK. Congress—

Mr. BISHOP. I am sorry, even if the reservoir helps people, it is not worth it?

Mr. STORK. There are 24 miles of the Merced River underneath FERC licensed MID reservoirs at this time.

Mr. BISHOP. Even if it helps people, it is not worth it?

Mr. STORK. It also helps people to have a National Wild and Scenic River System.

Mr. BISHOP. But even if having a reservoir helps people, it is not worth it?

Mr. STORK. And there are 24 miles of the Merced River.

Mr. BISHOP. And this is a small portion, and even if it helps people, it is not worth it? I am sorry, but that is your testimony; even if it helps people, it is not worth it?

Mr. STORK. The Wild and Scenic River System is.

Mr. BISHOP. Mr. Garamendi, you have joined us. Do you have questions on this particular bill?

Mr. GARAMENDI. I do, and there is a great deal of confusion here about what is and what isn't. First of all, the Yosemite Valley floods periodically, and that is a different issue than this entire issue before us.

The issue of the level of water as it enters the lake, it is higher, and as was stated here, and it will eventually level out as it inundates the lake. So we have two different things.

You have the water coming in and it is filling, and as it fills, it is higher, and it is flooding beyond the normal stream bed as it enters the lake. There is no doubt about that.

Now, what we really have here is a very, very important national issue of whether we modify a Wild and Scenic River. There is no doubt about it. But the real issue, the initial issue is the question of FERC's licensing, and whether FERC can consider in its licensing the question of raising the spillway and generating power, additional power, and in doing so, periodically raised the total reservoir level to 897.

And in so doing, about 1800 feet, or 1770 lineal feet, of river will be flooded for a while, and perhaps eight weeks as I understand it. So the question is should FERC be allowed to proceed with its licensing and consider this modification in the reservoir.

I assume that a NEPA and CEQA evaluation will have to be made, and while no Federal funds are involved, we are certainly involving a Federal issue here, and that is the Wild and Scenic River. I don't think that has been done; is that right, Mr. Kelly? That has not been done yet has it?

Mr. KELLY. No, sir. This would have to go through the full NEPA process.

Mr. GARAMENDI. There are a lot of questions out there and a lot of answers will be forthcoming. I know that the Bureau of Reclamation is—excuse me, the Bureau of Land Management is concerned about certain historic artifacts that are in this area, such as the old railroad, and perhaps some mining claims, and also trail access and the like, all of which is going to have to be taken into account when the FERC study is done.

And it may very well be that FERC deems this to be an inappropriate and not allow the 10 foot rise in the level of the lake. That is quite possible. And if they were to allow it, they would probably, as is their custom, require a serious mitigation if the Wild and Scenic River law is modified.

So there are a lot of questions out there, but what I think we really need to do here is to get answers to questions before we modify a Wild and Scenic River legislation, and I think that it is highly likely that this bill will pass in its present form, which I think is premature.

And I would recommend that what the community may want to do is simply allow FERC to conduct the studies, and the NEPA process to go on, and let us figure out the length of time in which the river will be inundated, and the amount or the likelihood of it, and the effect that it would have on vegetation riparian habitat, and on historic artifacts, Indian, and more recent, and what mitigation might be required, and then come back here and see whether we really want to do it given knowledge.

Right now, we don't have the knowledge to do that, and so Mr. Denham, I might suggest that to avoid a lot of conflict, and not all conflict, but a lot of conflict, that instead of waving the Wild and Scenic River, that you simply modify or amend your bill to allow FERC to do what their study, and then come back to the Congress and see if it is worth the concerns that are going to be raised about allowing it to go forward.

You have about two years of study to get the NEPA and CEQA done, and that is at least two years; is that correct?

Mr. KELLY. Yes, sir.

Mr. GARAMENDI. Time enough to find out what the impacts are. We don't know those impacts now. We are guessing. I know that the Bureau of Land Management has some assessments, and those would be part of the FERC study, as would any mitigation that might be allowed.

My 15 minutes or 5 minutes is up, but I think that might be a way of figuring out what all of this will mean to the area, and then we can with that knowledge make a decision of whether we want to change the Wild and Scenic River legislation.

Mr. BISHOP. Mr. Denham, do you have any further questions?

