



Protect America's Climbing

July 11, 2011

The Honorable Paul Gosar
Natural Resources Committee
United States House of Representatives
504 Cannon HOB
Washington, DC 20515

RE: Access Fund Position on H.R. 1904, the Southeast Arizona Land Exchange and Conservation Act of 2011

The Honorable Representative Paul Gosar:

I write as the executive director of the Access Fund, the national climbers advocacy group dedicated to climbing access and conservation, to suggest improvements and state our position with respect to your bill, the *Southeast Arizona Land Exchange and Conservation Act of 2011* (H.R. 1904). Since 2004, the Access Fund has been an interested party and involved stakeholder to the various versions of this proposed federal land exchange. Over the last year the Access Fund has also met with your staff about this proposed law that would direct the Secretary of Agriculture to convey highly popular climbing resources on federal land for use as an underground copper mine. We urge you to strengthen this bill or otherwise ensure that significant compensation is provided to climbers, and require meaningful environmental review and public involvement before any land is transferred. These elements were supported by both Arizona's US Senators and nearly the entire Arizona US House of Representatives delegation in several previous land exchange bills involving this area, and it's appropriate that these elements remain in the current bill.

The Access Fund is the national advocacy organization whose mission keeps climbing areas open and conserves the climbing environment. Rock climbers are numerically the largest recreation group that uses the Oak Flat/Queen Creek area, and we also stand to suffer the largest loss if this area is destroyed by mining activities. There are over one thousand established climbs in the Mine Area, Euro Dog Valley, and Oak Flat that will subside into an enormous crater if Resolution Copper Mining (RCM) is allowed to proceed with their present plan to "block cave" mine the underlying ore deposit. The Access Fund has commented on and provided congressional testimony on several previous iterations of this bill and we have specific concerns related to H.R. 1904 as outlined herein. Because provisions favorable to climbers have been removed from this land exchange bill, new environmental concerns have emerged, and climbers have yet to complete an agreement with RCM to address the loss of climbing resources, the Access Fund opposes H.R. 1904 while these issues remain unresolved.

The Access Fund

The Access Fund is a 501(c)3 non-profit advocacy group representing the interests of approximately 2.3 million rock climbers and mountaineers in the United States. We are America's largest national climbing organization with over 10,000 members and affiliates. The Access Fund's mission is to keep climbing areas open and to conserve the climbing environment. Preserving the opportunity to climb and the diversity of the climbing experience are fundamental to our mission. Arizona is one of our largest member states. For more information about the Access Fund, log on to www.accessfund.org.

Oak Flat Recreation

For decades climbers have frequented the Oak Flat/Queen Creek Canyon area in Central Arizona to scale the vast assortment of cliffs, canyons, and boulders. See attached an additional summary of the popular public recreation resources in this area affected by this land exchange. Climbing at the Oak Flat area proved so popular that the area hosted the Phoenix Bouldering Contest for several years which eventually became the world's largest such event. The Southeast Arizona Land Exchange and Conservation Act of 2011 would transfer Oak Flat, located in the Tonto National Forest, to RCM who plans to mine the area by using the extremely destructive yet highly profitable "block-cave" mining method. If this land exchange bill is passed authorizing this particular mine proposal, the outcome will be the single largest loss of climbing in the history of the United States.

The value of the Oak Flat area as a recreational resource has been officially acknowledged since the 1950s. The Eisenhower Administration foresaw this exact threat of mining to Oak Flat when in 1955 it issued Public Land Order 1229 and specifically placed this land off-limits to all future mining activity. The Nixon Administration subsequently issued PLO 5132 in 1972 to modify PLO 1229 and allow "all forms of appropriation under the public land laws applicable to national forest lands *except under the US mining laws.*" Various attempts over the years by mining companies to lift this protection have failed. This proposed law would lift those longstanding protections. If H.R. 1904 becomes law, Congress should 1) recognize the importance of the recreational resource at Oak Flat by requiring specific and significant mitigation to compensate for the loss of climbing (as included in previous bills), and 2) require responsible environmental analysis before this massive mining project is allowed to consume public resources and potentially affect the environment far beyond the footprint of this proposed mine.

Specific Problems with HR 1904

Since 2004, the Access Fund has worked with a variety of climbing groups in Arizona, conservation organizations, officials from local and federal government, and Resolution Copper Mining to address the severe impacts that this bill would cause to Oak Flat and the recreation community in central Arizona. Reasonable minds may differ on the best approach to conserve the environment and climbing opportunities if a mine is to go forward. For example, the Concerned Climbers of Arizona¹ seek to minimize surface disturbance at Oak Flat and advocate

¹ <http://www.concernedclimbers.com/>

for the co-existence of mining and recreational activities, while Queen Creek Coalition (QCC)² seeks to “maximize rock climbing resources in the Queen Creek Region” through direct negotiations with RCM. However, the following specific concerns are held by the Access Fund and many of our partners in Arizona.

Despite climbers losing extensive and longstanding public resources, HR 1904 provides no compensation to climbers. Many of the previous commitments of compensation to climbers—in former bills and promises by RCM—are now missing. The replacement climbing park offered by RCM was rejected by Arizona State Parks and remains difficult to access, and RCM has pulled from the land exchange the popular climbing parcel known as “The Pond” which also was in previous bills.³ Furthermore, previous bills required RCM to provide financial compensation dedicated to recreation facility development and management.⁴ This financial compensation is absent from HR 1904.

