Fort McDowell Yavapai Nation

Written Statement of President Clinton M. Pattea of the Fort McDowell Yavapai Nation Before the U.S. House of Representatives Natural Resources Committee, Subcommittee on Energy and Mineral Resources, March 21, 2013

CONCERNING

H.R. 687, Southeast Arizona Land Exchange and Conservation Act of 2013

Mr. Chairman and members of the Committee, on behalf of Fort McDowell Yavapai Nation (herein 'Nation'), I respectfully provide our serious concerns and describe how the Yavapai People are affected by H.R. 687 (herein 'Bill' or 'Legislation')**.** We provide evidence herein as to why this proposed mining operation does not meet the stated purposes of this bill. In the hearing, Congressman Gosar stated "the facts will set you free." The Nation follows this line of thought and inquiry and presents the facts, not how supporters wish for others to perceive or mislead, but the legally mandated facts as written. Mr. Gosar stated that many of the issues the detractors have brought up have been "addressed in in the Congressional record at some point." However, the Nation's testimony reports on how the bill supporters do not understand the consequences or the legal components of this bill as it relates to the environment and Tribal issues. Plainly, this bill sacrifices our holy land yet, H.R. 687 title refers to a "Conservation Act.' In truth, the Federal land, our holy place that is traded away is hardly conserved. The connotation is disingenuous at best and should be stricken. We are also affronted if there is any implication that Native Americans, particularly my Nation, are in some way being deceptive as to our ties to this area. It was mentioned that certain individuals believe that this land was only *recently* utilized by San Carlos. I emphatically state that these individuals do not know *my* Nation, *my* People, or *our* history. For, if they did, they would know that since time immemorial this has been *our* ancestral land and the area has *ALWAYS* been part of and used by the Yavapai. I trust the Nation will be afforded an opportunity to personally describe, for the record, the facts as to how these traditional lands were and remain today fundamentally important, culturally significant, highly spiritual and religious to the Yavapai. As such, the Nation formally request an amendment be made to the record to reflect these undeniable facts.

WHO AND WHAT IS RESOLUTION COPPER?

Resolution Copper Mine LLC (herein 'RCM'), a joint venture between foreign mining multinationals Rio Tinto plc/Rio Tinto Limited (herein 'Rio Tinto') and BHP Billiton (herein 'BHP'), intend to exploit a deposit with an uncorroborated future 'value.' Since Rio Tinto is the major stakeholder and has taken the lead in this legislation we acknowledge H.R. 687 as Rio Tinto's as well as its subsidiary RCM. RCM is a Delaware based Limited Liability Company. Delaware LLC's do not require the formalities of a Corporation, they can be formed from anywhere in the world, no minimum investment is required, no annual report is required only a payment of an annual tax of $250.00. Notably, ***nine percent of Rio Tinto is owned by the state-controlled Aluminum Corporation of China, also known as Chinalco.*** More specifically; "Shining Prospect Pte. Ltd, a Singapore based entity owned by Chinalco acquired 119,705,134 Rio Tinto plc shares on 1 February 2008. Through the operation of Corporations Act as modified, this gives these entities and their associates voting power of 9.32 per cent in the Rio Tinto Group on a joint decision matter, making them ***"substantial shareholders of Rio Tinto Limited as well as of Rio Tinto plc"*** (emphasis added) (numerous reports, e.g., Rio Tinto, 2010 annual report). Thus, a significant portion of the ***Federal lands to be exchanged, including mineral and other natural resources, would be held by the country of China*** through its ownership stake in Rio Tinto. However, supporters of this bill marginalizes China's role.

DEFENSE OF H.R. 687 IS NOT RATIONAL OR DEFENSIBLE ON ANY LEVEL

Curiously absent from the hearing were RCM owners who subsequently had their supporters speak for them rather than having to directly and factually testify. Rio Tinto has assured themselves the intentional limited role of the Federal government to make scientific, sound determinations, and what is in the best interest to the United States. But, it is irrationally to purposely restrain the Federal government's ability to regulate, provide instruction, or make recommendations, as to the safety of the proposed mine. As shared by the several on the committee and on the panels, many questions remain and hearings have not answered uncertainties. Congressman Grijalva stated, "Why the rush?" Why the "mandatory exchange?" Because, the foreign mining companies and foreign interests who own RCM do not want the U.S. to comprehend, evaluate, or have a voice on this area's vulnerability as to the inevitable dangers RCM will bring. The fact of making the exchange mandatorily [SEC 4(i)] prior to discovery thereby, dictates mandatory inaction by the U.S. Rio has constantly downplayed damage. For example, in 2007, RCM insisted that subsidence would not occur, now their website readily admits, albeit softens, substantial subsidence. Uncertainty regarding risks on Federal lands that are left unanswered by a mining company directly reverts back to the Federal government to answer. But, Rio's hand crafted bill hamstrings the U.S. ability to perform studies and investigations. Why not withdraw this bill and refer this land exchange and mining project through administrative processes that congressionally mandates National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and other Federal laws? Because, Rio Tinto doesn't want the elephant in the room examined.

