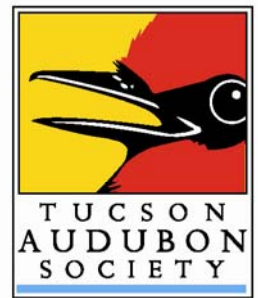


The Honorable Gabrielle Giffords  
United States House of Representatives  
1728 Longworth House Office Building  
Washington, D.C. 20515-0308

May 21, 2009



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Dr Paul Green  
*Executive Director*

Dear Congresswoman Giffords,

Tucson Audubon Society appreciates the opportunity to comment on the bill introduced today in the House by Representative Kirkpatrick regarding Resolution Copper Company (RCC)'s plans for mining near Superior entitled the Southeast Arizona Land Exchange and Conservation Act of 2009.

Though Tucson Audubon is not inherently opposed to a mining operation, we cannot support the bill as presented for the following reasons:

It is not substantially different from any of the previously submitted bills. The bill is first and foremost designed "... to facilitate the efficient extraction of mineral resources ..." and the benefits to conservation are in question, to be determined at a later, unknown date, despite the introductory language.

All assurances are given to RCC in advance of the exchange while possible adverse impacts vs. benefits to the public are to be determined after the fact due, in part, to a lack of a fair, open, and transparent appraisal process. In order for that to occur such that the public could have some assurance of equal value in the exchange, there would need to be a NEPA process with more information on actual values and possible alternatives prior to the exchange. The bill says that the Secretary "may" decide to apply NEPA and then states that the parties may agree that the Secretary of Agriculture take the lead. We believe NEPA is essential prior to the exchange and that the Secretary of the Interior must take the lead.

We are particularly concerned regarding obtaining value for value for such things as potentially impacted endangered cacti, currently undocumented, and especially any and all impacts to the various watershed(s) potentially impacted by future activities of RCC and its minor partner, BHP. This would include an assessment of their proposed impacts to Queen Creek, Devil's Canyon, the Gila River, and the lower San Pedro River.

When representatives of Tucson Audubon met with Mr. Salisbury and Ms. Davies of RCC on May 7<sup>th</sup> of this year we asked them to tell us how this bill differs from the previous bills. Mr. Salisbury mentioned the inclusion of Apache Leap. In fact, the difference is that the previous bill "protected" 695 acres and the current one lists 822 acres. We are not sure this means these lands are protected from undermining, subsidence, or any future mining activities, based on the language. It appears to refer technically to intentional surface disturbance only, and that is unclear. In fact, the issue of potential subsidence and its effects on the surrounding lands have not been adequately addressed, nor or we assured that the method of mining proposed by Resolution is the only option.

Perhaps most important to us, Mr. Salisbury mentioned that our previously stated concerns regarding the potential dewatering of the lower San Pedro River by the Pinal County approved housing development for up to 35,000 homes atop 23,234 acres of BHP's reclaimed lands near

San Manuel might be addressed by the substitution of a solar farm. We have seen no information confirming this possible option, how the BHP water rights would be impacted by this option, nor are we aware of what the plan B would be for the land and the water rights if solar were determined to not be a best use of those parcels.

The dewatering of Salt River Project (SRP) and the Bureau of Reclamation (BOR) mitigation lands, as well as lands owned and managed for conservation by the Nature Conservancy (TNC) along the lower San Pedro River for endangered species downstream of BHP's lands, or the 7 B bosque immediately downstream of the proposed housing development and proposed as a part of the exchange, is a completely unacceptable option.

Taxpayers' dollars have heavily invested in mitigation along the lower San Pedro so that the residents of the city of Phoenix could have an assured water supply. Without the inclusion in the proposed land exchange of a determination of the fate of BHP's San Manuel river lands and the associated water rights, there is no point in acquiring the 7B bosque for mitigation and conservation. Other entities will find it difficult, if not impossible, to meet their mitigation requirements along the lower San Pedro River.

There are many other questions. Why is there no specific mention of President Eisenhower's proclamation withdrawing Oak Flat from mineral exploration and extraction in 1955 (Public Land Order 1229) or justification for rescinding it? Is Oak Flat necessary for their operation and what will the effects to the area be? Apparently, neither we, nor they, know. To the best of our understanding, maps are not included in this bill and will only be made available after the legislation passes. Is this fair, open, and transparent? We seriously question the ability of the agencies potentially involved to complete this process within one year—they have neither the funds or the staff to do so at this time.

Another potential area of concern mentioned by Mr. Salisbury is the possible use of the Pinto Creek mine site for their excavated mine waste and the future processing of their ore, which would require tunneling from Superior. We have also repeatedly expressed concern regarding a fair royalty for these operations. RCC has yet to pay royalties on its mine in Alaska, though royalty language was included in that bill.

Lastly, though we would not presume to speak for them, we have yet to hear from the Apache, Yavapai, or Gila Nations as to how they view the proposed effects of RCC's activities on their traditional lands and their watersheds. Why should they need to obtain permits to use their traditional lands? Will RCC provide a cultural center for the Apache along the lower San Pedro? RCC has yet to address these and many other concerns raised in our conversations with them. While we appreciate an ongoing, cordial opportunity for dialogue with RCC, they have been unable to answer many of our questions. If this land exchange proposal goes forward, the American people need to be sure that they benefit in the trade—that means that there will need to be functional and meaningful mitigation and conservation for at least the full value of what we are losing.

Thank you for the opportunity to express our concerns. We look forward to a carefully considered debate of these, and other, issues regarding the proposed land exchange and hopefully some answers to our questions.

Sincerely,



Christina Record McVie  
Conservation Chair | Tucson Audubon



Dr Paul Green  
Executive Director | Tucson Audubon