

109TH CONGRESS
1ST SESSION

S. 1122

To authorize and direct the exchange and conveyance of certain National Forest land and other land in southeast Arizona.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2005

Mr. KYL (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize and direct the exchange and conveyance of certain National Forest land and other land in southeast Arizona.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Southeast Arizona
5 Land Exchange and Conservation Act of 2005”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to further the public inter-
8 est by authorizing, directing, facilitating, and expediting

1 the conveyance and exchange of land between the United
2 States and Resolution Copper.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) APACHE LEAP.—The term “Apache Leap”
6 means the approximately 562 acres of land referred
7 to as the “Apache Leap Conservation Easement
8 Area” on the map entitled “Southeast Arizona Land
9 Exchange and Conservation Act of 2005—Federal
10 Parcel—Oak Flat”, dated January 2005.

11 (2) FEDERAL LAND.—The term “Federal land”
12 means the approximately 3,025 acres of land located
13 in Pinal County, Arizona, depicted on the map enti-
14 tled “Southeast Arizona Land Exchange and Con-
15 servation Act of 2005—Federal Parcel—Oak Flat”,
16 dated January 2005.

17 (3) NON-FEDERAL LAND.—The term “non-Fed-
18 eral land” means the land described in paragraphs
19 (1) and (2) of section 4(c).

20 (4) RESOLUTION COPPER.—The term “Resolu-
21 tion Copper” means—

22 (A) Resolution Copper Mining, LLC, a
23 Delaware limited liability company; and

1 (B) any successor, assign, transferee,
2 member, or joint venturer of Resolution Copper
3 Cooper Mining, LLC.

4 (5) TOWN.—The term “Town” means the Town
5 of Superior, Arizona, an Arizona incorporated mu-
6 nicipality.

7 **SEC. 4. LAND CONVEYANCES AND EXCHANGES.**

8 (a) IN GENERAL.—On receipt of an offer from Reso-
9 lution Copper to convey title acceptable to the Secretary
10 of Agriculture and the Secretary of the Interior, as appli-
11 cable, to the non-Federal land, the Secretary of Agri-
12 culture shall convey to Resolution Copper all right, title,
13 and interest of the United States in and to the Federal
14 land, subject to any valid existing right or title reservation,
15 easement, or other exception required by law or agreed
16 to by the Secretary of Agriculture and Resolution Copper.

17 (b) MANDATED LAND CONVEYANCE.—As a condition
18 of carrying out the land exchange directed by subsection
19 (a), Resolution Copper shall convey to the United States—

20 (1) each parcel of land described in subpara-
21 graphs (A) through (D) of subsection (c)(1); and

22 (2) each parcel of land described in subpara-
23 graphs (A) and (B) of subsection (c)(2).

24 (c) RESOLUTION COPPER LAND EXCHANGE.—Simul-
25 taneously with the receipt of title to the Federal land

1 under subsection (a), Resolution Copper shall convey to
2 the United States—

3 (1) title acceptable to the Secretary of Agri-
4 culture to—

5 (A) the approximately 147 acres of land lo-
6 cated in Gila County, Arizona, depicted on the
7 map entitled “Southeast Arizona Land Ex-
8 change and Conservation Act of 2005–Non-
9 Federal Parcel–Turkey Creek”, dated January
10 2005;

11 (B) the approximately 148 acres of land
12 located in Yavapai County Arizona, depicted on
13 the map entitled “Southeast Arizona Land Ex-
14 change and Conservation Act of 2005–Non-
15 Federal Parcel–Tangle Creek”, dated January
16 2005;

17 (C) the approximately 149.3 acres of land
18 located in Maricopa County, Arizona, depicted
19 on the map entitled “Southeast Arizona Land
20 Exchange and Conservation Act of 2005–Non-
21 Federal Parcel–Cave Creek”, dated January
22 2005; and

23 (D) the approximately 266 acres of land
24 located in Pinal County, Arizona, depicted on
25 the map entitled “Southeast Arizona Land Ex-

1 change and Conservation Act of 2005–Non-
2 Federal Parcel–JI Ranch”, dated January
3 2005; and

4 (2) title acceptable to the Secretary of the Inte-
5 rior to—

6 (A) the approximately 3,073 acres of land
7 located in Pinal County, Arizona, depicted on
8 the map entitled “Southeast Arizona Land Ex-
9 change and Conservation Act of 2005–Non-
10 Federal Parcel–Lower San Pedro River”, dated
11 January 2005; and

12 (B) the approximately 1031 acres of land
13 located in Santa Cruz County, Arizona, de-
14 picted on the map entitled “Southeast Arizona
15 Land Exchange and Conservation Act of 2005–
16 Non-Federal Parcel–Appleton Ranch”, dated
17 January 2005.

