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112th CONGRESS

1st Session

H. R. 1904

[Report No. 112-246]

To facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 13, 2011

Mr. GOSAR (for himself, Mr. FRANKS of Arizona, Mr. QUAYLE, Mr. FLAKE, and Mr. SCHWEIKERT) introduced the following bill; which was referred to the Committee on Natural Resources

October 14, 2011

Additional sponsors: Mr. TIPTON, Mr. MANZULLO, Mr. CHAFFETZ, Mr. BISHOP of Utah, Mrs. LUMMIS, Mr. PEARCE, Mr. LUETKEMEYER, Mr. SESSIONS, Mr. LANDRY, Mr. BROOKS, Mr. CARTER, Mr. FLORES, Mr. REED, Mr. WALDEN, Mrs. MCMORRIS RODGERS, Mr. YOUNG of Alaska, Mr. KELLY, Mr. HECK, Mr. AMODEI, Mr. SOUTHERLAND, Mr. THOMPSON of Pennsylvania, Mr. STUTZMAN, Mr. LANKFORD, and Mr. SIMPSON

October 14, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 13, 2011]

A BILL

To facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the `Southeast Arizona Land Exchange and Conservation Act of 2011'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

Sec. 3. Definitions.

Sec. 4. Land exchange.

Sec. 5. Conveyance and management of non-Federal land.

Sec. 6. Value adjustment payment to United States.

Sec. 7. Withdrawal.

Sec. 8. Apache leap.

Sec. 9. Conveyances to town of Superior, Arizona.

Sec. 10. Miscellaneous provisions.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings- Congress finds that--

(1) the land exchange furthers public objectives referenced in section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) including--

(A) promoting significant job and other economic opportunities in a part of the State of Arizona that has a long history of mining, but is currently experiencing high unemployment rates and economic difficulties;

(B) facilitating the development of a world-class domestic copper deposit capable of meeting a significant portion of the annual United States demand for this strategic and important mineral, in an area which has already been subject to mining operations;

(C) significantly enhancing Federal, State, and local revenue collections in a time of severe governmental budget shortfalls;

(D) securing Federal ownership and protection of land with significant fish and wildlife, recreational, scenic, water, riparian, cultural, and other public values;

(E) assisting more efficient Federal land management via Federal acquisition of land for addition to the Las Cienegas and San Pedro National Conservation Areas, and to the Tonto and Coconino National Forests;

(F) providing opportunity for community expansion and economic diversification adjacent to the towns of Superior, Miami, and Globe, Arizona; and

(G) protecting the cultural resources and other values of the Apache Leap escarpment located near Superior, Arizona; and

(2) the land exchange is, therefore, in the public interest.

(b) Purpose- It is the purpose of this Act to authorize, direct, facilitate, and expedite the exchange of land between Resolution Copper and the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) APACHE LEAP- The term `Apache Leap' means the approximately 807 acres of land depicted on the map entitled `Southeast Arizona Land Exchange and Conservation Act of 2011-Apache Leap' and dated March 2011.

(2) FEDERAL LAND- The term `Federal land' means the approximately 2,422 acres of land located in Pinal County, Arizona, depicted on the map entitled `Southeast Arizona Land Exchange and Conservation Act of 2011-Federal Parcel-Oak Flat' and dated March 2011.

(3) INDIAN TRIBE- The term `Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) NON-FEDERAL LAND- The term `non-Federal land' means the parcels of land owned by Resolution Copper that are described in section 5(a) and, if necessary to equalize the land exchange under section 4, section 4(e)(2)(A)(i).

(5) OAK FLAT CAMPGROUND- The term `Oak Flat Campground' means the approximately 50 acres of land comprising approximately 16 developed campsites depicted on the map entitled `Southeast Arizona Land Exchange and Conservation Act of 2011-Oak Flat Campground' and dated March 2011.

(6) OAK FLAT WITHDRAWAL AREA- The term `Oak Flat Withdrawal Area' means the approximately 760 acres of land depicted on the map entitled `Southeast Arizona Land Exchange and Conservation Act of 2011-Oak Flat Withdrawal Area' and dated March 2011.

