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The Honorable Jeff Bingaman, Chairman  
U.S. Senate Committee on Energy and Natural Resources  
304 Dirksen Senate Building  
Washington, DC 20515

**Subject: S.409 The Southeast Arizona Land Exchange and Conservation Act of 2009**

Dear Senator Bingaman,

Defenders of Wildlife is a national conservation organization that focuses on protecting native plants and animals in their natural habitats. We have approximately 1 million members and supporters nationwide and maintain offices in 10 states, including Arizona and New Mexico. We recently learned about deliberations on S.409 and are submitting the following for your consideration.

The San Pedro River and its surrounding watershed is an internationally significant ecological resource. Any legislation pertaining to land use decisions within the watershed should further conservation of this national treasure.

In addition, there are already administrative processes for addressing federal land exchanges that are designed to protect the public interest, comply with environmental laws, ensure public input, and ensure equal value exchanges. Any legislation mandating an exchange should at least meet these minimum standards.

Changes to this bill since the 2008 version are mostly cosmetic, and so we continue to have additional specific concerns.

**The Exchange Should be Predicated on the Outcome of Environmental Review**

No thorough environmental review of the proposed exchange has been made. The bill says that the Secretary “may” decide to apply the National Environmental Policy Act (NEPA) and then states that the parties may agree that the Secretary of Agriculture take the lead. The legislation should make clear that NEPA review is required before any exchanges take place, including analysis through an Environmental Impact Statement, to fully understand the effects of the proposal and any alternatives. The Department of Interior, not USDA, should lead this effort.

**The Legislation Should Respect Tribal Concerns and Truly Protect Apache Leap**

The language in the current bill describing the protection of the Apache Leap site is unclear. Although the bill appears to “protect” 822 acres rather than the 695 listed by its predecessor, it is not clear whether only the surface is protected. There are significant concerns on the part of the Apache and others about both undermining and subsidence, and these issues must be clarified, and potentially mitigated, before any land exchange occurs.

### **The Legislation Should Include Exchange of the BHP Property Near San Manuel**

BHP, a corporate partner in the Resolution mine project, is planning a massive (35,000 home) housing development project that would likely have profound impacts on the water quantity and quality of the San Pedro River, including potentially dewatering the lower San Pedro River. To ensure that previous conservation investments by federal, state, and private partners are not severely impacted, and to protect the San Pedro ecosystem, the legislation should include these and other BHP lands along the San Pedro in the land exchanged to the government.

### **The Appraisal Process Needs to be Improved**

There is a long history of federal lands not being appraised at fair market values, resulting in significant losses to U.S. taxpayers. The legislation should ensure that taxpayers are receiving fair market value for the property.

### **An Operations and Reclamation Plan Should be Included**

The land exchange should be contingent on the mining companies’ submitting a plan of operations and a reclamation plan for the site. Substantive criteria for reclamation of the site should be included in the legislation.

### **The Legislation Should Address the Impacts of Climate Change**

As deliberations move forward on this legislation, we want to emphasize the importance of understanding how climate change will, in future years, affect water resources in the areas under discussion. Scientists estimate globally that between 20 percent and 40 percent of existing species are likely to go extinct in the next century if global warming continues at its current rate.

Unfortunately, little is currently understood regarding how climate change will specifically affect areas under discussion here, the impacts on species, or any projections on regional extinction rates. This concern becomes even more compelling as the emerging scientific evidence asserts that the coming decades of climate change will leave Southwest water levels significantly below historical levels. Some of the modeling shows dramatically less water in the coming years due to both increased heat and decreased precipitation. It is highly likely therefore, that if historical data are used to suggest future availability of water, data projections will far exceed actual future resources.

Water is an essential component to the thriving diversity of life that lives in the San Pedro watershed as well as the human communities that share water along the San Pedro and Gila watersheds, and 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. Obviously, this legislation has the potential to dramatically affect water allocations in all areas under consideration. Water allocation decisions based on historical data as opposed to future projections could leave shortfalls well below promised amounts. This could be disastrous to both natural and human communities in Arizona and the Southwest.

Thank you for your consideration.

Sincerely,