Previous negotiations to compensate climbers for the loss associated with this land exchange (S. 1122 and H.R. 2618, etc.) included 1) an executed recreational use license agreement with RCM permitting continued public use of Oak Flat and two specific climbing areas in Queen Creek Canyon (one being “The Pond”), and 2) the creation of a new 2,000-acre state park focused on rock climbing in the vicinity of Tam O’Shanter Peak (“Tamo”) near Hayden, Arizona that would “replace” the climbing and bouldering area eventually mined at Oak Flat by RCM. Although RCM executed a recreational use license with The Access Fund in 2006—recently renewed with the Queen Creek Coalition⁵—the State of Arizona declined RCM’s offer to acquire and incorporate Tamo into its state park system. Access to Tamo (most of which is already public BLM land) is now not included in any compensation for Arizona’s rock climbing community. The access road to Tamo remains complicated by private property restrictions, requires high clearance vehicles, and is much further from Phoenix where most Queen Creek-area climbers live.

Another piece of compensation to the climbing community initially written into previous versions of the land exchange bill was for RCM to transfer The Pond property, perhaps the most popular climbing area in the larger Oak Flat/Queen Creek area, to the US Forest Service to be managed for recreation. Despite inclusion into previous land exchange bills,⁶ The Pond parcel was also pulled from HR 1904. We believe that the transfer of RCM’s “Pond” parcel to the US Forest Service or other entity—or the creation of an access easement for climbers—are appropriate forms of compensation for this loss.

As noted, the QCC has recently received a short-term license for climbing access to The Pond and is currently negotiating directly with RCM on many additional points. According to QCC’s website:

² <http://www.theqcc.org/>

³ S. 409 and H.R. 4880 from the 111th Congress.

⁴ Id.

⁵ <http://www.theqcc.org/>

⁶ S. 409 and HR 4880.

QCC has reached a preliminary agreement with RCM pursuant to which RCM will provide substantial funding to QCC for the development and maintenance of regional climbing resources. QCC is working with RCM to finalize the details of this agreement and to address in a mutually satisfactory way: 1) long-term public access to climbing areas located on land owned by RCM (The Pond, Atlantis); 2) access to areas that in the future may be owned by RCM (The Mine Area, Euro Dog Valley, Oak Flat); and 3) access via RCM property to areas located on public land (Upper Devils, Lower Devils, Apache Leap).⁷

However, the QCC has yet to sign any agreement with RCM beyond the short-term license to access The Pond.

HR 1904 Lacks Meaningful Environmental Analysis

The Southeast Arizona Land Exchange and Conservation Act of 2011 fails to require any meaningful environmental analysis prior to the federal land transfer to RCM. Requiring a full National Environmental Policy Act (NEPA) analysis prior the transfer of title prevents significant impacts to water and other sensitive resources. Further, it is bad policy to waive the requirement that a range of alternatives are analyzed and that decisions are informed.

This bill would circumvent the public process mandated under NEPA for prior analysis of any similar project on federal public land. This analysis would include the impact mine operations would have on the health of nearby residents, on water quality, air quality, transportation, and the overall environment. While HR 1904 calls for environmental studies after the fact, it fails the “look-before-you-leap” requirement of NEPA. Before the transfer of a 2,422-acre parcel of U.S. Forest Service-managed land to a private company we should have a better idea of the long term environmental impacts.

H.R. 1904 would require the Secretary of Agriculture to complete an environmental review document within three years of the exchange and before commencing production in commercial quantities of any valuable mineral. However, once the land exchange is consummated and these lands are in the private ownership of RCM, the Secretary of Interior will have less discretion to require a full range of planning and management alternatives. Likewise there will be no meaningful opportunities for public involvement. NEPA requires that, before taking a discretionary decision, the federal agency consider the environmental impacts of a proposed major federal action. The public has extremely little information on the environmental implications of this mine. Because HR 1904 ensures the development of this mine, NEPA requires an environmental review document before the exchange. A pre-exchange NEPA review is good policy, was included in previous versions⁸ of this land exchange bill, and should be included in HR 1904. The Access Fund believes that NEPA must be fully complied with to address all federal actions and decisions, including those necessary to implement congressional direction.

⁷ <http://www.theqcc.org/>

⁸ Id.

HR 1904 also requires the exchange to be completed within one year. At least two to three years are needed to complete environmental reviews, appraisals, title documents, and tribal consultations. Extending the exchange deadline will also facilitate a meaningful NEPA process. Finally, the conclusory statement in section 2 (A)(2) that “the land exchange is, therefore, in the public interest” is without merit absent a meaningful environmental review of this massive mining project with full opportunities for public involvement.

* * *

The Access Fund has long had a strong interest and played a significant role in the negotiations related to the recreational impacts of this land exchange. This mine will long hold the record for the most climbs destroyed. At the minimum, climbers should receive the level of compensation promised in past versions of this bill. Also, before proceeding it is critically important for the US Forest Service and general public to more fully understand the scope and impacts of this project. The Access Fund believes that requiring a pre-exchange NEPA would address potentially significant environmental concerns and best serves the public interest.

Sincerely,



Brady Robinson
Executive Director
The Access Fund

Cc: Arizona Congressional Delegation
US House Subcommittee on National Parks, Forests and Public Lands
US Senate Subcommittee on Public Lands and Forests
Queen Creek Coalition
Concerned Climbers of Arizona