



June 8, 2009

To: The Hon. Senator Jeff Bingaman, U.S. Senate Committee on Energy and Natural Resources:

Enclosed herein is the testimony of the Maricopa Audubon Society regarding Senate Bill 409. On behalf of the 2300 members of this chapter of the National Audubon Society here in central Arizona we wish to express our strong opposition to Senate Bill 409.

In summary:

1. It lacks the safeguards of NEPA oversight and NEPA's scrutiny to the mine's structural design, cultural and environmental harms and air, water and land impacts and pollutions.
2. The bill has immense unresolved environmental impacts and harms, specifically regarding riparian habitat, endangered species, cultural and historical values.
3. The cultural harms to Native Americans by this project are offensive and humiliating. The horrendous 3rd world environmental/indigenous records of Rio Tinto and BHP-Billiton, the two partners in this Resolution Copper Company (RCC), are well recognized.
5. The Bill impacts, weakens and/or circumvents endangered species, endangered and unique ecosystems, and historical and cultural places that would normally be protected by NEPA. ESA (Endangered Species Act) and NHPA (National Historic Protection Act) are greatly vitiated in this NEPA-exempt land exchange legislation.

The National Environmental Policy Act (NEPA) signed by President Nixon in 1969 has come to be the Magna Carta of environmental protection in the U.S. King John, at Runnymede in 1215, granted what is now the basis of civil and political liberty in England. S. 409 circumvents the opportunity of citizens to that vital oversight and scrutiny of NEPA and weakens NHPA and ESA scrutiny and oversight. This bill bypasses outright, the opportunity of U.S. Citizens to public hearings and testimony regarding the environmental, cultural, endangered species and historical impacts of the project.

If the land exchange, as written, were to be consummated, citizens would have no opportunity to respond to the harms of the (1) mine itself, -- to the environment, the air, waters and especially the priceless life-giving aquifers of the area, (2) the cultural and religious and historical concerns and values of Native Americans, (3) the protection of historic and culturally irreplaceable

sites such as Apache Leap and Oak Flat and Devil's Canyon and the surrounding area, (4) the protection of endangered species such as the highly endemic and federally endangered Arizona Hedgehog Cactus, and (5) to unique Sonoran Desert riparian treasures such as the immediately adjacent Devil's Canyon. The framework of NEPA allows the opportunity for substantive public input and full and adequate response from the federal and/or non-federal agencies involved. There are no such safeguards or mechanisms in this legislation.

There would be no opportunity under S. 409 for citizens to hear about the concerns regarding the harms of the mine itself or its impacts to the adjacent land, water, and air and harms to non-Native American and Native Americans citizens of this area and the U.S. Since the land would be privatized and under the sole ownership of the Resolution Copper Company, the land resources and human values would have no NEPA benefits and greatly reduced ESA and NHPA oversight.

There is no NEPA for the mine plan or mine's structure or mine's operation in this law. The American public will have no insight into the structural, operational and physical harms caused by this mine. This is a giveaway to two foreign mining companies with horrendous third world cultural/environmental records.

Most grave of all is the impact of the mine upon the water table supplying the Devil's Canyon aquifer – which canyon is located just a mile or so east of Oak Flat. The bill's sponsor, Resolution Copper boasts of a mesquite bosque swap property at the BHP Billiton's 7B ranch property on the San Pedro River. It is a single-species, even-aged, even-sized, even-canopied forest lacking the broad-leaved arboreal species' diversity so characteristic of the rest of the San Pedro River's environment. In fact, the 7B possesses only a dry riverbed, not even a tiny bit of flowing river stream. It is devoid of broad-leaved deciduous trees, as is both vital and characteristic of the avian and other species that flourish in the Lower San Pedro River.