ERONOUS TIMING RATIONAL

The expressed immediacy to pass legislation has not been made clear as Rio has specified that production capabilities are "at least 10 years away" and the fact that technology to mine one mile below the earth's crust is "not currently in existence" but is "under development" (quoted in Rio's and RCM's numerous cooperate documents, testimonies, and websites). Any deep mine technology that may be developed will not be solely used for RCM as their parent companies will be benefactors of new technologies who have multiple interests in deep mines (or future interests) around the globe. Therefore, they will recoup any vested technology. RCM has also enjoyed the privilege of proceeding with their explorations in the area unopposed by the Federal government. Thus, why is the exchange legislation mandated if the other issues described herein are not dealt with first? We assume that Rio requires this 'special' legislation before: uncertainties are revealed; meaningful consultations are conducted with Tribes; impacts are fully known, addressed, and mitigated; and the legal standard to evaluate the Federal property catches up to what is revealed in the ***eventual, final, and realistic*** Mining Plan of Operation (MPO) as opposed to one developed for theatrical purposes as *SEC 4(j) labels it "proposed" not 'firm' or' approved' MPO.*

IRRATIONAL FINANCIAL LOGIC TO SUPPORT DIRECTED LAND EXCHANGE

H.R. 687 'directed exchange' mandates that the exchange to occur within one year SEC 4(i). Rio Tinto asserts future financial *investment* reasons for the necessity of a directed exchange. Or, is it *financial trouble*? In late 2012, Rio slashed $5bn from mine costs and stated that their new mine development investment and *shareholders returns* strategy is "*by the end of 2014 and overhaul its investment strategy to return more cash to its shareholders rather than spending on new mines*" (Financial Review, Nov. 29, 2012). Rio understands and accepts risks on returns on investments as noted in their SEC statements, Annual Reports, investment strategies, etc. For example, in a recent message to shareholders: "Rio Tinto recognizes that risk is an integral and unavoidable component of the business, and that it is characterized by both threat and opportunity…. The directors recognize that creating shareholder return is the reward for taking and accepting risk." Rio is no different than any other mining company who would similarly invest in exploring and determining the risks and benefits of such a project. In fact, their awareness of associated financial and other risks with mining is best noted in their corporate "Forward-thinking' statement:

".. involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Rio Tinto, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements…" But, they play down risks by stating: *"Rio Tinto expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement… to reflect any change in Rio Tinto's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based."*(e.g., from Rio Tinto

website, SEC filings, etc.). However, this February, *Standard & Poor's downgraded Rio Tinto's outlook* from stable to negative, citing a risk that the mega-miner's debt may increase further in 2013-2014. S&P Credit Analysts Andrey Nikolaev and Karl Nietvelt said the negative outlook "indicates a one-in-three chance of the rating being lowered in the next 12 to 18 months" (Mineweb, Feb, 26 2013). In 2007, Rio Tinto risked $38.1 billion in their takeover of Canadian's aluminum Alcan Inc. In 2011, Rio wrote down $9.3 billion of assets, including impairments related to its diamond business. Alcan's acquisition loaded Rio with about $38 billion of debt that threatened to topple the entire company because of their underestimate of demand, scoring operational costs, and price fluctuations, and overestimations on this investment. Rio understood where the Alcan ore was located, had the technologies and knew how to mine it - *quite different* than the proposed RCM. Given Rio's financial downgrade, grand risk miscalculations in combination with the fact that there are no minerals readily available to mine due to the lack of technologies at 7,000 ft., what is really behind the push to proceed with this directed land exchange? Is Rio afraid that the risk to the environment and surrounding area is so great that the U.S. would ultimately not permit RCM to operate on Federal land through the administrative process? Fact, Rio does not want to invest foreign shareholders money, including their largest investor China, to develop this mine without first obtaining exclusive control and an all-encompassing guarantee of full ownership over these lands and the value of the resources they contain *before* any federally directed environmental risk analysis, consultations, or federally defined monetary evaluations are completed. In fact, they can hold in perpetuity or sell the land if RCM was not financed!

H.R. 687 RELIES ON RIO'S ECONOMIC ANALYSIS NOT THE FEDERAL GOVERNMENT'S

The supposed rational and quintessential factor for passage of this legislation is to promote *immediate* and *significant* job opportunities as espoused by Rio Tinto and their supporters. Proponents also tout the projects economic values. But, whose studies and facts reaffirm these claims? There are no Federal studies to support the unsubstantiated and disparate economic and job numbers purported by Rio Tinto – no U.S. affirmations - just Rio's propaganda. For example, a September 2011 report on RCM economic impact was not truly independent as it was developed using assumptions and selective data originating data from Rio Tinto. "The assumptions for evaluation of the economic and fiscal impacts of the Resolution Copper mine project including employment impacts for mining operations were based on information provided by Resolution Copper Company." Moreover, the study stated: 1) "All estimates regarding direct employment and wages as well as on mining operations were provided by Resolution Copper."; 2) "This study has not evaluated the feasibility or marketability of the site for planned uses."; 3) "Except as specifically stated to the contrary, this study does not give consideration to the following matters to the extent they exist: (i) matters of a legal nature, including issues of legal title and compliance with Federal, state and local laws and ordinances; and (ii) environmental and engineering issues, and the costs associated with their correction. The user of this study will be responsible for making his/her own determination about the impact, if any, of these matters" (essential data used to determine financial feasibility). One of the most unsettling statements:

"*Our analysis is based on currently available information and estimates and assumptions about long-term future development trends. Such estimates and assumptions are subject to uncertainty and variation. Accordingly, we do not represent them as results that will be achieved. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur; therefore, the actual results achieved may vary materially from the forecasted results. The assumptions disclosed in this market study are those that are believed to be significant to the projections of future results.*" Is this what is meant by a revealing study on RCM's long-term financial impact?

The aforementioned report stated "Active mines….. smelter operation in Hayden provide most production jobs and create demand for support/supplier industries as well." Smelter jobs are some of the highest paid jobs in the industry. But, it is already a fact that ***RCM will not smelter in the U.S. as Rio admitted copper concentrate will be shipped offshore.*** This not only reduces employment opportunities, but decreases the overall value of the copper by at least 40%, significantly reducing 'revenues' to the U.S, state and others even further. However, this fact has not been explained by Rio Tinto. Job claims are speculative and lack credibility because they are not supported with a *realistic and final* MPO, impartial economic documentation, and have not been scrutinized by Federal authorities. In fact, nowhere within H.R. 687 is there any written or legal commitment from Rio Tinto or BHP to create jobs, types of the jobs and when they will be created, location of those jobs, workforce pool to be utilized, educational

requirements, etc. Job creation in the region is vital –we appreciate this need. Hearings noted high paying jobs will be available for the people of Superior and Native Americans. Though, to understand the furtiveness behind Rio Tinto's supposed jobs opportunities one only needs to look at how the mine is being designed.

What is being proposed is not the mine of the past that most are familiar with rather what Rio coins the "S*uper Mine of the Future'* due to its yet developed *but* boasted 'automated technologies' it will require (John McGagh, Rio Tinto and step-change innovation, Sydney Convention and Exhibition Centre (ASEG), Australia, 8/23/2010; Rio Tinto Website), but offer little in the way of employment as currently recognized. Automated mines operate utilizing robotized drilling, driverless ore trains, driverless "intelligent" truck fleet, etc. (e.g., Rio Tinto Adds Driverless Trucks To Pilbara Iron Ore Operation, Dow Jones Newswires, 6/8/2011). In fact, Rio's 2010 Sustainable Development Report stated that based upon: *"today's improved understanding of caving processes and advanced technology,"* Resolution Copper will be able to *"employ more automation and mechanization than were available in the past."* Another fact, Rio's CFO Guy Elliott told investors that automation will increase Rio's corporate bottom line by decreasing labor cost and eliminate jobs:

*"..**new technology such as driverless trucks and automated operations centers would result in fewer jobs in the future … We're looking at every available opportunity to reduce, if possibly sustainably, these costs.."*** and ***"…I think we're going to have some difficult discussions with labour."*** (Financial Review, Smart Investor, Nov. 29, 2012; Rio Tinto November, 2012 Sydney investor seminar presentation). (emphasis added)

Have local workers or others been privy to this information? Is this one of the reasons that this bill mandates the land exchange ***prior to*** the benefit and knowledge contained in a realistic MPO or other information [as opposed to the 'proposed' MPO under SEC 4 (j)] that would define proven mining technologies and actual job creation that are in line with these operations? If the supporters of this bill believe the mine proposal will provide job and economic benefits as well as follow Federal procedures; allow it to be approved and permitted by the United States through administrative process (without a trade). The purported 'jobs' would not be affected by an administrative process. The land exchange itself would not be required to proffer jobs, but the mine would.

The use of automated technology across the mining sector, from transport to drill rigs, allows mining processes to be operated remotely. Recently, the *Sydney Morning Herald* quoted Construction, Forestry, Mining and Energy Union leader Gary Wood stated that "…in the long run automation will mean serious job losses…People talk about reskilling but you don't need a team of truck drivers to sit and operate one computer…Over 10 or 20 years we are going to see a significant demise of these lesser skilled job opportunities. (from Driverless Trains and the 'Mine of the Future': Are Workers Becoming Obsolete?, By Kari Lydersen**,** In These Times, 2/282012). Rio's "independent" report state jobs would be given based on "depending on the compatibility of skill sets of those seeking work." What is not said by anyone is - who will be hired, are they being transferred from other sections of Rio Tinto or BHP, are they direct employees of Rio Tinto or BHP that will be transferred back to these parent companies, are they temporary workers, where are these individuals or companies being recruited from (outside Arizona or in the U.S.), where are their actual location(s) and home base(s), what types of jobs are they performing, are lawyers and lobbyists included in these numbers, etc.? Will Rio and BHP shift highly educated, specific internal company based knowledgeable Rio and BHP employees to work concomitantly in RCM operations?

