

**Questions for Joel Holtrop  
Deputy Chief  
National Forest System  
Forest Service  
Department of Agriculture  
Subcommittee on Public Lands and Forests Hearing – June 17, 2009**

**Question from Senator Wyden re: S. 1139:**

*As we discussed at the hearing, this property, built by the Civilian Conservation Corps in the 1930s, has high historical value, which the community intends to protect and restore. You indicated that the Forest Service intends to protect the unique architectural features and the important cultural and historic features of the property. Can you tell me how the Forest Service plans to ensure that these unique architectural, cultural and historic features of the property are maintained if it sells it under existing law?*

**The Forest Service is working with the Oregon State Historic Preservation Officer (SHPO) to determine the most appropriate means of either recording or protecting the site. Because there are other nearby sites with similar features from the same time period, the SHPO has determined that the site can be photographed and recorded and that existing buildings would not need to be maintained or retained. (The agency estimates that costs for deferred maintenance of the existing buildings approaches \$300,000.) Therefore, if sold, the disposition of the buildings would be at the discretion of the new owners.**

**Questions from Senator Bingaman:**

**Question 1:**

*The Department of the Interior has testified that adding a provision requiring Resolution Copper to provide confidential access to the Secretaries of Agriculture and the Interior (and their representatives) to all exploration and development data and company analyses on the mineral deposits underlying the Federal land is essential in order to ensure an accurate appraisal. Is access to such data and analyses important to the Department in the context of completing appropriate analyses under NEPA and other environmental laws?*

**Subsurface information that would be part of the mining plan and mining operations documentation are essential in order to assess environmental impacts, including the hydrological conditions, subsidence, and other related issues. This information is critical in order to evaluate the mineral appraisal process. Without such documentation, it's impossible to assess impacts or to evaluate the ore body.**

Question 2:

*The Tribes have testified repeatedly that they have been deeply concerned about the lack of consultation on a government-to-government basis regarding the Southeast Arizona Land Exchange and Conservation Act. In past testimony, the Department has not directly recognized the Tribes' interests in the proposal or addressed the Tribes' consultation concerns. In its testimony at our recent hearing, however, the Department did recognize that:*

*Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil's Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area. We will continue to work with these Tribes as we move forward with the analysis.*

*Has the Forest Service consulted with the Tribes on a government-to-government basis on this proposal and, if not, does it plan to?*

**Although the U.S. Forest Service has conducted informal consultations with concerned Tribes over the course of the several years this exchange has been under discussion, the Secretary's letter to Senator Wyden on July 13, 2009, highlights the need for the Administration to conduct formal Government to Government consultation with concerned Tribes over S. 409 to discuss the concerns raised by Tribal Governments that the bill circumvents various laws, policies, and Executive Orders. As set forth in the 2004 Forest Service Manual, the U.S. Forest Service seeks to ensure that it protects sites sacred to Native Americans located on the National Forest System lands and provides continued access to these sites. Further, under the 2004 Forest Service Manual, the U.S. Forest Service seeks to ensure that it protects Native American burial and archeological resources located on National Forest System lands.**

Question 3:

Does the Forest Service have an understanding of whether the proposed mine will have any impact on local or regional water supplies and water quality? If so, please provide to the Committee with whatever information and analyses the Forest Service has considered.

**At this time the U.S. Forest Service does not have an understanding of the impacts the proposed mine will have on local or regional water supplies, water quality, or possible dewatering of the area. No studies or assessments of the water supplies have been conducted. That is information which could be obtained by the Forest Service with NEPA analysis *before* the exchange. A NEPA analysis after the**

**exchange would not allow the Forest Service to recommend alternatives since the exchanged parcel would already be in private ownership. Data and analyses in the possession of Resolution Copper Mining would be of assistance to the Forest Service in evaluating the impacts of the proposed mine on local and regional water supplies and quality.**

**Question 4a:**

*A number of interested parties have advocated for the inclusion in the exchange of some land near San Miguel along the Lower San Pedro River that is owned by BHP-Billiton, which is the minority partner in the mining project. Apparently, the concern is that the development of that property would have a significant adverse affect on the riparian values of the other property along that river that the Federal government would acquire through the exchange.*

