

Gosar Oak Flat Land Exchange Bill – Big Loss for the Public, Big Win for Foreign Mining Giants

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Today, Congressman Gosar introduced a new version of the Oak Flat Land Exchange. The new bill number is H. R. 1904. Congressmen Franks, Flake, Quayle and Schweikert, all Arizona Republicans, joined Rep. Gosar in co-sponsoring the bill.

This bill is similar to the McCain – Bingaman Compromise that resulted in S 409, which passed in the Senate Energy and Natural Resources Committee in December of 2009. However, there are several important differences that make this version much worse. The bill is not in the interest of citizens of the United States; it serves only one purpose – to make it easier for two foreign mining companies – Rio Tinto and BHP-Billiton – to export valuable American natural resources overseas and reap huge profits at taxpayer expense. The following is a section by section narration of H.R. 1904 looking at the major features and shortcomings of the bill.

Section 1

This is the short title of the bill – the “Southeast Arizona Land Exchange and Conservation Act of 2011,” and the table of contents.

Section 2

Section 2 states several erroneous findings and includes the inaccurate and misleading statement that this bill is in the public interest.

Section 2 (A) states that the bill would promote significant job and other economic opportunities and that Arizona is experiencing high unemployment. While the latter statement is true, this land exchange would do nothing to alleviate Arizona’s current bleak economic situation. According to Rio Tinto, the primary promoter of the land exchange, the earliest a mine at Oak Flat could begin construction is at least another decade. Rio Tinto also is planning to use extensive robotics to operate the mine, so it is likely that few jobs other than low paying menial jobs would go to local residents. In addition, the bill would create numerous economic liabilities for both Arizona and the federal government that are not taken into account.

Section 2 (B) says that mining this deposit would meet U.S. demands for copper, a strategic mineral. Rio Tinto and BHP-Billiton (the project’s minority owner) are foreign mining companies with no allegiance to the United States and under no obligation to process and sell minerals from a mine at Oak Flat to the United States. The likeliest scenario is that the profits and the copper would be exported overseas and the United States and the State of Arizona would be liable for a massive clean-up bill once the companies skip town.

Section 2 (C) says that the land exchange would enhance federal, state, and local revenue collections. Mines in Arizona rarely pay their fair share of federal and state taxes compared to the benefits and subsidies they receive. One need only look at the towns of Superior, Miami, Globe, Kearney, and Winkelman to see how little they

benefit from local mines over the long term. This land exchange bill would do nothing to change that.

Section 2 (D) says that the land exchange parcels would benefit the United States. Most of these parcels have limited conservation value and are nowhere near equal to the ecological, recreational and cultural value American citizens would lose if the land exchange were consummated.

Section 2 (F) says that the bill would provide opportunities for the towns of Superior, Miami, and Globe. The land exchange would do little for the Town of Superior other than allow it to buy, at full market value, several parcels of land that are either of no value to the town or could have been consummated years ago without the land exchange. There are no apparent benefits to the towns of Miami and Globe in this bill other than the gratuitous mention of the towns in this section.

Section 2 (G) says that the land exchange would protect Apache Leap. It is quite the opposite; the language of this bill provides for little or no protection of Apache Leap, allows additional tunnels and other potentially destructive alterations to Apache Leap, and does not protect the religious freedom of Native American tribes.

Section 3

Section 3 contains a list of definitions that are not controversial other than making a distinction between the improved portion of Oak Flat Campground (listed as 50 acres) and the Oak Flat Withdrawal Area as signed by President Eisenhower and reconfirmed by President Nixon. This distinction is important later when the bill allows Rio Tinto to enter the withdrawn area, but not the "improved" portion of the campground to explore for minerals.

Section 4

Section 4 says that if Rio Tinto offers the United States the aforementioned low value private lands, the Secretary of Agriculture is directed to give Rio Tinto the Oak Flat Campground and the surrounding 2,400 acres. The bill states that if government to government consultation has not taken place beforehand, the United States must consult after the fact with Native American nations within 30 days of the bill's enactment.

Section 4 (d) sets the terms of the appraisal for the lands involved in the exchange bill. Rio Tinto is allowed to choose the appraiser. Once the appraisal is done, there is essentially no chance that the appraisal would be thrown out or updated.

Section 4 (d) (C) says that any "improvements" Rio Tinto makes to the federal lands (such as road improvements) would not be included in the appraised value.

Section 4 (d) (3) says that the appraisal shall include a "detailed income capitalization approach" analysis. This "analysis" is guaranteed to assure that the valuation of the federal lands and minerals therein would be grossly underestimated.

Section 4 (e) (2) says that if the value of the federal lands is greater than the value of the lands offered by Rio Tinto (which surely should be the case), Rio Tinto can either offer more land, pay the difference to the federal treasury into a fund, which would be used for the purchase of more land, or both.

