AMENDMENT NO. _______  Calendar No. _______

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

S. 409

To secure Federal ownership and management of significant natural, scenic, and recreational resources, to provide for the protection of cultural resources, to facilitate the efficient extraction of mineral resources by authorizing and directing an exchange of Federal and non-Federal land, and for other purposes.

Referred to the Committee on ___________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by ____________

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Southeast Arizona

5 Land Exchange and Conservation Act of 2009”.

6 SEC. 2. DEFINITIONS.

7 In this Act:
(1) Apache Leap.—The term “Apache Leap” means the approximately 822 acres of land depicted on the map entitled “Apache Leap” and dated January 2009.


(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 4(a).

(5) Oak Flat Withdrawal Area.—The term “Oak Flat Withdrawal Area” means the approximately 760 acres of land depicted on the map entitled “Oak Flat Withdrawal Area” and dated January 2009.

(6) Resolution Copper.—The term “Resolution Copper” means Resolution Copper Mining, LLC, a Delaware limited liability company, includ-
ing any successor, assign, affiliate, member, or joint
venturer of Resolution Copper Mining, LLC.

(7) SECRETARY.—The term “Secretary” means
the Secretary of Agriculture.

(8) STATE.—The term “State” means the State
of Arizona.

(9) TOWN.—The term “Town” means the town
of Superior, Arizona.

SEC. 3. 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, and if the Secretary deter-
mines that the public interest would be well served by
making the exchange, the Secretary shall convey to Reso-
lution Copper, all right, title, and interest of the United
States in and to the Federal land.

(b) COMPLIANCE WITH APPLICABLE LAW.—

(1) IN GENERAL.—Except as otherwise pro-
vided in this Act, the Secretary shall carry out the
land exchange under this section in accordance with
section 206 of the Federal Land Policy and Manage-
ment Act of 1976 (43 U.S.C. 1716) and other appli-
cable laws, including the National Environmental
(2) ENVIRONMENTAL REVIEW DOCUMENT.—

(A) IN GENERAL.—To the maximum extent practicable under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and Council on Environmental Quality regulations, the Secretary, in consultation with the Secretary of the Interior and other affected Federal agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions under Federal law related to the land exchange and connected agency decisions related to the proposed mine on the Federal land.

(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph precludes the Secretary from using separate environmental review documents prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable laws for exploration or other activities not involving—

(i) the land exchange; or

(ii) the extraction of minerals in commercial quantities by Resolution Copper on or under the Federal land.

(c) CONDITIONS ON ACCEPTANCE.—
(1) **TITLE.**—Title to any non-Federal land conveyed by Resolution Copper to the United States under this Act shall be in a form that is acceptable to—

(A) the Secretary, for land to be administered by the Forest Service; and

(B) the Secretary of the Interior, for land to be administered by the Bureau of Land Management.

(2) **TERMS AND CONDITIONS.**—The conveyance of the Federal land and non-Federal land under this Act shall be subject to such terms and conditions as the Secretary and the Secretary of the Interior may require.

(d) **CONSULTATION WITH INDIAN TRIBES.**—Prior to making a public interest determination under subsection (a), the Secretary shall engage in government-to-government consultation with affected Indian tribes concerning issues related to the exchange, in accordance with applicable laws (including regulations).

(e) **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 con-

(2) Requirements.—

(A) In general.—Except as provided in subparagraph (B), an appraisal prepared under paragraph (1) 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.—

(i) In general.—After the final appraised value is determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value for a period of 3 years beginning on the date of the approval by the Secretary of the final appraised value.

(ii) Reappraisal.—Nothing in this subparagraph precludes the Secretary, prior to entering into an exchange agreement with Resolution Copper, from requir-
ing a reappraisal or update of the final appraiser if the Secretary determines that such reappraisal or update is necessary.

(iii) 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.

(C) PUBLIC REVIEW.—Before implementing 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) ADDITIONAL APPRAISAL INFORMATION.—

(A) IN GENERAL.—The appraiser selected under this subsection shall prepare a detailed income capitalization approach analysis, in accordance with the appraisal requirements referred to in paragraph (2)(A), of the market value of the Federal land, even if the income capitalization approach analysis is not the appraisal approach relied on by the appraiser to determine the market value of the Federal land.

(B) INCLUSION IN FINAL APPRAISAL REPORT.—The income capitalization approach
analysis under subparagraph (A) shall be in-
cluded in the final appraisal report of the Fed-
eral land.

(f) **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 ac-
cordance 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 Sec-
retary 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 paragraph 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, without further appropriation, for the acquisition of land for addition to the National Forest System in the State.

(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, the surplus value of the non-Federal land shall be considered to be a donation by Resolution Copper to the United States.
(g) Oak Flat Withdrawal Area.—

(1) In general.—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 may authorize Resolution Copper to carry out mineral exploration activities—

(A) under the Oak Flat Withdrawal Area, so long as such activities would not disturb the surface of the area; and

(B) on the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), so long as such activities are conducted from a single exploratory drill pad.

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

(3) Termination.—The authorization for Resolution Copper to undertake mineral exploration activities under this subsection shall terminate on the earlier of—

(A) the date the land is conveyed to Resolution Copper in accordance with this Act; or
(B) the date that is 3 years after the date
a special use permit is issued in accordance
with this subsection.