While we appreciate the immediate need for job creation, this legislation does not provide *assurances or guarantees from the company on the timing of the technology or whether it can be developed to mine at this depth utilizing automated block cave 'future' methodologies.* A fact no one has cared to address even in legislation is ***if the technology will be successfully advanced***. To call attention to this point, Rio's *Annual reports* stated:

*"Some of the Group's technologies are **unproven** (emphasis added) and failures could adversely impact costs and/or productivity….. The Group has invested in and implemented information systems and operational initiatives. Some aspects of these technologies are **unproven and the eventual operational outcome or viability cannot be assessed with certainty.***" (emphasis added)

Rio Tinto fully acknowledges that automation also comes with technology that requires a greater specificity and ***eliminates the types of jobs that typical copper mining operations*** would normally offer:

"the future miner will be required to have a higher degree of education in mechatronics, supercomputing or artificial intelligence.." (J. Cribb, Rio Tinto. Miners of the Future. Review. September 2008). They also state; *"Humans will no longer need to be hands on as all this equipment will be 'autonomous' - able to make decisions on what to do based on their environment and interaction with other machines."* (Rio Tinto. *Rio Tinto chief executive unveils vision of "mine of the future,"1/18/ 2008,* riotinto.com/media/5157_7037.asp).

Additionally, H.R. 687 does not garner any guarantees from these multinational corporations that they will actually 'operate' the mine in Superior (or regionally). Technology could allow RCM to operate the mine from anywhere in the world using Remote Operations (RO) similar to Rio's Pilbara Mine that is controlled from an RO center 800 miles away. Rio's RO centers are actively being expanded upon. Thus, why would RCM put money into setting up such operations in this region when it can be operated anywhere these ROC's currently exit (e.g., Salt Lake area), where employed well-trained, highly technical staff already reside?

Superior has now stated that are not in favor with this bill. This type of mining does little to benefit the local economy, the state, the U.S., or provide jobs. It will, however, help foreign conglomerates and their stakeholders. The lack of analysis/verification by Federal authorities to examine jobs claims, immediacy and types of job creation, and economic impact are merely ***unmet expectations in order to sway passage of this bill.***

RCM COPPER MUST STAY IN U.S. TO SUPPORT THE U.S. NOT SUPPORT FOREIGN GROWTH

Chairman Lamborn stated "As a nation, we can no longer afford to have our domestic mineral needs or policy put on the back burner… Strategic and critical minerals are essential to our economy…" He stated we are dependent on "foreign sources for the majority of our non-fuel mineral materials." In previous Senate hearings, Senator McCain stated that "we can get this copper from this mine Mr. Chairman or we can import it from someplace overseas.." However, reports performed by the Federal government do not concur with this assertion. Recent assessments of copper resources indicate 550 million tons of copper remaining in identified and undiscovered resources in the United States [U.S. Geological Survey (herein 'USGS') National Mineral Resource Assessment Team, 2000, 1998 assessment of undiscovered deposits of gold, silver, copper, lead, and zinc in the United States: USGS Circular 1178, 21 p]. Essentially, there is more copper left to discover than has already been discovered. USGS also state that the U.S. is not importing copper, but is self-sufficient based on minable copper reserves ("Copper: Statistics and Information," U.S. Geological Survey, 2009, as of January 22, 2010). Due to numerous factors, but more than all other variables, China is attributed as the principal reason for the enormous world-wide copper price increase - not U.S. demand (*see* the Nation's discussion of China's copper demand in our S. 409 and H.R. 1904 Congressional record Testimonies). As a result of China (and to a lesser extent India), copper price increases resurrected the mining industry and fostered interest in deposits previously deemed unprofitable. Thus, the question is, where is our U.S. copper going and who is this mine be really providing favor to?

Mr. Lamborn also noted mining creates "tangible value" and "additional tangible value" comes from "the raw mine product through manufacturing, construction, and other uses." Adding, "harvesting domestic mineral resources" contributes to our economic security as products are made from these harvested products pointing out that industries depend on these raw mined materials and create other jobs that depend on these minerals. But, ***China is the world's largest copper consumer and America's best copper customer*** (Economy Statistics, Trade With U.S., U.S. Copper Exports by Country," Nation Master.org). In regard to RCM, facts deviate from what is thought to be a domestic supply for U.S companies and U.S. manufactured end-products. There is substantial evidence to reasonably assume that RCM mineral deposits as well as profits will be shipped off-shore based on their parent company's mining operations, holdings, and performance. Rio states that Asia, driven by China, will make up over 60% of their ore demand (*see* Rio's 2012/13 annual reports, investor statements, etc.). China's importance to Rio - "China is Key" (N. American presentation to fixed investors, 3/2013). China's copper mining ventures and supply chain needs with and through Rio Tinto can be found in over a 100 of their website references, annual reports, news releases, summary statements, investor road shows, professional presentations, SEC statements, etc. Rio Tinto has

repeatedly stated that China is the sector that they will continue to direct market and supply mined copper and other ores to meet (China's) needs. Fact, China is their number one customer and RCM will be no exception - this is unquestionable as countless statements from Rio Tinos' executives have been made that RCM will meet China's needs. Early discussions began on RCM minerals, Rio Tinto's Bret Clayton, stating their copper operations:

"..are well positioned to take advantage of strong global demand, driven by continued growth in China.." (Reuters, 8/8/2008). John McGagh, head of innovation at Rio Tinto recently stated: *"China needs to build 3 cities larger than Sydney every year until 2030 to accommodate rural to urban migration"* (ASEG conference, August 2010). RCM will help to meet this need.