Mr. DENHAM. Yes, Mr. Chairman. Actually, I would like to give Mr. Kelly an opportunity to respond to Mr. Garamendi's concerns as far as whether we hold things up, or whether this actually just gives FERC the opportunity to do those very things to answer his concerns.

Mr. KELLY. Thank you. If H.R. 869 is made law, then FERC would be able to consider the full impact of the project, and the merits of the project, versus the impacts and the required mitigation for it. That is pretty much what we are asking for.

Mr. GARAMENDI. If I might.

Mr. BISHOP. Will the gentleman yield?

Mr. DENHAM. I will yield.

Mr. GARAMENDI. Thank you, Mr. Denham. My point is slightly different, and let me switch to a different microphone so that we can communicate visually as well.

Mr. KELLY. Thank you.

Mr. GARAMENDI. My point is different. The bill as written provides a permanent opportunity to flood this stretch of the Wild and Scenic River. What I am suggesting is that we modify the language here to allow you to go ahead with the FERC study, and then with that information in hand, and that is the NEPA and CEQA, as well as FERC requirements, to come back and we can then make a decision based upon knowledge and information gained from those studies, whether we as a Nation want to modify for the first time ever a Wild and Scenic River.

I understand the merits. It is the process here that we are jumping ahead of knowledge and information, and so I would just say let's get the knowledge, and let's get the information, and then come back to Congress and say it is really in the public interest.

The rivers are only going to be flooded every now and then, every 5 years, or 3 years, or whatever, for a short period of time, and vegetation is not going to be seriously modified, and by the way, FERC is going to require you to put a boat out there to haul the rafters that extra half-mile so they don't have to paddle so hard.

I mean, those are all things that are going to be in the FERC study. You and I both know that. We have been through this many times, and then we can say, yeah, it is not a big deal, and we can make this simple modification, or say that it is one big deal, and we are not about to let this go forward.

But you are going to have to do the studies anyway, and so you are going to be through that process, and then come back to us with that knowledge and information, and give the opportunity for FERC to study this issue. That is my suggestion.

Mr. DENHAM. I would like to reclaim my time, and Mr. Kelly, if you would like to answer. I know that this bill would actually give FERC the opportunity to study this. So if you could expand on that, please.

Mr. KELLY. Yes, sir. Besides the environmental NEPA-CEQA process, it would have to actually go through design review, and I would be happy to take such suggestions to my board of directors, but just so you understand, which I am sure that you do, there is a huge cost in actually preparing a design and going through that. And to expect a local agency to expend that cost without the certainty that it could move forward would be worrisome.

Mr. DENHAM. Thank you, Mr. Kelly. I agree that any water project that we talk about in California, there is always the tactic to slow things down, and let's hold them up further, and let's study them one more time.

I can't afford in my area to watch flooding continue to go on, or ask FEMA to come back and help us one more time, nor can I work those food lines any longer, and just tell people, sorry, we are going to study this for a few more years. You guys are going to have to wait until you find a job.

We have some real problems to solve in the Central Valley, and this is one small piece of that puzzle, and I would like to thank you for bringing this bill to us. I yield back.

Mr. BISHOP. Let me ask one question before I ask Mr. McClintock if he has questions of Mr. Kelly as well. I am assuming that you have already approached FERC as to this situation and potential study. Has FERC told you that they are willing to sans this legislation to do a study on what would basically be an illegal act?

Mr. KELLY. FERC has stated that they could not consider the project because of the legislation. I mean, because of the 1991 and 1992 legislation.

Mr. BISHOP. So would they be willing to do a study, especially if we put a specific time limit on them for something that they don't have the power to actually conclude? Has that been a hang-up in your conversations with FERC?

Mr. KELLY. It has come up, but it has not been resolved, but they have stated explicitly that they cannot issue a new license with such a project unless the law is modified.

Mr. BISHOP. All right. Mr. McClintock, do you have any questions on this particular bill?

Mr. MCCLINTOCK. No, Mr. Chairman.

Mr. BISHOP. All right. Then let me ask one last question, unless someone else has a question any more? Mr. Denham.

[Pause.]

Mr. BISHOP. All right. Mr. Stork, one last question for my own edification. Has your group ever taken or asked for access to EGA funds?

Mr. STORK. I don't even know what that is.