The U.S. Bureau of Reclamation, the Nature Conservancy, the U.S. Bureau of Land Management and the Salt River Project have properties containing endangered Southwestern Willow Flycatchers and Western Yellow-billed Cuckoos, as well as the San Pedro flagship species such as Gray Hawks, Zone-tailed Hawks, Black Hawks and Mississippi Kites. None of these are found on the arid, distant-from-the-dry-riverbed 7B ranch which is a dry, non-riverbed, upland mesquite bosque. As far as tree species are concerned the Devil's Canyon may actually exceed tree and plant species diversity per river mile compared with the Lower San Pedro River ecosystem.

A serious environmental abuse of this land exchange is that it would de-water and destroy one of the most unique and diverse riparian habitats in the Sonoran Desert of the United States, namely Devil's Canyon. Since there is no NEPA, the American public will be uninformed of this. Located just a mile east of Oak Flats, Devil's Canyon consists of many river miles of an irreplaceable riparian treasure-trove. Its water supply and groundwater aquifer would be eliminated forthwith by construction of the Resolution Copper Company mine. Block-caving would require de-watering of the water table (aquifer) far below that level supplying Devil's Canyon. And after the mine was terminated acid mine waters would be likely to pollute the Devil's Canyon aquifer as well as the water sources of the adjacent people of Superior. Also on termination of the mine, Devil's Canyon would continue to be waterless. The mine is far below the water level of Devil's Canyon and would irretrievably dry up that priceless riparian Sonoran Desert ecosystem.

The large variety of Sonoran Desert plants and animals and trees in Devil's Canyon is extraordinary, and as species diverse as any place in Arizona including the Lower San Pedro River. The highly varied tree species in Devil's Canyon include Arizona Black Walnut, Velvet Ash,

Arizona Sycamore, Arizona White Oak, Emory Oak, Fremont Cottonwood, Goodding Willow, Bonplan Willow, Netleaf Hackberry, and Arizona Cypress. Nesting Zone-tailed Hawks, Black Hawks, and Peregrine Falcons give avifaunal diversity in this Devil's Canyon treasure chest.



Devil's Canyon: Threatened by the mine are an array of waterfalls, interspersed with limpid pools, and breath-taking riparian forest galleries. Over 90% of Arizona's riparian wetlands, critical to the survival of desert birds and wildlife, have been destroyed by dams, stream diversions, groundwater pumping, grazing and mining.

Few people have experienced this riparian treasure except rock climbers, biologists, Audubon and Sierra Club nature buffs and Arizona Highways magazine photographer types. But a trail into it could easily be built, were it also undertaken to protect this national ecologic treasure from vandalism.

The aquifer supplying this canyon is in extreme jeopardy, even as we speak. The mining company, Resolution Copper Company (RCC), is even this very moment planning to dewater their mine site of some 2 billion gallons of water and continue to keep it dry. This would mean the death of the Devil's Canyon ecosystem. These two foreign mining companies (BHP, Rio Tinto) are not

even waiting to get an exemption from federal NEPA and EIS laws before they start their dewatering of this riparian treasure. The Devil's Canyon-impacted properties are a mix of Arizona State Trust lands and U.S. Forest Service lands.