Meeting China's copper concentrate demand (rather than smeltered) was noted by Rio's Mr. Cherry who attempted to deflect the questions (in 2011 hearings on RCM) on China and sipping copper offshore by stating: "*..copper is a commodity traded like any other metal.*" When further pressed he added "*..copper concentrate will then go to smelters to produce pure metal…*" and in referring to RCM "*our projections are they will produce enough concentrate exceed smelting capacities in the U.S. and potentially oversee for smelters*." This need is also well understood throughout the halls of Congress. Even Senator McCain stated back in 2005, "Why is the price of copper at an all-time high? The Chinese are buying every scrap of copper that's available. Supply and demand." (Transcript of John McCain's Roundtable Discussion with Star Editors, Arizona Daily Star website, Aug. 28, 2005). Thus, this mines copper production (taken from Federal lands) is not for U.S. demand, but will meet the Asian appetite.

FOREIGN COMPANIES AND COUNTRIES BENEFIT BY THE UNEQUAL EXCHANGE

Mr. Gosar stated that "appraisers look at the actual facts that that apply to a particular property including associated mineral values." He further mentioned that opponents of this bill state there are unusual appraisal processes, but he noted that the same standards in this bill establishing fair market values are commonly employed practices. The Congressman has not made it clear that the bill as written cannot take into account the *uncorroborated* mining ore assertions Rio has made and minerals that are not currently accessible cannot be used in these standard appraisal practices. Congressman Grijalva stated at the hearing "This legislation is a deceptive" and that "we need to do our due diligence and be true stewards of our public lands and responsibility that we owe." He noted lingering unsupported facts and unanswered questions regarding the overall economic feasibility and benefit of this exchange to the American taxpayer and that the public interest requires a complete and fully informed appraisal and equalization of values be performed ***prior to*** Congressional passage of H.R. 687, ***not after***.

The exchange is not one of fair value. Federal agencies were minimally consulted and Tribes were not involved in determining what specific, higher priority parcels or land bases should also be included in the exchange. On a monetary level, one can clearly see that RCM financially recoups all mineral profits at the expense of the public making such an exchange grossly disproportionate. Relying on the RCM current engineering and other reports is insufficient. Legally, under Federal Land Policy and Management 17 Act of 1976 (43 U.S.C. 1716(b)) (FLPMA), exchanges are on a "value-for-value" basis and the exchanged land acquired by the United States is determined to be in their best interest. The 'value' of the Federal land in this legislation is unquestionably worth more than the mere lands being offered. FLPMA requires if the exchange is not equal, they are to be equalized by a monetary payment of up to 25% of the value of the Federal lands conveyed in the exchange (43 C.F.R. PART 2200, § 2201.6 Value equalization; cash equalization waiver). When questioned by Congressman Holt, FS Deputy Chief Wagner doubted the bill would allow an appraisal based on its "highest and best use" (HBU) market value. The parcels to be exchanged also have significant differences in assessment due to different HBU's and various other 'intrinsic' values. This bill alters Federal law allowing for the additional land/dollars to be exchanged above the 25% limit in order to appear that this would make up for such differences. *But, the short time frame for the exchange and other timing and restrictions regarding analysis/reports/plans will not allow for an accurate appraisal of the true and accurate 'worth' including Tribal values of the Federal land.* This will thereby preclude the U.S. from ever receiving a 'fair market value' and sufficient private land to be exchanged and taken into trust.

Suggestions on a valuation of the ore by multiplying an assumed quantity of mineral reserves by a unit price is almost universally disapproved by the courts [*see Cloverport Sand & Gravel Co., Inc. v. U.S., 6 Cl. Ct. 178, 188, (1984*)] and also not acceptable. H.R. 687 calls for an appraisal report that would include an income capitalization approach analysis and to be in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), of the market value of the Federal land. However, this will require the appraiser to use a multitude of indicators, facts, and variables, the accuracy of which cannot clearly and easily be demonstrated by direct market data [*see Foster v. United States, 2 Cl. Ct. 426 (1983)*]. As prescribed in law as to a 'dollar' evaluation, the "*Market value"* of the land to be exchanged means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, and the price is *not affected by undue influence* (*see* 43 C.F.R. § 2200.0-5). In this case, the offer on the table has always been directed by foreign mining companies who own private lands and/or wish to dispose of parcels for this invaluable Federal land without consideration to the Yavapai or the citizens of the United States as a whole.

