



Legislative Bulletin October 26, 2011

Contents:

H.R. 1904 - Southeast Arizona Land Exchange and Conservation Act of 2011

H.R. 1904 - Southeast Arizona Land Exchange and Conservation Act of 2011 (Gosar, R-AZ)

Order of Business: The bill is scheduled to be considered on Wednesday, October 26, 2011 under a structured rule, [H.Res. 444](#). The rule provides for one hour of general debate, waives all points of order against consideration of the bill, and one motion to recommit with or without instructions.

Summary: H.R. 1904 authorizes the Secretary of Agriculture (Secretary) to exchange 2,422 acres in Pinal County, Arizona, to Resolution Copper Mining, LLC. Resolution Copper would be required to simultaneously convey eight separate parcels totaling approximately 5,344 acres. Of the acreage currently owned by Resolution Copper, approximately 1,194 acres would be conveyed to the Secretary of Agriculture, and 4,150 acres would be conveyed to the Secretary of the Interior.

The legislation directs the Secretary to have all parcels appraised. In the event that the U.S. government is conveying land of greater value than it is receiving, the legislation directs Resolution Copper to convey additional lands in Arizona, or make a cash payment, to the Secretary to equalize the value. In the event that Resolution Copper is conveying land of greater value than it is receiving, the legislation directs the U.S. government to make a payment to Resolution Copper to equalize the value. These appraisals shall take into account the value of minerals located in the federal lands.

H.R. 1904 directs the Secretary, upon request, to convey special use mining permits to Resolution Copper for certain lands classified as the Oak Flat Withdrawal Area. Additionally, the Secretary may issue permits to Resolution Copper for underground activities (other than commercial mineral extraction) of Apache Leap. Resolution Copper currently has rights to Apache Leap and H.R. 1904 requires those rights to be surrendered.

Resolution Copper is directed to pay all costs that are associated with this land exchange and the costs of environmental review documents required by the National Environmental Policy Act of 1969.

Resolution Copper is directed to report annually to the Secretary of the Interior on the quantity of minerals produced from land conveyed by this legislation. This report is due annually by February 15th, and will be available to the state of Arizona. If the minerals produced from the lands conveyed by the U.S. government are worth more than what the appraiser originally estimated, Resolution Copper would be required to pay the U.S. government (annually by March 15th) a value adjustment payment for the quantity of the excess minerals produced. In the event of such payment, the funds are to be deposited in the Treasury and made available to the Secretary of the Interior for the maintenance and repair of Forest Service and Bureau of Land Management assets.

The legislation directs the Secretary to convey, to the town of Superior, Arizona, the following:

- An approximately 30 acre parcel of land entitled ‘Southeast Arizona Land Exchange and Conservation Act of 2011-Federal Parcel-Fairview Cemetery’ and dated March 2011;
- The reversionary interest and any reserved mineral interest of the U.S. government in the 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; and
- An approximately 250 acre parcel 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.

These land tracts will be appraised and the town of Superior shall pay the U.S. government the fair market value of those tracts.

H.R. 1904 clarifies that it does not modify, expand, diminish, amend, or otherwise affect any state law relating to the imposition, application, timing, or collection of a state excise or severance tax.

Within 30 days of enactment (if not before enactment) the Secretary shall engage in government-to-government consultations with affected Indian tribes concerning issues related to the land exchange.

Additional Information: The land currently owned by the federal government reportedly includes the third largest undeveloped copper mine in the world. H.R. 1904 would transfer that land to a private company where a mining operation could take place.

An independent analysis of the economic impact of the proposed mining operation estimates that it would generate over \$61 billion in economic activity over the life of the project. The project is estimated to support around 3,700 jobs annually.

A report on the economic and fiscal impact of this land exchange is linked below:

http://www.securearizonasfuture.com/_pdf/Economic-and-Fiscal-Impact.pdf

According to [House Report 112-246](#):

Resolution Copper Mining LLC (Resolution Copper) is a subsidiary of Rio Tinto and BHP-Billiton. The company owns land and holds mining claims near the Town of Superior, in southeastern Arizona. In the late 1990s, Resolution Copper's exploratory activities revealed the existence of a very large copper deposit on its claims, located between 4,500 to 7,000 feet below the surface. Resolution Copper is interested in developing a large underground mine where the ore would be extracted and removed.

The Oak Flat Campground, part of the Tonto National Forest, is located in the center of Resolution Copper's land holdings and mining claims. Approximately 760 acres of National Forest lands in and around the Oak Flat Campground were withdrawn from the mining laws in 1955. *See* Public Land Order 1229 (Sept. 27, 1955); 20 Fed. Reg. 7336-37 (Oct. 1, 1955). Resolution Copper has proposed a land exchange to allow it to acquire the campground and adjacent withdrawn National Forest lands so that it can proceed with development of the mine. The Secretary of Agriculture would convey to Resolution Copper certain lands and interests in the Tonto National Forest, Arizona, in exchange for private lands of environmental and archeological significance in the State of Arizona for management by the U.S. Forest Service and the Bureau of Land Management (BLM). The Town of Superior, Arizona, will also acquire lands.

