



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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June 26, 2009

The Honorable Ron Wyden, Chairman
Subcommittee on Public Lands and Forests
304 Dirksen Senate Building
Washington, DC 20510

Re: S. 409; Southeast Arizona Land Exchange and Conservation Act of 2009

Dear Chairman Wyden:

The Arizona Game and Fish Commission (Commission) appreciates the opportunity to provide comments to the Subcommittee on Energy and Natural Resources as it deliberates S. 409; Southeast Arizona Land Exchange and Conservation Act of 2009. The Arizona Game and Fish Department (Department), under the authority of the Commission and under Title 17 of the Arizona Revised Statutes, has jurisdiction over wildlife in the State of Arizona. The Commission recommends the subject legislation address the following issues:

Financial Assurances

In spite of the Commission's repeated request that any land exchange be contingent upon completion of both an operations plan and a reclamation plan (including evidence of financial assurances for future mitigation), the implementation of such plans and monetary assurances obligating Resolution Copper remediate potential damages have not been addressed in the current legislation. Furthermore, because exchange lands require long-term management, it is important that S. 409 identify long-term guaranteed funding for those properties.

Mitigation Strategy

Without reviewing the specifics pertaining to how the mining operation will be conducted (mining method and smelting activities), the Department is unable to assess future potential risks to wildlife and recommend appropriate mitigation measures. Details identifying the leaching agents to be used and the plans for disposal of tailings would help determine the level of impacts to wildlife. An operational plan would provide such details and identify mitigation strategies to be employed throughout the life of the mining operation. Additionally, this plan should also include an emergency hazard response plan for potential contamination during mining operations, as well as identify and fund reclamation tasks when the mine is decommissioned.

NEPA Compliance

The proposed legislation states the National Environmental Policy Act (NEPA) compliance process will be conducted after the land exchange is consummated. NEPA provides for significant public involvement to ensure the protection of public resources and environmental

Chairman Wyden

Re: S. 409; Southeast Arizona Land Exchange and Conservation Act of 2009

Page 2

safeguards; as written, S. 409 will not afford the public opportunity to review and comment on the full disclosure of proposed mining operations and associated impacts (beneficial and adverse). An environmental analysis and associated mitigation plan should be developed to address impacts of the mining operation on the fish and wildlife resources and wildlife-related recreation.

Royalty Payments

S. 409 provides for annual royalty payments (Royalty) by Resolution Copper to the United States when their cumulative production exceeds the amount of production estimated in the appraisal analysis. Royalty rates will be calculated using a Federal Royalty Rate (yet to be established) or by applying the Royalty rate used in the royalty income approach analysis of the appraisal (which was approved by both parties). Any funds generated by these payments would be deposited into a special account in the U.S. Treasury and made available, without further appropriation, to the Secretary and the Secretary of Interior as they may jointly agree to use for acquisition of lands or interests in lands in the State of Arizona. It is difficult to estimate what the amount of Royalties might be, if any, since the Royalty figures associated with the appraisal are not available for inspection at this time. Additionally, the Royalty amounts would vary with the production and sales decisions of Resolution Copper. At this time there is no means of determining if these potential Royalty payments would be viable, much less substantive.

BHP-Billiton (BHP)

As the minority partner (45%) in the Resolution Copper Corporation (Resolution Copper) and owner of approximately 26,000 acres approved for development near the town of San Manuel, Arizona, BHP is in a unique position to manage this property in a manner that would provide permanent protection to the Lower San Pedro River Basin. If developed, increased water use at this property would negatively impact the adjacent riparian habitat and critical migratory wildlife corridor which provides crucial habitat for Federally protected and other sensitive species. This development may potentially impact significant conservation and mitigation investments made by the Salt River Project and the Bureau of Reclamation located downstream of San Manuel. The San Manuel development may also impact the Arizona State Land Department's extensive holdings, ultimately increasing pressure to develop additional lands along the Lower San Pedro River.

The Commission recommends Resolution Copper work with Arizona stakeholders to resolve and address the issues expressed above. For further coordination regarding this matter please contact Larry Voyles, Arizona Game and Fish Department Director at (623) 236-7278 or email at lvoyles@azgfd.gov.

Sincerely,



Bob Hernbrode, Chairman

Arizona Game and Fish Commission

cc: Larry D. Voyles, Director, Arizona Game and Fish Department
Arizona Congressional Delegation

Michael Anable, Senior Policy Advisor for Natural Resources, Agriculture and Environment, Office of the Governor