Given the directed exchange (SEC 4 (i)), even if the final MPO demonstrates there are significant locatable reserves (not resources) years later, this land cannot be subject to further financial appraisals. SEC 4 (d)(2)(B)(ii) states, "after the final appraised values of the Federal land and non-Federal land are determined and approved…, the Secretary shall not be required to reappraise or update the final appraised value… *at all* ....after an exchange agreement is entered into…" This is not common business sense and leaves unanswered how the Federal lands "associated mineral values" can be evaluated as to their market value, fair return, equalization, comparables, appraisal, etc. RCM has claimed it is the 'largest ore body' unlike anywhere else in the U.S. How can 'minerals' at 7,000 ft. belowground that are undefined, undescribed, nonlocatable, unquantifiable, and of unknown quality that are far from economically viable for extract be considered an appraisal? **They can't**. Appraisers cannot qualify and put a price on the unknown because these undefined ***resources*** and ***not reserves*** and therefore ***cannot legally*** be a part of any appraisal. These ***speculative resources*** are documented in Rio's Annual reports:

"*Estimates of ore reserves are based on certain assumptions and so changes in such assumptions could lead to reported ore reserves being restated. There are numerous uncertainties inherent in estimating ore reserves (including subjective judgments and determinations based on available geological, technical, contracted and economic information) and assumptions that are valid at the time of estimation may change significantly when new information becomes available."*

The questionable accuracy on such appraisals is particularly underscored when discounted cash flow (DCF) analysis or other forms of yield capitalization are employed in the analysis. Furthermore, within the UASFLA there are several specific requirements to assess values, including the need for a detailed mining plan for the property. UASFLA requires that production level estimates should be supported by documentation regarding production levels achieved in *similar* operations. The annual amount of production and the number of years of production are more difficult (and speculative) to estimate, and require at a minimum, not only physical tests of the property to determine the quantity and quality of the mineral present, but also market studies to determine the volume and duration of the demand for the mineral in the subject property. However, it is unknown at this time what the true production estimates are as specific mining plan details have not been forthcoming from RCM. In addition, the true quality or quantity of the material is unknown and the extraction technology for this mining operation at a 7000 ft. depth has not been developed and thus, not currently available. This fact is further underscored by the lack of available information on production levels being consistent with an (unknown) mining plan's labor and equipment.

In further examining UASFLA, the income approach also requires several economic predictions including a cash-flow projection of incomes and expenses over the life-span of the project and a determination of the Net Present Value (NPV), including the NPV of the profit stream, based on a discount factor. The NPV of a future income is always lower than its current value because an income in the future assumes risk. The actual discount factor used depends on this assumed risk. A proven technology carries a lower risk of non-performance (thus, a lower discount rate) than a technology being applied for the first time. What will the retained earning be? How will Rio hold/keep profits in retained earnings? Given shortfalls described above, the evaluation standards prescribed by the

UASFLA, coupled with the lack of factual data and uncertainty of the technology, the final appraisal of this massive ore body could ultimately net zero, meaning that the valuation of the Federal lands exchanged for the benefit of RCM would not reflect the value of the copper and other saleable minerals these lands contain.

SEC 4 (i) requires the exchange and other critical documentation be completed within one year after congressional passage. The complexity of such analysis make it incredulous that one year would be sufficient time for the completion, and subsequent thorough examination, and to review of all reports and appraisals. Indeed, current and former FS as well as BLM testimonies on this matter believe H.R. 687's time frames are woefully insufficient for the completion and review of complex a mineral report, completion and review of the multifaceted appraisals, and final verification and preparation of title documents. Yet, the sponsors of this bill have chosen not to heed the government's own experts' advice and counsel on mineral appraisals. Why?

In regard to royalty provisions, it is highly likely that trading these Federal lands into RCM's private ownership will result in unquantifiable, inequitable, and effectively zero 'royalties' being provided to the U.S. treasury. SEC. 4 (d) (3) states "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,* (emphasis added) to determine the value of the Federal land, and shall be the basis for calculation of any payment under section 6." But, we know that the ore in not readily minable and not locatable to mine and, therefore, cannot be appraised. Meaning the ore value is zero. Plus, the MPO delivered to the Secretary is only preliminary and 'proposed' [SEC 4 (j)]. Yet, SEC 6 (3)(b) states "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), ….a value adjustment payment for the quantity of excess production *at the same rate assumed* (emphasis added) for the income capitalization approach analysis *prepared under section* 4(d)(3) (emphasis added)." This is a circuitous rational. The value of the unminable ore is not evaluated in SEC (d)(3), hence a value adjustment payment for excess production cannot be determined as the "rate" is clearly zero under SEC 4(d)(3) to begin with!