*Has the Department evaluated the BHP-Billiton parcel and the potential impact of its development on the conservation values of the land the Federal government would acquire in the proposed exchange?*

**The lower San Pedro River and BHP-Billiton parcels are outside of the National Forest boundary. The lower San Pedro River parcel would likely be under the jurisdiction of the BLM. We would defer to the Department of Interior.**

**Question 4:**

*At the hearing on this proposal on July 9, 2008, Chairman Wyden asked Mr. Salisbury if lifting the Oak Flat withdrawal and conveying that land to Resolution Copper was essential to the development of the mine, and Mr. Salisbury responded that it was. See S. Hrg. 110-572 at 56-57. If Congress provided authorization to carry out the proposed 3-party exchange under existing law, please generally describe whether and, if so, how the Forest Service would evaluate the environmental impacts of conveying the Oak Flat parcel.*

**Under existing administrative procedures for land exchanges, it would be analyzed along with the other federal and private lands proposed for this exchange utilizing standard NEPA procedures. The first step is a feasibility analysis which would provide information on whether to proceed with the environmental analysis.**

**The next step in the process would then be to complete resource surveys and conduct public scoping of the proposal to determine the significance of potentially affected resources (e.g., subsidence, impact on water table), uses and social effects (e.g., heritage resources, loss of a campground, economic analysis) to determine the extent of any potential impacts to those resources, uses and social effects, describe possible mitigation measures for those impacts, and disclose the impacts for which no mitigation is possible. After documenting those findings a decision would be made by the line officer as to whether or not the proposed exchange is in the public interest and whether to approve it.**

**Question 5:**

*Mr. Salisbury's testimony states that Resolution Copper estimates that it will have to invest approximately \$600 million over the coming years on exploration and feasibility studies before it determines whether mining the ore is economically or technologically feasible. Given the substantial financial investment and the remaining uncertainty, my understanding is that Resolution Copper is concerned about waiting until the end of that process to conduct the environmental analyses associated with the land exchange.*

*Would it be possible for the Forest Service to conduct the environmental analyses that would be necessary to complete the exchange in accordance with existing law with the information that is currently available or reasonably obtainable, or would the Forest Service be required under existing law to wait until Resolution Copper has completed its exploration and technological feasibility analyses? Please describe how the Forest Service would proceed under these circumstances.*

**The information now available or that which could be reasonably obtained would allow the Forest Service to conduct the needed environmental analysis. As a start and as described in company reports and information that has already been shared, the subject property is highly mineralized.**

**While a significant amount of information is available to begin the analysis, ecological evaluations such as hydrologic conditions of the area, geologic assessments, ESA assessments, or other environmental resources analysis have not been conducted. In addition, Resolution Copper Mining does not have a mining plan of operations. Without such studies, assessments, or documents, mining and post mining subsidence issues, water quality contamination concerns (including acid mine drainage and subsequent pollution), water quantity (including the dewatering of nearby surface water and water rights concerns), air quality compliance issues, tailings and overburden storage and placement cannot be assessed or determined at this time.**

**The NEPA process mandates analysis and disclosure of environmental impacts, including cumulative impacts, allowing all affected parties and decision-makers to review and comprehend the risk assessment.**

**The Council on Environmental Quality has made allowances for incomplete or unavailable information which are available when the overall costs of obtaining the information are exorbitant or the means to obtain the information are unknown. In such cases, 40 CFR 1502.22, states:**

**“When an agency is evaluating reasonably foreseeable significant adverse affects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.....” 40 CFR 1502.22.**

Question 6:

*If you followed the standard administrative land exchange authority under section 206 of the Federal Land Policy and Management Act, you would need to make a public interest determination. What factors would the agency consider in making that determination?*

**The Forest Service would follow the criteria outlined in 36 CFR 254.3. 36 CFR 254.3(b)(1) requires that an exchange be made only after a determination that “the public interest is well served.” 36 CFR 254.3(b)(2) sets forth the factors to consider in making that determination.**