(7) RESOLUTION COPPER- The term `Resolution Copper' means Resolution Copper Mining, LLC, a Delaware limited liability company, including any successor, assign, affiliate, member, or joint venturer of Resolution Copper Mining, LLC.

(8) SECRETARY- The term `Secretary' means the Secretary of Agriculture.

(9) STATE- The term `State' means the State of Arizona.

(10) TOWN- The term `Town' means the incorporated town of Superior, Arizona.

SEC. 4. LAND EXCHANGE.

(a) *In General-* Subject to the provisions of this Act, if Resolution Copper offers to convey to the United States all right, title, and interest of Resolution Copper in and to the non-Federal land, 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.

(b) *Conditions on Acceptance-* Title to any non-Federal land conveyed by Resolution Copper to the United States under this Act shall be in a form that--

(1) is acceptable to the Secretary, for land to be administered by the Forest Service and the Secretary of the Interior, for land to be administered by the Bureau of Land Management; and

(2) conforms to the title approval standards of the Attorney General of the United States applicable to land acquisitions by the Federal Government.

(c) *Consultation With Indian Tribes-* If not undertaken prior to enactment of this Act, within 30 days of the date of enactment of this Act, the Secretary shall engage in government-to-government consultation with affected Indian tribes concerning issues related to the land exchange, in accordance with applicable laws (including regulations).

(d) *Appraisals-*

(1) *IN GENERAL-* As soon as practicable after the date of enactment of this Act, the Secretary and Resolution Copper shall select an appraiser to conduct appraisals of the Federal land and non-Federal land in compliance with the requirements of section 254.9 of title 36, Code of Federal Regulations.

(2) *REQUIREMENTS-*

(A) *IN GENERAL-* Except as provided in subparagraph (B), an appraisal prepared under this subsection shall be conducted in accordance with nationally recognized appraisal standards, including--

(i) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(ii) the Uniform Standards of Professional Appraisal Practice.

(B) *FINAL APPRAISED VALUE-* After the final appraised values of the Federal land and non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value--

(i) for a period of 3 years beginning on the date of the approval by the Secretary of the final appraised value; or

(ii) at all, in accordance with section 254.14 of title 36, Code of Federal Regulations (or a successor regulation), after an exchange agreement is entered into by Resolution Copper and the Secretary.

(C) IMPROVEMENTS- Any improvements made by Resolution Copper prior to entering into an exchange agreement shall not be included in the appraised value of the Federal land.

(D) PUBLIC REVIEW- Before consummating the land exchange under this Act, the Secretary shall make the appraisals of the land to be exchanged (or a summary thereof) available for public review.

(3) APPRAISAL INFORMATION- The appraisal prepared under this subsection shall include a detailed income capitalization approach analysis of the market value of the Federal land which may be utilized, as appropriate, to determine the value of the Federal land, and shall be the basis for calculation of any payment under section 6.

(e) Equal Value Land Exchange-

(1) IN GENERAL- The value of the Federal land and non-Federal land to be exchanged under this Act shall be equal or shall be equalized in accordance with this subsection.

(2) SURPLUS OF FEDERAL LAND VALUE-

(A) IN GENERAL- If the final appraised value of the Federal land exceeds the value of the non-Federal land, Resolution Copper shall--

(i) convey additional non-Federal land in the State to the Secretary or the Secretary of the Interior, consistent with the requirements of this Act and subject to the approval of the applicable Secretary;

(ii) make a cash payment to the United States; or

(iii) use a combination of the methods described in clauses (i) and (ii), as agreed to by Resolution Copper, the Secretary, and the Secretary of the Interior.

(B) AMOUNT OF PAYMENT- The Secretary may accept a payment in excess of 25 percent of the total value of the land or interests conveyed, notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(C) DISPOSITION AND USE OF PROCEEDS- Any amounts received by the United States under this subparagraph shall be deposited in the fund established under Public Law 90-171 (commonly known as the 'Sisk Act'; 16 U.S.C. 484a) and shall be made available to the Secretary for the acquisition of land for addition to the National Forest System.

(3) SURPLUS OF NON-FEDERAL LAND- If the final appraised value of the non-Federal land exceeds the value of the Federal land--

(A) the United States shall not make a payment to Resolution Copper to equalize the value; and

(B) except as provided in section 9(b)(2)(B), the surplus value of the non-Federal land shall be considered to be a donation by Resolution Copper to the United States.