Mr. BISHOP. OK. I have no other questions, and unless there is another Member that has a question, we thank the witnesses once again for being here, and for your testimony, and I appreciate your patience with us.

I want to thank all the witnesses, and both of those witnesses who are still here, as well as others. We will be contacting you, and we ask you for your written response to any questions that are submitted in writing by Members of the Subcommittee as time goes on there.

And if there is no further business, without any objection, this Subcommittee will stand adjourned.

[Whereupon, at 1:18 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

**Statement of The Honorable Jeff Denham, a Representative in Congress
from the State of California**

First, I would like to thank Chairman Bishop for bringing my bill, H.R. 869, before his Subcommittee for this Legislative Hearing. As a Representative from the West, the Chairman is very much aware of the problems that come when dealing with an uncompromising environmental agenda.

My legislation before the committee today is a simple, common-sense bill that will provide for much needed water storage during wet years in the Central Valley of California.

And, this bill has bipartisan support in Congress, from California water organizations throughout the state, cities, counties, labor, and recreationalists.

This past winter was considered a wet water year for California. Currently, dams are in flood control operations and releasing thousands of acre-feet of water due to the lack of sufficient storage.

There is a common saying to “save for a rainy day.” When talking about water and agriculture, the saying needs to be tweaked a little to read as “save on a rainy day,” meaning that we need to be able to save and store the excess water in wet years for when the inevitable drought occurs.

The Central Valley of California is home to the world’s most productive farm land. The economies of most communities in the Valley are buoyed by the agricultural production that occurs throughout the Valley.

I would like to submit for the record a chart that shows a direct correlation to jobs and the amount of water that the Central Valley receives. It clearly shows that a lack of water means that there is a lack of employment opportunities.

My district continually suffers from unacceptably high unemployment. Currently unemployment is hovering around 18 percent, which is about double of the national average.

We are dependent on water for jobs, communities to be sustainable, and livelihoods of farming operations.

H.R. 869 is as simple a piece of legislation that can be drafted to create desperately needed water storage.

Simply stated, the bill will allow for the Merced Irrigation District to raise the level of Lake McClure by 10 feet for 60 days during a wet water year.

With this legislation, the Merced Irrigation District will apply for relicensing with FERC with the proposed spillway modification included in their application. Their application will still be subject to full FERC review process once the application is filed.

This legislation will provide up to 70,000 acre-feet of additional water, which can serve 1,700 homes and generate roughly 10,000 megawatts of clean, renewable electricity on an annual basis.

There is no simpler or more logical a proposal to create jobs and much needed water storage where both are so greatly needed.

Let me also inform this committee that this legislation will not cost any state or federal funds.

Again, let me thank Chairman Bishop for bringing H.R. 869 before this committee, and let me thank Mr. Bryan Kelly for flying out from the Merced Irrigation District to help fully convey what this bill does and how much it is needed.

[The prepared statement of Mr. Larsen follows:]

**Statement of The Honorable Rick Larsen, a Representative in Congress
from the State of Washington (WA-02)**

Chairman Bishop and Ranking Member Grijalva, I would like to thank you for including H.R. 1740 as part of today’s hearing. This legislation, and its companion bill, S. 888, introduced by Senator Patty Murray, would designate portions of Illabot Creek in Skagit County, Washington, as a component of the Wild and Scenic Rivers Act.

Illabot Creek travels from the Glacier Park Wildness Area to the upper Skagit River, falling 7,000 feet during its journey. The water of Illabot Creek provides the optimal conditions for wild Chinook salmon, steelhead and bull trout, species listed as threatened.

My legislation will designate 14.3 miles of Illabot Creek as Wild and Scenic, protecting the strong character of the water for species promulgation while ensuring that hunting and fishing and other recreational activities continue.

I was very pleased when this same legislation was unanimously agreed to in the full Natural Resources Committee last year, and when it was passed by voice vote in the full House. H.R. 1740 reflects the changes adopted by the committee to more specifically designate the area included within the bill.

I would like to thank Lisa Bellefond of The Nature Conservancy for testifying on behalf of the legislation. The Nature Conservancy, along with local elected officials, environmentalists, fisherman, agriculturists and others came together in this effort and we are hopeful to see it move through the process and reach completion.

Thank you again for holding this hearing on H.R. 1740, and for the opportunity to provide this testimony.