**When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split mineral estates; expansion of communities; accommodation of existing or planned land use authorizations (254.4(c)(4)); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.**

Senator Barrasso Supplemental Questions**S. 409 – Resolution Copper Land Exchange**

*Mr. Holtrop in the 110<sup>th</sup> Congress the Forest Service testified that they supported the exchange in S. 409 but then equivocated in answers to supplemental questions by saying once the exchange was directed by Congress that your responsibility to make such a determination ends and that it would be difficult to make such a finding until you understand the proposal for the mine better.*

*Given what you know about this bill, do you think this proposed exchange is likely to be in the public interest?*

**If the U.S. Forest Service concludes after careful analyses that the proposed mine that the land exchange would facilitate would not have unacceptable adverse environmental impacts and if the proposal takes into account and resolves the concerns of Indian Tribes and surrounding or affected communities, then the exchange may well be determined to be in the public interest. However, until the U.S. Forest Service can fully analyze environmental impacts as addressed through**

**NEPA, formally consults with Tribes and the public through that process, including assessing the proposed land exchange in light of the U.S. Forest Service's responsibilities under applicable laws, policies, and Executive Orders, it is too early to conclude that the proposed land exchange would be in the public interest.**

*You also complained in your testimony during the 110<sup>th</sup> Congress that you had concerns about the cost of rebuilding a camp ground to replace the Oak Flats Campground. In your testimony in the hearing you suggested the Company just give the Forest Service the million dollars to spend on general camp ground upgrades and backlog maintenance. It seems to me the agency can't have it both ways. You can't complain about the loss of the camp ground at Oak Flats and then say you can't find a replacement, while also asking for a million dollars.*

*This legislation requires Resolution Copper Company to pay up to a million dollars to replace the Campground.*

*If the agency does not think that a million dollars is a sufficient sum would you provide the Committee with a list of the cost of the last ten new campgrounds it developed, along with a description of the facilities constructed at those campgrounds.*

**The agency is not seeking one million dollars in funding. If the bill provides one million dollars the agency would use those funds to increase capacity as well as quality at nearby sites as they have not been able to find a replacement site nearby. Current cost of campground development on the Tonto is \$35,000 per camp unit. This includes everything from survey and design through opening day. Replacement of 21 units at the current standard (\$35M/unit) would be \$735,000. This cost does not include NEPA and other pre-design environmental analyses, archaeological site effects mitigation or site access roads, which depending upon location, could be a substantial cost.**

*Please provide the subcommittee with your agency's rationale of why it thinks this company should make a million dollar donation to be used to take care of backlog maintenance of other campground?*

**The agency is not asking for funding. If the bill provides one million dollars the agency would use those funds to increase capacity as well as quality at nearby sites as they have not been able to find a replacement site nearby.**

*Mr. Holtrop I know you are acutely aware of the issues that revolve around having to complete NEPA and/or a finding of public interest when it comes to land exchanges.*

*Those questions become even more complex when a land exchange involves a proposal for a major development, such as a mine.*

*Several Congresses ago the Yavapai Ranch land exchange passed and included both a Congressional directed exchange to be completed on a tight timeline, as well as a requirement that the exchange comply with Section 206 of the Federal Land Policy and Management Act (FLPMA).*

*What is the status of that exchange?*

**The Northern Arizona Land Exchange partnership has dissolved and we recently cancelled the original “Agreement to Initiate” document that outlined the responsibilities, timelines and costs for the various aspects of conducting the land exchange process. A new Agreement is being written with the remaining partner, Fred Ruskin.**

### **S. 1139 – City of Wallowa**

*I generally think turning federal land over to non-federal entities should be seriously considered, but I am concerned about the precedent that S. 1139 and S. 1140 will set.*

*Mr. Holtrop how many other parcels of land does the Forest Service have that it would like to give to non-federal entities?*

**None. The agency seeks to receive consideration when conveying lands out of federal ownership. The intent is to preserve the value of the federal estate.**

*How would you suggest Congress deal with a situation when multiple parties, including Indian tribes, have asked to be given the same parcel of land and/or buildings?*