(f) Oak Flat Withdrawal Area-

(1) PERMITS- Subject to the provisions of this subsection and notwithstanding any withdrawal of the Oak Flat Withdrawal Area from the mining, mineral leasing, or public land laws, the Secretary, upon enactment of this Act, shall issue to Resolution Copper--

(A) if so requested by Resolution Copper, within 30 days of such request, a special use permit to carry out mineral exploration activities under the Oak Flat Withdrawal Area from existing drill pads located outside the Area, if the activities would not disturb the surface of the Area; and

(B) if so requested by Resolution Copper, within 90 days of such request, a special use permit to carry out mineral exploration activities within 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 on the Campground.

(2) CONDITIONS- Any activities undertaken in accordance with this subsection shall be subject to such reasonable terms and conditions as the Secretary may require.

(3) TERMINATION- The authorization for Resolution Copper to undertake mineral exploration activities under this subsection shall remain in effect until the Oak Flat Withdrawal Area land is conveyed to Resolution Copper in accordance with this Act.

(g) Costs- As a condition of the land exchange under this Act, Resolution Copper shall agree to pay, without compensation, all costs that are--

(1) associated with the land exchange and any environmental review document under subsection (j); and

(2) agreed to by the Secretary.

(h) Use of Federal Land- The Federal land to be conveyed to Resolution Copper under this Act shall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership.

(i) Intent of Congress- It is the intent of Congress that the land exchange directed by this Act shall be consummated not later than one year after the date of enactment of this Act.

(j) Environmental Compliance- Compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) under this Act shall be as follows:

(1) Prior to commencing production in commercial quantities of any valuable mineral from the Federal land conveyed to Resolution Copper under this Act (except for any production from exploration and mine development shafts, adits, and tunnels needed to determine feasibility and pilot plant testing of commercial production or to access the ore body and tailing deposition areas), Resolution Copper shall submit to the Secretary a proposed mine plan of operations.

(2) The Secretary shall, within 3 years of such submission, complete preparation of an environmental review document in accordance with section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)) which shall be used as the basis for all decisions under applicable Federal laws, rules and regulations regarding any Federal actions or authorizations 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.

SEC. 5. CONVEYANCE AND MANAGEMENT OF NON-FEDERAL LAND.

(a) Conveyance- On receipt of title to the Federal land, Resolution Copper shall simultaneously convey--

(1) to the Secretary, all right, title, and interest that the Secretary determines to be acceptable in and to--

(A) the approximately 147 acres of land located in Gila County, Arizona, depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Turkey Creek' and dated March 2011;

(B) the approximately 148 acres of land located in Yavapai County, Arizona, depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Tangle Creek' and dated March 2011;

(C) the approximately 149 acres of land located in Maricopa County, Arizona, depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Cave Creek' and dated March 2011;

(D) the approximately 640 acres of land located in Coconino County, Arizona, depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-East Clear Creek' and dated March 2011; and

(E) the approximately 110 acres of land located in Pinal County, Arizona, depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Apache Leap South End' and dated March 2011; and

(2) to the Secretary of the Interior, all right, title, and interest that the Secretary of the Interior determines to be acceptable in and to--

(A) the approximately 3,050 acres of land located in Pinal County, Arizona, identified as 'Lands to DOI' as generally depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Lower San Pedro River' and dated July 6, 2011;

(B) the approximately 160 acres of land located in Gila and Pinal Counties, Arizona, identified as 'Lands to DOI' as generally depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Dripping Springs' and dated July 6, 2011; and

(C) the approximately 940 acres of land located in Santa Cruz County, Arizona, identified as 'Lands to DOI' as generally depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Non-Federal Parcel-Appleton Ranch' and dated July 6, 2011.

(b) Management of Acquired Land-

(1) LAND ACQUIRED BY THE SECRETARY-

(A) IN GENERAL- Land acquired by the Secretary under this Act shall--

(i) become part of the national forest in which the land is located; and

(ii) be administered in accordance with the laws applicable to the National Forest System.