Last, other facts. Arizona will not charge a 'royalty' on private (exchanged) lands for ore instead apply a 2.5% of "Net Severance Base" which is roughly "50% of the difference between gross value of production and the production costs" which effectively means 1.25% of *net* revenue (AZ stat 42-504). But, there are depreciation and deductions that can be taken to reduce this cost. Arizona also does not double tax mineral products. Sponsors state this bill is transparent. We have provided facts that this is not the case. In fact, under SEC 4, the appraisal of the Federal land a may only be available in 'summary' form – thus, how transparent can a summary be to the public?

H.R. 687 DOES NOT REQUIRE NEPA OR OTHER NEUTRAL, INDEPENDENT STUDIES

What Federal analysis has been or will be performed under H.R. 687 on the *entire mining operation* that guarantees the environmental quality and cultural resources will remain intact? NONE. (*see* the Nation's discussion of lack of required NEPA reporting in our S. 409 and H.R. 1904 Congressional record Testimonies). When questioned, FS DC Wagner, stated NEPA (or any environmental impact statements (EIS)) will be performed on FS lands outside of the exchange in accordance with H.R. 687, not the exchanged FS lands WHY? SEC 8 (c) "..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." ***Once privatized, this land is effectively exempt from nearly all requirements of Federal law and outside review and scrutiny due to the mandatory one year trade provision.*** This was repeated by Federal experts at the hearing. In fact, it will not be subject to the requirements of the Mining Law of 1872. Claims made regarding NEPA on Federal exchanged lands are incongruent with the intent or wording of this bill.

Supporters also quip that an MPO will be approved by the government. However, in regard to applicable Federal governing law and jurisdiction, the Federal government has no such 'approval' process of an MPO on private mining lands or has the ability to regulate the land under an MPO that would be provided now to be governed on

private hands. Thus, any MPO produced now, is meaningless because the mining plans will change once the land is in private and no longer subject to NEPA or other Federal governmental review and oversight [SEC 4 (h)].

Ranking member Holt stated H.R. 687 "raises numerous concerns about the impact on the environment." Both Congressman Grijalva and Congresswoman Hanabusa both noted that the bill **does not allow** for the analysis of potential impacts of the mine ***prior to the exchange*** and the connection to NEPA – even if a full analysis is performed on this area- once in private hands NEPA no longer legally exists as when lands are federally owned. Fact, the Federal authorities cannot mandate changes in plans or operations, mandate remediation, mandate environmental alternatives, mandate NEPA conforming consultations, etc. etc. to privately held lands. Why do the bill's sponsors fail to understand this very simple fact? Ms. Hanabusa noted that she had issues with the section on environmental compliance of the bill as well as the lack of protections to Apache Leap and other sacred areas. She stated that ***if read "carefully",*** "NEPA, it does not kick in until after the transfer is made…" noting that this is not how NEPA ordinarily works "before the Secretary would even consider this transfer – clearly has a lot of environmental implications." She further noted that and EIS review before transfer would not occur in that an "there is no requirement for review"

This stealth 'special' legislation is specifically structured to circumvent a variety of Federal laws, statues, policies and procedures including the NEPA and effectually negates any opportunity for public involvement and Tribal consultation required, disclosure of environmental impacts, including cumulative impacts and obfuscates affected parties and decision-makers to review and comprehend the risk assessment. In this case, NEPA, if ever performed on the traded lands, is merely a pro forma and perfunctory at best as land is traded ***before*** NEPA is completed and before a credible MPO is developed. This point is incontrovertible. Proposed legislation does not bind Rio to a long-term agreement with any federally directed study outcome, analysis, mitigation, compliance requirements, or changes to mining plans, etc. as it relates to the Federal parcel. Nor, as they have stated, would they be willing to be under the direction of the Federal government as to the mandated Federal compliances related to Federal lands post enactment. That is why they want the land transferred into private ownership within one year and allowed to mine and perform mining related activities in this area immediately after passage of the legislation.

It was stated that Arizona has NEPA laws. Arizona Facts, they do not have a state 'NEPA'; they do have permissive environmental laws that are weak on mining; mining companies often shield their contamination from civil lawsuits and penalties; past and current mining cleanups have cost taxpayers millions of dollars; no formal laws requiring reclamation, etc. H.R. 687 NEPA provision is a postscript, a broken promise to Native Americans, performed after damages begin, backward to the legal, federally approved process and core intent of NEPA.

FAILURE TO PROTECT CULTURAL AND RELIGIOUS CONCERNS OF THE YAVAPAI

Congresswoman Hanabusa noted environmental issues regarding the lack of protections to Apache Leap and other sacred areas. Ms. Hanabusa stated that "special use permits that would allow tunnels to be developed under Apache Leap" and we have "no idea what it means to tunnel under those specific areas." In addressing the Congresswoman's concerns, Congressman Gosar stated that "My bill will protect Apache Leap beyond the current land management situation" and that "Resolution Copper will surrender its right to commercially extract *any* minerals under Apache Leap." But, his facts regarding Apache Leap are incorrect. First, the current management 'situation' is such that RCM and parent companies do not change under/on Federal land per SEC 10 (3). Secondly, the bill does not state that mining under the Leap is forbidden; rather it prohibits 'commercial' quantities to be extracted [but countered by SEC 10 (3)]. Third, carefully avoided by supporters is the fact that there *are allowances* for ***"tunneling" and "mining activities" under Apache Leap*** – destructive activities that have consequences, but are not mitigated anywhere within the legislation. Apache Leap is not "protected" as overall protections are seriously undermined by SECS 4,8, and 10 by ***providing for substantial mining activities and operations both on top of and under Apache Leap that will result in its subsidence***. It was noted that because Rio will (supposedly) be spending a 'billion' dollars on infrastructure, it equates to an unsubstantiated fact that Apache Leap would not be damaged because the mining company would not want their infrastructure to be destroyed. However, Rio Tinto has had several mine related collapses worldwide, such as the Lassing magnesium silicate mine in Austria, Rio Tinto's