(h) Costs.—As a condition of the land exchange,
Resolution Copper shall agree to pay, without compensa-
tion, any costs that are—

(1) associated with the land exchange; and
(2) agreed to by the Secretary.

(i) Intent of Congress.—

(1) In general.—It is the intent of Congress
that the Secretary shall complete any necessary envi-
ronmental reviews and public interest determination
on the land exchange not later than 3 years after
the date Resolution Copper submits a mining plan of
operation to the Secretary.

(2) Agreement.—If the Secretary determines
that the public interest would be well served by mak-
ing the land exchange, it is the intent of Congress
that the Secretary seek to enter into an exchange
agreement not later than 90 days after the date of
the public interest determination.

SEC. 4. 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 of Agriculture, 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 Conservation Act of 2009–Non-Federal Parcel–Turkey Creek” and dated January 2009;

(B) the approximately 148 acres of land located in Yavapai County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009–Non-Federal Parcel–Tangle Creek” and dated January 2009;

(C) the approximately 149 acres of land located in Maricopa County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009–Non-Federal Parcel–Cave Creek” and dated January 2009;

(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 2009–Non-Federal Parcel–East Clear Creek” and dated January 2009;
(E) the approximately 95 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009–Non-Federal Parcel–The Pond” and dated January 2009; and

(F) the approximately 110 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Conservation Act of 2009–Non-Federal Parcel–Apache Leap South End” and dated January 2009, subject to the retained right of Resolution Copper to conduct underground activities that—

(i) the Secretary determines would not disturb the surface of Apache Leap; and

(ii) do not involve commercial mineral extraction under Apache Leap; 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 “Lower San Pedro River” and dated June 3, 2009;
(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 “Dripping Springs” and dated June 3, 2009; 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 “Appleton Ranch” and dated June 3, 2009.

(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 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. 460l–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 Riparian National Conservation Area.—

(i) In general.—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 Riparian 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 Riparian 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.

(e) SURRENDER OF RIGHTS.—In addition to the conveyance of the non-Federal land conveyed 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—

(1) Apache Leap; and

(2) the property described in subsection (a)(1)(E) (commonly known as “The Pond”).

SEC. 5. RECREATIONAL ACCESS AND IMPROVEMENTS.

(a) RECREATIONAL ACCESS AND FACILITIES.—
(1) IN GENERAL.—As a condition of the land exchange under this Act, Resolution Copper shall pay to the Secretary $1,250,000, to improve access and facilities for dispersed recreation and other outdoor recreational activities as provided in paragraph (2).

(2) USE OF AMOUNTS.—The Secretary shall use the amount paid in accordance with paragraph (1), without further appropriation, to construct or improve road access, turnouts, trails, parking areas, or facilities for dispersed recreation and other outdoor recreational activities as the Secretary determines to be appropriate.

(3) PREFERRED LOCATIONS.—To the maximum extent practicable, the funds made available under this subsection shall be used by the Secretary on national forest land—

(A) in the general area north of Arizona State Highway 60; or

(B) in the general area along Arizona State Highway 177.

(b) DETERMINATION OF VALUE.—Amounts paid by Resolution Copper under this section shall not be considered in determining the value of the Federal and non-Federal land under section 3(f).
SEC. 6. VALUE ADJUSTMENT PAYMENT TO UNITED STATES.

(a) ANNUAL PRODUCTION REPORTING.—

(1) IN GENERAL.—As a condition of the exchange, beginning on February 15 of the first calendar year beginning after the date of commencement of production of valuable locatable minerals in commercial quantities from the Federal land conveyed to Resolution Copper under section 3, and annually thereafter, Resolution Copper shall file with the Secretary of the Interior a report indicating the quantity of locatable minerals produced in commercial quantities from the Federal land during the preceding calendar year.

(2) 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 3 exceeds the quantity of production of locatable minerals from the Federal land used in the income capitalization approach analysis prepared under section 3(e)(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 as-
sumed for the income capitalization approach analysis pre-
pared under section 3(e)(3).

(c) STATE LAW UNAFFECTED.—Nothing in this sec-
tion modifies, expands, diminishes, amends, or otherwise
affects any State law relating to the imposition, applica-
tion, timing, or collection of a State excise or severance
tax.

(d) USE OF FUNDS.—The funds paid to the United
States 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, without further appropriation,
for the acquisition of land for addition to the National
Forest System in the State.

SEC. 7. WITHDRAWAL.

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

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

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

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

(a) CONVEYANCES.—

(1) IN GENERAL.—On request from the Town and subject to the provisions of this section, the Secretary shall convey to the Town the following:

(B) The reversionary interest and any reserved mineral interest of the United States in the approximately 265 acre of land located in Pinal County, Arizona, as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2009–Federal Reversionary Interest–Superior Airport” and dated January 2009.


(b) PAYMENT.—

(1) IN GENERAL.—The Town shall pay to the Secretary the fair market value for each parcel of land or interest in land acquired under this section, as determined by appraisals conducted in accordance with section 3(e).

(2) REDUCTION.—If the final appraised value of the non-Federal land exceeds the value of the Federal land under section 3—

(A) the obligation of the Town to pay the United States shall be reduced by an amount
not to exceed the excess value of the non-Federal land conveyed to the United States; and

(B) the amount donated by Resolution Copper to the United States shall be reduced accordingly.

(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, without further appropriation, for the acquisition of land for addition to the National Forest System in the State.

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