(B) BOUNDARY REVISION- On the acquisition of land by the Secretary under this Act, the boundaries of the national forest shall be modified to reflect the inclusion of the acquired land.

(C) LAND AND WATER CONSERVATION FUND- For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of a national forest in which land acquired by the Secretary is located shall be deemed to be the boundaries of that forest as in existence on January 1, 1965.

(2) LAND ACQUIRED BY THE SECRETARY OF THE INTERIOR-

(A) SAN PEDRO NATIONAL CONSERVATION AREA-

(i) IN GENERAL- The land acquired by the Secretary of the Interior under subsection (a)(2)(A) shall be added to, and administered as part of, the San Pedro National Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area.

(ii) MANAGEMENT PLAN- Not later than 2 years after the date on which the land is acquired, the Secretary of the Interior shall update the management plan for the San Pedro National Conservation Area to reflect the management requirements of the acquired land.

(B) DRIPPING SPRINGS- Land acquired by the Secretary of the Interior under subsection (a)(2)(B) shall be managed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and applicable land use plans.

(C) LAS CIENEGAS NATIONAL CONSERVATION AREA- Land acquired by the Secretary of the Interior under subsection (a)(2)(C) shall be added to, and administered as part of, the Las Cienegas National Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area.

(c) Surrender of Rights- In addition to the conveyance of the non-Federal land to the United States under this Act, and as a condition of the land exchange, Resolution Copper shall surrender to the United States, without compensation, the rights held by Resolution Copper under the mining laws and other laws of the United States to commercially extract minerals under Apache Leap.

SEC. 6. VALUE ADJUSTMENT PAYMENT TO UNITED STATES.

(a) Annual Production Reporting-

(1) REPORT REQUIRED- As a condition of the land exchange under this Act, Resolution Copper shall submit to the Secretary of the Interior an annual report indicating the quantity of locatable minerals produced during the preceding calendar year in commercial quantities from the Federal land conveyed to Resolution Copper under section 4. The first report is required to be submitted not later than February 15 of the first calendar year beginning after the date of commencement of

production of valuable locatable minerals in commercial quantities from such Federal land. The reports shall be submitted February 15 of each calendar year thereafter.

(2) SHARING REPORTS WITH STATE- The Secretary shall make each report received under paragraph (1) available to the State.

(3) REPORT CONTENTS- The reports under paragraph (1) shall comply with any recordkeeping and reporting requirements prescribed by the Secretary or required by applicable Federal laws in effect at the time of production.

(b) Payment on Production- If the cumulative production of valuable locatable minerals produced in commercial quantities from the Federal land conveyed to Resolution Copper under section 4 exceeds the quantity of production of locatable minerals from the Federal land used in the income capitalization approach analysis prepared under section 4(d)(3), Resolution Copper shall pay to the United States, by not later than March 15 of each applicable calendar year, a value adjustment payment for the quantity of excess production at the same rate assumed for the income capitalization approach analysis prepared under section 4(d)(3).

(c) State Law Unaffected- Nothing in this section modifies, expands, diminishes, amends, or otherwise affects any State law relating to the imposition, application, timing, or collection of a State excise or severance tax.

(d) Use of Funds-

(1) SEPARATE FUND- All funds paid to the United States under this section shall be deposited in a special fund established in the Treasury and shall be available to the Secretary and the Secretary of the Interior only for the purposes authorized by paragraph (2).

(2) AUTHORIZED USE- Amounts in the special fund established pursuant to paragraph (1) shall be used for maintenance, repair, and rehabilitation projects for Forest Service and Bureau of Land Management assets.

SEC. 7. WITHDRAWAL.

Subject to valid existing rights, Apache Leap and any land acquired by the United States under this Act are withdrawn from all forms of--

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under the mineral leasing, mineral materials, and geothermal leasing laws.

SEC. 8. APACHE LEAP.

(a) Management-

(1) IN GENERAL- The Secretary shall manage Apache Leap to preserve the natural character of Apache Leap and to protect archeological and cultural resources located on Apache Leap.

(2) *SPECIAL USE PERMITS-* The Secretary may issue to Resolution Copper special use permits allowing Resolution Copper to carry out underground activities (other than the commercial extraction of minerals) under the surface of Apache Leap that the Secretary determines would not disturb the surface of the land, subject to any terms and conditions that the Secretary may require.