Grasberg mine, a mine in the Philippines, etc. Given that they have never operated a similar mine at 7,000 feet - how to handle and predict such devastation is a huge unknown. Block cave mining at this depth, with the complex nature of the physics and geology of this area make it unpredictable given the areas fissures, faults, and earth movements. Moreover, a physical collapse, once it begins, cannot be controlled and land ownership and boundaries cannot be distinguished. If the traded Federal lands are mined, when catastrophic disturbances, such as subsidence, fissures, etc., causes destruction on, under, or around Apache Leap, where are detailed restoration/reclamation provisions? Who will be the responsible party to provide for those restoration activities and their associated costs? There simply are no provisions as to how to evaluate, monitor or stop either short- or long-term impacts of mining activities, or to stop or prevent the destruction of irreplaceable cultural and religious resources of Apache Leap. (*see* the Nation's discussion on Apache Leap in our S. 409 and H.R. 1904 Congressional record Testimonies).

Devil's Canyon, located near RCM is of great importance and of critical concern to the Yavapai people. Without providing sacred details, Congress should be cognizant of the fact that the Yavapai perform and have performed numerous religious and cultural ceremonies at Devil's Canyon since time immemorial. ***The hydrology is a critical element that makes this region significant to the Yavapai People.*** Perpetual dewatering throughout the life of the mine through groundwater pumping, mine dewatering, pollution, and other mining activities will cause these springs to be lost forever. This is an irrefutable scientific fact and not addressed by anyone or in H.R. 687.

Frankly, our sacred land cannot be traded, like a baseball card. It isn't mining we are objecting to, but the destructive block cave mining activities and exchange of this sacred site. Let me be clear, this land is currently and equally important today as it was to our ancestors. Since time immemorial the Yavapai have exercised our religious rights, traditions, cultural practices, and teachings. Although this land is now in Federal ownership, it can still be visited, touched, and cherished. The spirits remain and we still feel their presence. RCM operation will cause irreparable damage to the environment of this area whose resources are inextricably linked to sacred sites, archeological, and the cultural and religious heritage of the Yavapai People. Thus, as a Tribal Nation, the Yavapai are not just an effected or aggrieved 'party' but a People who will be significantly injured and will lose identity and dignity should this bill become law. To the Yavapai, this area also has high the environmental and cultural importance. It is not 'just' a campground. The aboriginal Yavapai Indians named the Oak Flat and Apache Leap area *Gohwhy Gah Edahpbah.* Until forcibly moved, the Yavapai's lived in this area and their traditional ways of life until the discovery of mineral ores. Thus, the Yavapai have been displaced because of ore bodies. It is astounding in an enlightened society that this type of invasion can still occur and ugly labels placed on Native Peoples who object to their constantly held scared sites being desecrated. Those supporting the mine also fail to recognize that issues this mine will bring affect many Tribes, not just the San Carlos Apaches.

As written, this bill eviscerates Federal mandates on Government-to-Government consultations with Indian Tribes due to the directed exchange (SEC 4 (i)). The Secretary hands are tied to incorporate any Tribal input into NEPA or an EIS because the land exchange is completed before the majority of analysis or consultation is concluded. Tribal input is after-the-fact making any timely or meaningful consultation without the requisite studies/analysis and results on RCM part of a check list -just a formality- rather than lawful. Rio Tinto is keenly aware of this fact and may be attributed to their rational for not proceeding through the administrative process. As a sovereign government, the United States has an obligation to engage in ***meaningful*** consultation with the Nation on this matter before the exchange and before this legislation passes-not after. This requirement for consultation has been echoed by several members of Congress and administration. It is difficult to explain the importance of this areas religious, spiritual, and cultural, and environmental significance to someone whose predominate motivating factor for H.R. 687 (without meaningful requisite NEPA and Tribal Consultations) is monetary in nature (*see* the Nation's discussion of required Consultations in our S. 409 and H.R. 1904 Congressional record Testimonies). We conclude by asking to be involved in any further matters on RCM/exchange and be privy to any and all documents, discussions, decisions, etc. (pursuant to our rights under applicable Federal laws, statutes, executive orders, etc.).

Mr. Chairman, members of the Committee, on behalf of the Fort McDowell Yavapai People, I thank you for the opportunity to express our deep concerns regarding this proposed legislation.