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**Subject: S409 Southeast Arizona Land Exchange and Conservation Act 2009**

Dear Mr. Brooks:

Tucson Audubon Society (TAS) has been active in southeastern Arizona since our formation in 1949. Through education, recreation, restoration, and conservation activities, we focus attention on the conservation of birds and their habitats upon which people and other species of wildlife depend. As a 501(c)(3) non-profit, non-governmental organization, we work with many agencies, governmental entities, private landowners, academics, and all citizens to achieve our mutual goals of developing strong communities and economies, maintaining our quality of life, and improving our ability to adapt to changing circumstances including climate change.

The loss of southwestern riparian habitats has long been recognized as a threat to life in the desert, most recently in 2007 by the American Bird Conservancy, which rates southwestern riparian habitats as the fifth most threatened bird habitat in the United States. Riparian habitats serve as a primary focus for the conservation activities of the Tucson Audubon Society.

The Sonoran desert upland and riparian parcels along the lower San Pedro River owned by BHP-Billiton (BHP) are crucial to the survival of the last free-flowing river in the desert southwestern United States. In 2005, The Arizona Republic reported that the Pinal County Board of Supervisors approved a master plan amendment that would allow for 23,234 acres of BHP's land to be rezoned for as many as 35,000 homes.

BHP owns more than 7000 acres of rare cottonwood-willow forest habitat upstream from the 7 B Ranch. BHP's riparian lands and associated uplands, must be

included in S. 409 and protected, as well as the 7 B Ranch already included in the S. 409 proposal. BHP's proposed development would dewater the river, which feeds this vital habitat.

Other parcels likely to be impacted by this development include downstream lands owned and operated for conservation values by The Nature Conservancy (TNC), the Bureau of Reclamation (BOR), and the Salt River Project (SRP). The lands managed by SRP are held as mitigation for the development of the Roosevelt dam and lake, which provides water for the city of Phoenix. Dewatering the riparian forests of the lower San Pedro River threatens all of these mitigation measures. These BHP riparian lands, with their associated uplands and water rights, must be conserved, managed, and monitored to protect the lower San Pedro River in perpetuity, with sufficient designated funding to accomplish these activities. A piecemeal approach to river conservation will not work.

BHP is a 45% minority partner in the Resolution Copper Company (RCC) joint venture with Rio Tinto (55% majority partner). BHP must understand the pre-eminent importance of its actions along the lower San Pedro and their linkage to the proposed mine at Superior. As the RCC ore body is world-class, so is the San Pedro River world-class in its international biological significance. In order for any mitigation for RCC's mine at Superior to be taken seriously, BHP must spell out exactly what its plans are and how they will assure the protection of the lower San Pedro River.

Arizona Representatives Grijalva, Giffords, and Mitchell have all written to RCC to advocate for the inclusion of the BHP property in the exchange as a means of enhancing the protection of the lower San Pedro River watershed through the establishment of a protected conservation area. The San Pedro River is of international importance and is considered a primary pollinator and migratory pathway that supports our nation's ability to feed itself while providing diverse habitats essential for almost 400 species of migratory birds, 80 species of mammals, and 40 species of reptiles and amphibians, some of which are listed as threatened and endangered species under the Endangered Species Act (ESA).

Tucson Audubon Society supports the designation of the lower San Pedro River as a National Wildlife Refuge as it is the purview of the US Fish and Wildlife Service to manage lands for the threatened and endangered species of our nation. No other agency or designation will achieve the conservation of these species and this valuable habitat as well. We believe the land exchange contemplated by S. 409 should be contingent upon inclusion of BHP's uplands, riparian lands, and water rights, and that monies must be designated for additional land purchases, management, and monitoring for the new conservation area in perpetuity.

While the entire San Pedro River is a conservation priority of our organization, the lower San Pedro is our focus because it has not enjoyed the protections afforded the upper San Pedro by its designation

as the nation's first Riparian National Conservation Area in 1988. This legislative land exchange must address the lower San Pedro River in order to balance the profound environmental impacts of the proposed Resolution Copper Company mine at Superior, Arizona.

Currently, there is minimal support for this exchange in the conservation community in Arizona. RCC looks to generate vast sums of monies with their world-class mining venture at Superior, Arizona with its world-class ore body. The citizens of Arizona would have nothing of equal, truly world-class biological value without the inclusion of BHP's uplands, riparian lands, and water rights and the designation and protection of the lower San Pedro River.

We think that it is critical that the appraisal process be open and transparent so that the public can better evaluate whether they are getting a fair exchange from the companies.

We seek assurances that the National Environmental Policy Act (NEPA) will apply to all future mining-related activities should this exchange go forward. Royalties are another concern. We have numerous questions regarding the possible adverse consequences to the environment of the mining process as it evolves, especially to any riparian areas potentially impacted.

You can find more information on this issue at [www.tucsonaudubon.org](http://www.tucsonaudubon.org). We are available should you have any questions and thank you for the opportunity to provide comments. We respectfully request that these issues be resolved prior to your committee moving this item forward.



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