(3) *FENCES; SIGNAGE-* The Secretary may allow use of the surface of Apache Leap for installation of fences, signs, monitoring devices, or other measures necessary to protect the health and safety of the public, protect resources located on Apache Leap, or to ensure that activities conducted under paragraph (2) do not affect the surface of Apache Leap.

(b) *Plan-*

(1) *IN GENERAL-* Not later than 3 years after the date of enactment of this Act, the Secretary, in consultation with affected Indian tribes, the Town, Resolution Copper, and other interested members of the public, shall prepare a management plan for Apache Leap.

(2) *CONSIDERATIONS-* In preparing the plan under paragraph (1), the Secretary shall consider whether additional measures are necessary to--

(A) *protect the cultural, archaeological, or historical resources of Apache Leap, including permanent or seasonal closures of all or a portion of Apache Leap; and*

(B) *provide access for recreation.*

(c) *Mining Activities-* The provisions of this section shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area beyond those otherwise applicable to mining activities on privately owned land under Federal, State, and local laws, rules and regulations.

SEC. 9. CONVEYANCES TO TOWN OF SUPERIOR, ARIZONA.

(a) *Conveyances-* On request from the Town and subject to the provisions of this section, the Secretary shall convey to the Town the following:

(1) *Approximately 30 acres of land as depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Federal Parcel-Fairview Cemetery' and dated March 2011.*

(2) *The reversionary interest and any reserved mineral interest of the United States in the approximately 265 acres of land located in Pinal County, Arizona, as depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Federal Reversionary Interest-Superior Airport' and dated March 2011.*

(3) *The approximately 250 acres of land located in Pinal County, Arizona, as depicted on the map entitled 'Southeast Arizona Land Exchange and Conservation Act of 2011-Federal Parcel-Superior Airport Contiguous Parcels' and dated March 2011.*

(b) *Payment-* The Town shall pay to the Secretary the market value for each parcel of land or interest in land acquired under this section, as determined by appraisals conducted in accordance with section 4(d).

(c) Sisk Act- Any payment received by the Secretary from the Town under this section shall be deposited in the fund established under Public Law 90-171 (commonly known as the `Sisk Act') (16 U.S.C. 484a) and shall be made available to the Secretary for the acquisition of land for addition to the National Forest System.

(d) Terms and Conditions- The conveyances under this section shall be subject to such terms and conditions as the Secretary may require.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) Revocation of Orders; Withdrawal-

(1) REVOCATION OF ORDERS- Any public land order that withdraws the Federal land from appropriation or disposal under a public land law shall be revoked to the extent necessary to permit disposal of the land.

(2) WITHDRAWAL- On the date of enactment of this Act, if the Federal land or any Federal interest in the non-Federal land to be exchanged under section 4 is not withdrawn or segregated from entry and appropriation under a public land law (including mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.)), the land or interest shall be withdrawn, without further action required by the Secretary concerned, from entry and appropriation. The withdrawal shall be terminated--

(A) on the date of consummation of the land exchange; or

(B) if Resolution Copper notifies the Secretary in writing that it has elected to withdraw from the land exchange pursuant to section 206(d) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716(d)).

(3) RIGHTS OF RESOLUTION COPPER- Nothing in this Act shall interfere with, limit, or otherwise impair, the unpatented mining claims or rights currently held by Resolution Copper on the Federal land, nor in any way change, diminish, qualify, or otherwise impact Resolution Copper's rights and ability to conduct activities on the Federal land under such unpatented mining claims and the general mining laws of the United States, including the permitting or authorization of such activities.

(b) Maps, Estimates, and Descriptions-

(1) MINOR ERRORS- The Secretary concerned and Resolution Copper may correct, by mutual agreement, any minor errors in any map, acreage estimate, or description of any land conveyed or exchanged under this Act.

(2) CONFLICT- If there is a conflict between a map, an acreage estimate, or a description of land in this Act, the map shall control unless the Secretary concerned and Resolution Copper mutually agree otherwise.

(3) AVAILABILITY- On the date of enactment of this Act, the Secretary shall file and make available for public inspection in the Office of the Supervisor, Tonto National Forest, each map referred to in this Act.

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