Outside Groups: The below groups/individuals have expressed support for H.R. 1904:

- Arizona Governor Janice K. Brewer
- Chairmen of the House and Senate Western Caucuses
 - (Sen. Barrasso & Rep. Pearce)
- Arizona Chamber of Commerce
- Associated General Contractors of America
- Dowding Industries
- Let Freedom Ring
- National Association of Manufacturers (NAM)
- National Mining Association (NMA)
- Northwest Mining Association (NWMA)
- U.S. Chamber of Commerce

Committee Action: H.R. 1904 was introduced on May 13, 2011, and referred to the House Natural Resources Subcommittee on National Parks, Forests and Public Lands, which held hearings and discharged the legislation. The full committee held a markup on July 13, 2011, and the legislation was favorably reported by a [roll call vote of 26-19](#).

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that discretionary costs to implement the bill would total less than \$500,000 annually. Those costs would include preparing management plans to facilitate the exchange and administering new lands received in exchange for federal land. Enacting the bill would have no significant net effect on direct spending and no effect on revenues. CBO's report can be [found here](#).

Does the Bill Expand the Size and Scope of the Federal Government?: H.R. 1904 authorizes the Secretary of Agriculture to exchange 2,422 acres in Pinal County, Arizona, to Resolution Copper Mining, LLC in exchange for eight separate parcels totaling approximately 5,344 acres. This would result in an increase in the amount of acreage owned by the federal government. However, this legislation would allow the private sector to operate on lands formally held by the federal government. An independent analysis of this proposed economic activity estimates that it would generate over \$61 billion in economic activity over the life of the project, and would support around 3,700 jobs annually. This expands the private sector and a decrease in the size and scope of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: [House Report 112-246](#) states H.R. 1904 “contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: [House Report 112-246](#) states H.R. 1904 “does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.”

Constitutional Authority: The [Constitutional Authority Statement](#) accompanying the bill upon introduction states:

This bill addresses federal transfer of federal land. Accordingly, we turn to the following constitutional authority:

Article IV of the Constitution provides the authority of Congress over federal property as a general matter. Article IV, Sec. 3 refers to the managerial authority over property owned by the Federal Government, and provides in relevant part:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; ...

By virtue of this enumerated power, Congress has governing authority over the lands, territories, or other property of the United States--and with this authority Congress is vested with the power accredited to all owners in fee, the power to sell, lease, dispose, exchange, transfer, trade, mine, or simply preserve land. The appropriate acreage to be held under Federal dominance is not the subject of this bill. Turning to the power of Article IV, Sec. 3, the Supreme Court has described this enumerated grant as one “without limitation” *Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976) (“And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that “[t]he power over the public land thus entrusted to Congress is without limitations.” Citing *United States v. San Francisco*, 310 U.S. 29. The Court in *Kleppe* further explained that “In short, Congress exercises the

powers both of a proprietor and of a legislature over the public domain.” Id. Like any “proprietor” Congress has the power to sell or exchange federal property.

It is now generally accepted that the Federal Government may own and manage property in the manner and form mandated by Congress. *United States v. Gratiot*, 39 U.S. 526 (1840); *Cornfield v. United States*, 167 U.S. 518 (1897). However, the wisdom of the Federal Government owning large tracts of land, particularly in the Western States, is subject to question on policy grounds, and some contend on Constitutional grounds based on the decision in *Pollard's Lessee v. Hagan*, 44 U.S. 212 (where the Court stated that “a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new States were formed, except for temporary purposes. . . .” Historically, the early federal government transferred ownership of federal property to either private ownership or to state ownership in order to pay off the then crushing Revolutionary War debts and to assist with the development of infrastructure. These are still acceptable goals for federal property sale or transfer.

The land exchange here is one that comports with good policy and constitutional strictures since by exchanging the land set forth in this bill, a large commercial grade copper mine will be able to proceed with the attendant economic benefits with which such a proposition inures (assuming compliance with other requirements set forth in the bill), but the Federal Government also gains equally valuable land that has significance for other purposes.

Article 1, Sec. 8, Cl. 17 addresses property ceded by a state and conveys exclusive regulatory federal jurisdiction over these federal properties and enclaves. Section 8, Cl. 17 may also provide some guidance here to the extent it grants Congress the power to “exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings.” But it is Article IV that this bill is grounded upon.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576
