



SOCIETY FOR AMERICAN ARCHAEOLOGY

Testimony of the Society for American Archaeology
Before the Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
Regarding

S. 409, the Southeast Arizona Land Exchange Act of 2009

June 17, 2009

The Society for American Archaeology (SAA) thanks the subcommittee for this opportunity to express its concerns about S. 409, the Southeast Arizona Land Exchange Act. In particular, we believe that the legislation lacks adequate protections for cultural resources in the affected federal lands.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

S. 409 would direct the Department of Agriculture to accept certain parcels of non-federal land in five counties in Arizona from Resolution Copper in exchange for federal land in Pinal County, Arizona, including Apache Leap and the Oak Flat Campground area, the latter in which mining activity is prohibited. It is our understanding that under the legislation Resolution Copper could then conduct mineral exploration and “block-cave” extraction activities beneath the surface of the Oak Flat and Apache Leap areas.

These places are of great cultural and historic significance to several Native American tribes, including the San Carlos Apache, and the nation as a whole. Since well before recorded history, tribal groups were living in and around these lands, which play important cultural and religious roles in the lives of their descendants today. In addition, the areas that S. 409 would transfer out of federal ownership contain numerous known archaeological sites and resources, from both the pre- and post- contact eras, with a high probability of as-yet undiscovered additional sites. As of today, these lands and the cultural and historic resources they contain are protected by numerous federal statutes, including the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act, among

others. By transferring these lands out of federal ownership, S. 409 would remove these protections.

The bill contains provisions ostensibly designed to mitigate these concerns. These include requiring the preparation of an Environmental Impact Statement under the National Environmental Policy Act prior to the start of commercially-viable mineral extraction activities, easements preventing the surface disturbance of Apache Leap and Oak Flat, and management plans to preserve the cultural resources of the affected areas. SAA, however, believes these provisions to be wholly inadequate, especially when compared to the protections the resources have today. The above-mentioned EIS would be carried out only after the transfer and subsequent mineral exploration has taken place, presenting the federal government with a powerful disincentive to delay extraction. Numerous archaeological sites and resources exist beneath the surface of the earth—protecting the surface of sensitive areas such as Apache Leap and Oak Flat, while useful, does nothing to ensure the preservation of sites, both known and unknown, that lie well under the top layers of ground. At the very least, S. 409 should be amended to provide for a thorough review under Section 106 of the NHPA, prior to or as a condition of the land exchange, to determine if the cultural resources in and on the land would be adversely affected by mining activity and if so, what mitigation strategies are needed to resolve those adverse effects before mining activities are initiated. The section of the bill providing for the creation of a management agreement between Resolution Copper and tribal stakeholders to allow for traditional acorn gathering at Oak Flat is not binding on the company, and even if such an agreement were created the bill allows the company to suspend tribal activities if they were to impede mineral exploration and extraction. S. 409 simply does not provide enough consideration for the traditional activities of the Apache people at Apache Leap and Oak Flat.

SAA recognizes that difficult economic conditions are facing the residents and communities of south-east Arizona, and indeed the nation. There is no doubt that good-paying jobs are needed everywhere, and SAA does not oppose any and all economic development activities on federal land out of hand. Nevertheless, cultural and historic resources are non-renewable. Once they are destroyed, they are lost forever. Ever since the Antiquities Act of 1906, federal law has recognized the need to preserve and protect the resources that reside within federal boundaries, including safeguards to prevent or mitigate damage to such resources when other activities are going on. This federal responsibility should not be jettisoned in the interests of a land transfer. In fact, these safeguards should be carefully observed prior to any such transfer taking place. As currently written, S. 409 would short-circuit this process, to the detriment of the archaeological record and cultural heritage of the nation.

Thank you very much for your consideration of this important matter.