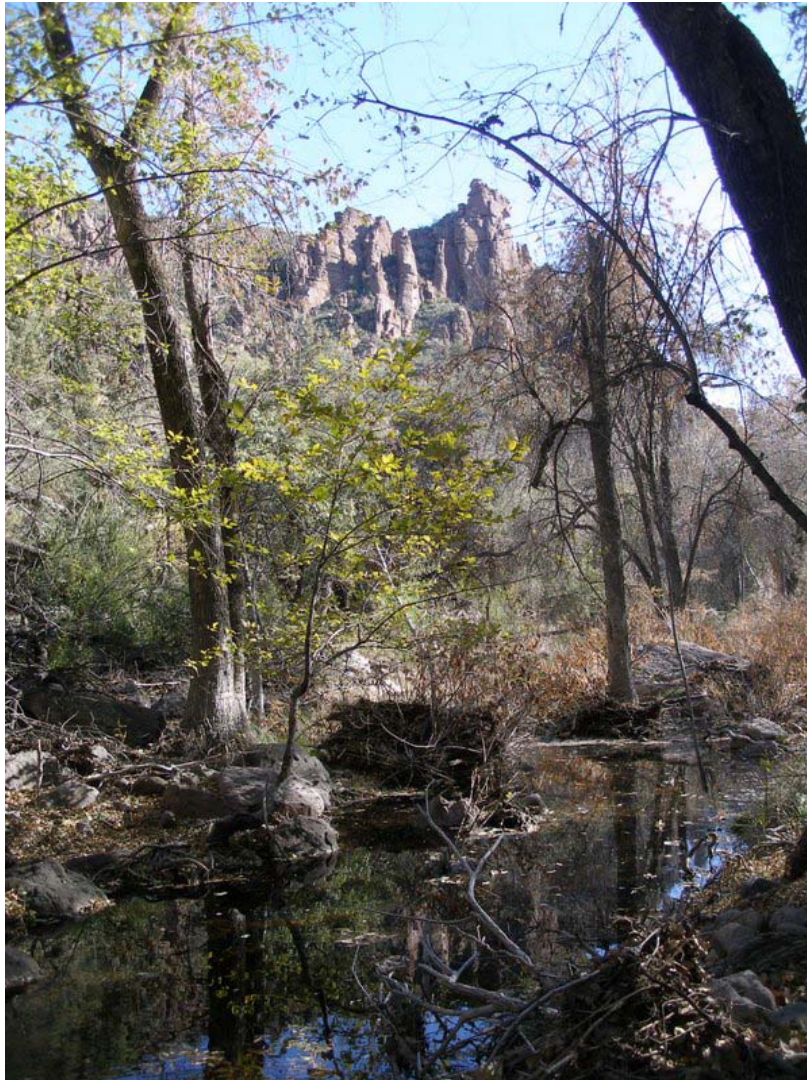


The fact of the NEPA-exempt Resolution Copper mine dewatering the Devil's Canyon "ribbon-of-life" riparian treasure of Fremont Cottonwood, Goodding Willow, Arizona Black Walnut, Velvet Ash, Arizona White Oak, Emory Oak, Arizona Alder, Arizona Cypress and Arizona Sycamore is horrendous. This is one of many reasons the mine wants to dodge NEPA oversight and public disclosure and review. Fall foliage photo.

The exchange properties, with the exception of the 7B, are primarily USFS inholdings. They are historically overgrazed and severely abused. The tens of millions of dollars it would cost to fence and rehabilitate them are not being folded into the land exchange legislation. The West Clear Creek property is particularly vulnerable to overgrazing, ORV's and other land abuses. The maintenance of water-gaps, cattle-free riverbanks and riparian seedling and upland forest riparian recruitment is economically not feasible.

Consequently, the public is receiving no benefits in these swap properties, only the adjacent permittees who may well continue to abuse or these exchange properties. There are no funds for the exchange lands' protection in this legislation.

The Oak Flat mine is a cultural, historical and environmental affront to America by two foreign mining companies with horrendous third world records. President's Nixon and Eisenhower, when they passed Executive Orders to close Oak Flat to mining were right on target. Let's not reverse those Orders by legislating destruction of this priceless, sacred area.



The groundwater aquifer providing water to the Devil's Canyon Sonoran Desert riparian masterpiece is about to be dewatered by RCC pumps-- even before the land exchange legislation is passed by Congress. At this very moment a scofflaw Australian/British mining consortium is proceeding to pump dry the groundwater aquifer which provides life-giving waters to the Devil's Canyon. Thus, this treasure-trove of decades-or-centuries-old Walnut, Sycamore, Willow, Oak, Ash, Alder, and Cypress trees are about to be destroyed along with the other unique plants, animals, birds, and reptiles now living in this riparian treasure (photo above by Lisa Fitzner).

Sincerely,

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