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## **Problems with Draft Bill to Trade Away Oak Flat Campground**

A new version of the Oak Flat / Apache Leap land exchange bill has been recently introduced in both the US House and Senate. On July 24, AZ Senator Jon Kyl (with Senator McCain as a co-sponsor) introduced S. 1862. On July 31, Representative Pastor (with Congressmen Shadegg, Flake, and Mitchell co-sponsoring) introduced H.R. 3301. The bills are essentially the same (although the Senate version is arguably a bit worse.) The bill directs the Forest Service to consummate a land exchange requested by Resolution Copper Company (RRC), a Delaware based limited liability Corporation that is wholly owned by mining giants Rio Tinto (UK) and BHP (Australia).

The short title of the bill is the “Southeast Arizona Land Exchange and Conservation Act of 2007.”

### **This land exchange is a bad deal for communities and water resources in southeast Arizona:**

- There is no language maintaining any public access to the Oak Flat area.
- The land exchange bills provide no acknowledgement that Oak Flat has been federally protected from mining for over 50 years by executive order. This order – PLO 1229 – is still as valid today as it was in 1955.
- The bill fails to require any environmental analyses under the National Environmental Policy Act which could consider the long-term implications of this massive proposed mine.
- Although the express purpose of the bills is to facilitate the development of a mine by Resolution Copper, there is no discussion whatsoever of the mine itself.
- There is no statement of water resource use, acquisition or disposal for the proposed mine at Oak Flat.
- No discussion of the enormous environmental and recreational loss, mountains of mining tailings, and associated pollution caused by this mine.
- The bill does not include copies of maps for the exchange and Congress is not obligated to provide maps unless the bill becomes law.
- There is no discussion of the land values in the bill and no appraisals are needed unless the bill becomes law.
- The bills do not address the loss of access to traditional Western Apache people for religious and cultural purposes to Oak Flats or the protection of artifacts or lands or springs needed by Western Apache other than force Native Americans to get a permit to use their traditional religious sites.
- Apache Leap, an important historical and cultural land mark would not only become private land, it would end up in the middle of a major mine.

### **Section by Section**

#### **Section 4 – Land Conveyances and Exchanges**

- This section lists a series of parcels of land that Resolution Copper would like to exchange for Oak Flat and Apache Leap.
- In addition, RCC would pay to the Federal Treasury the sum of \$7.5 million that could only be used to purchase additional land in Pima and Santa Cruz Counties. (S. 1862 does not contain the restriction that additional land purchased be in Pima and Santa Cruz counties.)
- This section also would allow the town of Superior to purchase at market value the public land on which the Fairview Cemetery is located and would allow the town to buy the reversionary interest of the Superior airport which is located on public land.

- This section would allow RCC to select the appraiser and pay for the appraisal of the lands that are proposed for the land exchange.

### **Section 5 – Valuation of Land Conveyed or Exchanged**

- Only the Secretary of Agriculture determines whether the appraisal is fair.
- The draft forbids any reappraisal or updating of the appraisal.
- There is no provision for public input into the appraisal. The Secretary of Agriculture is required to provide a “summary” of the appraisals but not detailed information.
- While the bill seems to assume that the private lands (plus \$7.5 million) are roughly equal in value than the public land that we would give up forever, there is no mention of the value of the campground or the publicly owned minerals under the surface (which RCC estimates to be worth several billion dollars).

### **Section 6 – Conservation Easement**

- While the bill mentions that the area RCC wants to take from the public is important to Apache Indian Tribes, it still would take the land and only agree to protect Apache Leap, a tiny fraction of the lands valued by the public, including the Tribes.
- The conservation easement cannot impose any additional restrictions on RCC outside the easement area.
- RCC would pay a sum of \$250,000 to the holder of the conservation easement, to be used for enforcement, monitoring, and other activities that would then presumably not be required of the mining company. This would transfer liability from the company to the easement holder should mining activity disrupt Apache Leap.

### **Section 7 – Incorporation, Management, and Status of Acquired Land**

- This section allows the JI Ranch (one of the parcels that would become public) to be used for acorn gathering by Apache Tribes and could be closed by the Forest Service to other purposes.
- The draft states that parcels acquired by the federal government for public use be managed for conservation values, and withdraws the parcels from future mineral entry.

### **Section 8 – Public Uses of Federal Land**

- If the bill becomes law, there is a maximum of two years for the public to have access to the campground even though the company would not be ready to mine for at least another decade.
- RCC is required to pay no more than \$500,000 to replace the Oak Flat Campground.
- The draft bill requires the Secretary of Interior to give an additional 2,000 acres of public land for the creation of a state of Arizona state park to provide for the climbing area lost in the land exchange. However, the state park would charge a fee for use and most climbers consider the “replacement” climbing area to be inferior to Oak Flat.
- RCC is required to pay no more that \$500,000 for the construction of a road to the new climbing area.

### **Section 9 – Traditional Acorn Gathering**

- This section allows RCC to attempt to grant a permit to allow Apache Tribes to gather acorns on what would become their private property. This would essentially force traditional Native Americans to ask permission to exercise their religious traditions – a serious infringement on religious freedom.
- RCC would be able to revoke this permit at any time.
- (S. 1862, the Senate version drops this provision entirely.)

**Conclusion:** While this version of the bill is better than the version introduced in the last Congress, it still falls short of following acceptable mine permitting practices (no NEPA), privatizes valuable public resources and sacred areas without establishing need, and ignores a basic tenet of responsible mining: informed prior consent of the effected local communities.