**If a single municipality wishes to acquire federal property for the benefit of its constituents, under the Townsite Act, the agency can offer a direct sale at the appraised value. The hierarchy for offering these lands or facilities would be as follows a. other federal, b. tribes, c. state, d. county, e. city, f. public utility district (PUD. If multiple parties of same standing wish to acquire the same property; i.e., two different PUD’s or two different tribes , a competitive bid process would be a preferred means for conveying the property.**

*Would you provide this committee with a list of parcels that you would like Congress to give away?*

**We have no such list.**

### **Senator Murkowski Supplemental Questions**

*Both in your testimony and in answers to questions at the hearing you indicated it would take some time for the Administration to analyze S. 409 before the Administration could take a position on the bill. Yet, the agency didn't seem to have difficulty formulating a position on S. 1139. S. 1139 which were introduced May 21, 2009. S. 409 was introduced February 11, 2009 and nearly identical bills were introduced in both the 109<sup>th</sup> and 110<sup>th</sup> Congress. In fact, Mr. Holtrop testified at hearings on the earlier versions of the bills in those Congresses. Additionally, you committed to Subcommittee Chairman Senator Ron Wyden to have answers to questions within two weeks.*

1. *While I understand we are six months into a new Administration, I need to know how long you expect it will take your agency to analyze legislation before being able to provide competent testimony in the future?*

*A) Should we hold off on hearings on new bills for 3 months after a bill is introduced or will you need more time than that?*

**This is a complex bill that took time to analyze. In addition to the Department of the Interior's testimony of June 17, 2009, Secretary Vilsack provided the Subcommittee with a letter detailing additional views and concerns on July 13, 2009.**

*Please help us better understand how it is that the Administration found the ability to testify on S. 1139 and S. 1140 and S. 874, all which were introduced since the last week of April, 2009, while it struggled to formulate an opinion on legislation which has been before the Forest Service for the last two sessions of Congress and which your agency supported as recently as 11 months ago?*

**S409 is a much more complex bill than the conveyance bills noted in your question. The Administration has a number of concerns as noted in the Department of the Interior testimony of June 17, 2009 and the Secretary of Agriculture's letter of July 13, 2009.**

#### **S. 1139 – City of Wallowa**

*The Administration testified that it was already prepared to use its authority under the Forest Service Facility Realignment and Enhancement Act to dispose of the Wallowa Ranger Station.*

*Absent S. 1139 being signed into law, when will that sale take place?*

**It is scheduled to take place in the fall of 2009.**

*You indicated that you had multiple parties interested in acquiring the property, including the Nez Perce Tribe. Would you provide the Committee with a list of all parties, individuals, or groups who have expressed an interest in acquiring the property?*



**A total of 24 responses were received from groups or individuals interested in acquiring the property, including the following (Ten of these responses were in support of the Forest giving the property to the Wallowa School District, in conjunction with the Maxville Project):**

**Individuals interested in possible purchase of the property:**

**Keith Kessler (Colorado)  
 Jim Soares (Enterprise, OR)  
 Gerald Schmeckpeper (Wallowa, OR)  
 Dick and Laura Parsons (Elgin, OR)  
 James Livingston (California)  
 Mike Young (Vale, OR)  
 Glen Foote (Baker City, OR)  
 Ben Deal (Enterprise, OR)  
 Ernie Josie (Wallowa, OR)  
 Dale Johnson (Wallowa, OR)**

**Four additional individuals who did not provide their name (neighbors, etc) also contacted the Forest with interest in possibly acquiring the compound.**

**Lower Valley Economic Development Team (to donate to Wallowa Resources)  
 Supporters of Gwen Trice and the Maxville Project include the following (all supported giving the compound to the Wallowa School District):**

**Friends of the Joseph Branch  
 Wallowa County Board of Commissioners  
 Wallowa School District  
 City of Wallowa  
 Northeast Oregon Economic Development District  
 Lower Valley Economic Development Team  
 Friends of Wallowa County Museum  
 Wallowa Resources  
 Wallowa Band Nez Perce Trail Interpretive Center, Inc. (Nez Perce Homeland Project)**

*Will you provide the Committee with your best estimate of the total value of the property if it were to be advertised for sale on the open market?*