Section 4 (f) gives Rio Tinto a directional drilling permit within 30 days of enactment of the bill to do drilling under the Oak Flat withdrawn area from outside the withdrawn area and within 90 days allows

Rio Tinto to drill from within the withdrawn area itself. Language is included allowing the Secretary of Agriculture to impose “reasonable” conditions on the granting of the permits, but the short time frames make any meaningful review impossible.

Section 4 (i) says that the intent of Congress is that the land exchange be consummated within one year of the bill's enactment, again making any meaningful review of the conditions of the exchange impossible. This is a very important change in this language from the S.409 language. S.409 allowed the Secretary of Agriculture (on paper, but not in practice) the possibility of rejecting the exchange. This version removes that possibility.

Section 4 (j) mentions the National Environmental Policy Act (NEPA). The language states that prior to commencement of mining in commercial quantities, Rio Tinto must submit a mining plan of operations to the Secretary of Agriculture and that the Secretary must complete a NEPA review of this plan within 3 years. It does not say what this mining plan should include nor does it mention what the Secretary can do if the plan is inadequate or incomplete. It says that this NEPA document would be the only document prepared to guide federal officials regarding federal actions or authorizations related to the mine. Never mind that NEPA is a law meant to give federal land managers a chance to “look before they leap” and that this exercise in futility would already have a mandated outcome. Never mind that the plan would not have to be written until the mine would already be built, and never mind that the land in question would be private property, so there may never be a federal nexus that would require action. It is unlikely that the US Forest Service could do a full NEPA analysis in three years, even if Rio Tinto was 100% cooperative with the US Forest Service – which is doubtful. Rio Tinto's current plan, which has changed many times and probably will continue to change, eliminates any federal nexus if the land exchange is enacted. In that case, the federal government would have spent three years and a lot of taxpayer money to write a meaningless document that would never be taken off the shelf and used. Still, mentioning the word NEPA presumably gives the bill “green cover.”

Section 5

This section mentions the properties that Rio Tinto is offering the federal government in exchange for Oak Flat. As previously discussed, these parcels are of little conservation, recreational, or cultural value and are certainly not a fair exchange for the loss of Oak Flat.

Section 6

This section is a rewording of the bizarre royalty language first included in a previous land exchange bill by Senator McCain. What this section means is that each year Rio Tinto would tell the federal government how much copper and other minerals they have taken from Oak Flat. If that tonnage exceeds the amount that was used in the previously mentioned income capitalization approach (which would surely undervalue the worth of the ore body), Rio Tinto would pay the federal government the difference computed at the same rate used by the appraiser in performing the income capitalization approach analysis. Huh? As Rio Tinto stated when S 409 was discussed in 2009, this section probably would not result in any payments to the federal government. In the unlikely chance that a payment was made under this section by Rio Tinto to the federal government, the money would go into a newly created special fund to allow the Secretaries of Interior and Agriculture to use the money to reduced the backlog of maintenance, repair, and rehabilitation of our public lands managed by these agencies.

Section 7

Section 7 withdraws from mineral entry the lands that the federal government would receive under this exchange, but they would still be subject to valid existing rights. What this means is that Rio Tinto or

BHP could potentially still manage to mine on these lands after they “give” them to the federal government as part of the exchange.

Section 8

Section 8 says that Apache Leap must be managed to preserve its natural character and its “archeological and cultural resources.” Once again, the bill continues the practice of fundamentally not understanding what makes the shape of an area sacred and what is really important for the full freedom for Native Americans to practice their religion unfettered by government or private company restrictions. This section allows the Forest Service to give Rio Tinto special use permits to still carry out underground activity under Apache Leap. This section mandates that the Secretary of Agriculture write a plan to manage Apache Leap (after consulting with Rio Tinto and others) to protect archeological, historical or cultural resources of Apache Leap and to provide access for recreation. (This is the only mention of any concessions for the climbing community, which were an important feature of previous bills.) This section also assures Rio Tinto that they can mine what would become their private land unfettered so long as they comply with weak and severely inadequate State of Arizona mining rules and regulations.

Section 9

This section mentions that the Town of Superior can ask the Forest Service for permission to purchase at full-market value certain federal lands surrounding Superior. As mentioned before, most of these lands would already have been conveyed to the town had not Rio Tinto insisted on adding these provisions to the bill and slowing down progress.

Section 10

This is the miscellaneous section of all bills. This section negates the public order President Eisenhower signed removing Oak Flat Campground from mineral entry and immediately removes the withdrawal of those lands. This section again assures Rio Tinto that it has the right to mine anywhere it wants so long as the company complies with weak federal mining laws and even weaker Arizona mining laws and regulations. Finally, this section restricts the right of the public to view the maps upon which decisions are made until **after** the land exchange is enacted.