**We have no appraisal information on this property. Any estimate would be without foundation.**

**Questions by Senator McCain**

*At the hearing, Mr. Holtrop, testifying on behalf of the U.S. Forest Service indicated that the Department had not completed its analysis of S. 409. He further indicated that the Administration will provide its views and concerns to the Committee upon completion of this work. The Forest Service has testified and provided its views and concerns regarding this land exchange on as many as three occasions prior to the hearing on June*

*17, 2009. On each of these occasions the Forest Service testified that it supported the exchange and that it was the Department's view that the exchange as a whole is in the public interest. In fact, in your "Responses to Additional Questions" you actually explained in detail why the Department believed the exchange was in the public interest. (see S. Hrg. 110-572 and S. Hrg. 109-582)*

*Did the Administration review your prior testimony prior to this hearing? What has changed substantively with regard to this land exchange since you last testified on July 9, 2008 that warrants additional review?*

**It is the prerogative of the Administration to analyze S. 409 and provide its views and concerns to the Subcommittee.**

*In 2006 (S. Hrg. 109-582) Mr. Holtrop testified that "the Department believes the acquisition of the non-Federal parcels to be managed by the Forest Service is in the public interest and would provide protection for riparian habitat and water rights, archeological sites, lands along permanently flowing stream, a year-round pond and an endangered cactus species. In this context, the Department supports the exchange." In 2008 (S. Hrg. 110-572), Mr. Holtrop testified that the non-Federal lands "have outstanding natural qualities" and that "the Department supports the exchange and believes that overall it is in the public interest." Is it the Forest Service's position that acquiring these non-Federal lands is no longer in the public interest?*

**In addition to the Department of the Interior's testimony of June 17, 2009, Secretary Vilsack's letter to Senator Wyden on July 13, 2009, describes additional views and concerns about S. 409. Several factors must be assessed prior to making a determination of whether or not the land exchange is in the public interest. Formal Government to Government consultations with Tribes along with other meaningful dialogue, environmental assessments including NEPA, and other analyses must be conducted in order to determine fully the impacts of mining operations on the National Forest System lands proposed for conveyance under S. 409, the adjacent areas of Apache Leap, Devil's Canyon and other areas.**

*In your written statement submitted at the hearing, you indicate that "consistent with Administration policy, NEPA should be done before moving forward on the land exchange."*

*What "Administration policy" are you referring to? Please provide copies of the policy. This is not a written policy but the policy position of this Administration in land conveyance legislation. Is it the position of the Forest Service that this "Administration policy" applies to actions that are directed or mandated by Congress? If so, please explain the basis for that position. Again, this is the policy which this administration is adopting when testifying on land conveyance legislation. In your written statement submitted at the hearing, the Forest Service claims that the Environmental Impact Statement (EIS) required by Section 5(c) would not analyze impacts from mining activities on the land to be conveyed. Please explain why the impacts from mining*

*activities on the land conveyed would not be part of the "cumulative effects" analysis in the EIS required by Section 5(c).*

**Section 5(c) of the bill would require the Secretary of Agriculture to prepare an environmental impact statement (EIS) under the National Environmental Policy of 1969 (NEPA) *after* the land exchange in section 4 is completed. It is the Administration's policy that the bill should be amended to require the preparation of an environmental impact statement *before* the land exchange is completed. NEPA is a forward looking statute setting out procedural obligations to be carried out before a Federal action is taken. It requires that, before making a discretionary decision, a Federal agency consider the environmental impacts of a proposed major Federal action and alternatives to such action. It is this Administration's policy that NEPA be fully complied with to address all federal decisions, including those necessary to implement Congressional direction. Furthermore, the effects of mining activities on the land to be conveyed will be considered in the NEPA analysis.**

**The purpose of a requirement in the bill that the agency prepare the EIS *after* the exchange, when the land is in private ownership, is unclear because the bill provides the agency with no discretion to exercise. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, and only if the agency were exercising its discretion in making a decision about the exchange. An EIS after the exchange would preclude the U.S. Forest Service from developing a reasonable range of alternatives to the proposal and providing the public with opportunities to comment on the proposal. The exchange would be a *fait accompli*. A reasonable range of alternatives and public comment would be superfluous.**

*An EIS requires full disclosure to the public of all adverse environmental impacts so if the EIS required by Section 4(h) was conducted and it revealed that the mine would cause adverse environmental impacts would not the Forest Service disclose those adverse environmental impacts to the public? What other federal environmental laws would affect the permitting of the mining operations?*

**The Forest Service would disclose those adverse environmental impacts to the public. If the objective of the environmental analysis is to ascertain the impacts of the potential commercial mineral production on the parcel to be exchanged, then the analysis should be prepared before an exchange, not afterwards, As indicated in the previous answer, preparing an EIS after the exchange would preclude the agency's ability to recommend alternatives which would mitigate adverse environmental impacts since the land would already be in private ownership. There are many federal laws which apply to mining operations; e.g., Clean Water Act, Clean Air Act, the Endangered Species Act, the National Historic Preservation Act, etc.**

*How many copper mines are in operation and located on National Forest System Lands?*

*When was the last time the Forest Service approved a major mining plan of operations that resulted in active copper mine on National Forest System Lands in the lower 48 states where the U.S. remained the landowner during the permitting process? Please provide the name and location of the mine.*

**Most of the copper mines are of mixed ownership (private and U.S.) and mixed commodity (a variety of minerals.) Most major mines are not located on federal lands but some of the infrastructure is. In the Southwestern Region (R-3), where many of the large copper mines are located, most are on mixed ownership lands, including patented private lands which are directly adjacent to National Forest lands. In these instances, additional mine expansion, new waste rock or leach pads, and infrastructure needs often involve approvals and permits from the adjoining Forest unit for the benefit of the mine. BHP's Pinto Valley Mine in Globe, Arizona, and Freeport MacMoran Copper and Gold Inc.'s Miami mine, in Miami, Arizona, are examples of large copper mines, with complex landownership patterns, that include the Forest Service.**

**In some cases such as the Carlota Copper Mine in Globe, Arizona, the vast majority of the mine (greater than 75 percent) occupies Forest Service land (Tonto NF). The Carlota Copper Mine is one of the few copper mines that is primarily on Forest Service land. The Record of Decision for this mine was approved in 1997. The Mining Plan of Operation was approved in 1998. Mine construction began in 2007 and actual operations began in 2008.**

*What kind of outreach has the Forest Service conducted with the San Carlos Apache tribe and other Arizona tribes concerning this proposal? Past Forest Service testimony indicates that government-to-government discussions have been occurring as far back as 2004.*

**Although the U.S. Forest Service has conducted informal discussions with concerned Tribes, including the San Carlos Apache Tribe, over the course of the several years this exchange has been under discussion, there is a need for formal Government to Government consultation with the concerned Tribes to discuss the obligations of the U.S. Forest Service to protect and preserve the Forest Service land that would be conveyed to Resolution Copper Mining under S. 409 as set forth in policies, Executive Orders and various laws. For example, NEPA requires the federal agency officials to consult with Indian Tribes concerning the effects of the proposed projects on their sacred sites.**

**Due to limited information, the U.S. Forest Service is unable at this time to provide its own proposed treatment plan to mitigate the adverse effects of the proposed land exchange on the archaeological, religious, historical, and cultural sites on the proposed National Forest System lands to be conveyed to Resolution Copper Mining and the adjacent areas of Apache Leap, Devil's Canyon and other areas if mitigation is even possible. One of the formidable issues the U.S. Forest Service**

**faces regarding mitigation planning is the lack of information on the mining plan of operations. In order to determine the effects of mining, such as land subsidence and dewatering of springs, it is essential to having mining operations plans. Thus, without such information, completing formal Government to Government consultations with Tribes will be difficult as potential impacts cannot be adequately analyzed by the affected parties. Initial contact with Tribes was made through the delivery of Resolution Copper Mining's pre-feasibility studies, but this is not a substitute for the plan of operations or mine planning. Formal consultation regarding the pre-feasibility has not occurred with Indian Tribes.**