18 (d) CONVEYANCE OF LAND TO TOWN.—

19 (1) IN GENERAL.—Not later than 60 days be-
20 fore carrying out the land exchange under subsection
21 (a), on receipt of a request from the Town, the Sec-
22 retary of Agriculture shall convey to the Town, for
23 a price equal to market value, as appraised under
24 section 5—

1 (A) the approximately 30 acres of land lo-
2 cated in Pinal County, Arizona, occupied on the
3 date of enactment of this Act by the Fairview
4 Cemetery and depicted on the map entitled
5 “Southeast Arizona Land Exchange and Con-
6 servation Act of 2005–Federal Parcel–Fairview
7 Cemetery”, dated January 2005;

8 (B) the reversionary interest of the United
9 States in the approximately 265 acres of land
10 located in Pinal County, Arizona, depicted on
11 the map entitled “Southeast Arizona Land Ex-
12 change and Conservation Act of 2005–Federal
13 Reversionary Interest–Superior Airport”, dated
14 January 2005; and

15 (C) on receipt of a request from the Town,
16 any of the 7 parcels of land totaling approxi-
17 mately 100 acres, located in Pinal County, Ari-
18 zona, depicted on the map entitled “Southeast
19 Arizona Land Exchange and Conservation Act
20 of 2005–Federal Parcel–Superior Airport Con-
21 tiguous Parcels 1–7”, dated January 2005.

22 (2) CONDITION OF CONVEYANCE.—Any convey-
23 ance of land under paragraph (1) shall be carried
24 out in a manner that provides the United States
25 manageable boundaries on any parcel retained by

1 the Secretary of Agriculture, to the maximum extent
2 practicable.

3 (e) **TIMING OF EXCHANGE.**—It is the intent of Con-
4 gress that the land exchange directed by this section be
5 carried out not later than 1 year after the date of enact-
6 ment of this Act.

7 (f) **COSTS OF CONVEYANCES AND EXCHANGES.**—
8 Resolution Copper shall be responsible for hiring all con-
9 tractors and paying the costs associated with—

10 (1) all appraisals of land (including reasonable
11 reimbursement to the Secretary of Agriculture on re-
12 quest of the Secretary of Agriculture for the cost of
13 reviewing and approving an appraisal);

14 (2) land surveys, including any necessary land
15 surveys by the Bureau of Land Management Cadas-
16 tral Survey; and

17 (3) any other cost agreed to by Resolution Cop-
18 per and the Secretary of Agriculture.

19 **SEC. 5. VALUATION OF LAND CONVEYED OR EXCHANGED.**

20 (a) **EXCHANGE VALUATION.**—

21 (1) **IN GENERAL.**—The values of land ex-
22 changed or conveyed under section 4 (including any
23 Federal reversionary interest) shall be equal, as de-
24 termined by the Secretary of Agriculture through an

1 appraisal conducted in accordance with paragraph
2 (2).

3 (2) APPRAISALS.—

4 (A) IN GENERAL.—An appraisal under this
5 section shall be—

6 (i) performed by an appraiser mutu-
7 ally agreed to by the Secretary of Agri-
8 culture and Resolution Copper;

9 (ii) performed in accordance with—

10 (I) the Uniform Appraisal Stand-
11 ards for Federal Land Acquisitions
12 (Department of Justice, 5th Edition,
13 December 20, 2000);

14 (II) the Uniform Standards of
15 Professional Appraisal Practice; and

16 (III) Forest Service appraisal in-
17 structions; and

18 (iii) submitted to the Secretary of Agri-
19 culture for review and approval.

20 (B) REAPPRAISALS AND UPDATED AP-
21 PRAISED VALUES.—After the final appraised
22 value of a parcel is determined and approved
23 under subparagraph (A), the Secretary of Agri-
24 culture shall not be required to reappraise or
25 update the final appraised value—

1 (i) for a period of 3 years after the
2 approval by the Secretary of Agriculture of
3 the final appraised value under subpara-
4 graph (A)(iii); or

5 (ii) at all, after an exchange agree-
6 ment is entered into by Resolution Copper
7 and the Secretary of Agriculture.

8 (C) PUBLIC REVIEW.—Before carrying out
9 a land exchange under section 4, the Secretary
10 of Agriculture shall make available for public
11 review a summary of the appraisals of the land
12 to be exchanged.

13 (3) FAILURE TO AGREE.—If the Secretary of
14 Agriculture and Resolution Copper fail to agree on
15 the value of a parcel to be exchanged, the final value
16 of the parcel shall be determined in accordance with
17 section 206(d) of the Federal Land Policy and Man-
18 agement Act of 1976 (43 U.S.C. 1716(d)).

19 (4) FEDERAL LAND.—The value of the Federal
20 land directed to be conveyed to Resolution Copper
21 under section 4(a) shall be determined as if the land
22 is unencumbered by any unpatented mining claims
23 owned by Resolution Copper.

24 (b) EQUALIZATION OF VALUE.—

25 (1) SURPLUS OF FEDERAL LAND VALUE.—

1 (A) IN GENERAL.—If the final appraised
2 value of the Federal land exceeds the value of
3 the non-Federal land in an exchange under sec-
4 tion 4, Resolution Copper shall make a cash
5 equalization payment to the Secretary of Agri-
6 culture to equalize the values of the Federal
7 land and non-Federal land.

8 (B) COMPLIANCE WITH FEDERAL LAND
9 POLICY AND MANAGEMENT ACT.—A payment
10 under subparagraph (A) may be in excess of an
11 amount authorized by section 206(b) of the
12 Federal Land Policy and Management Act of
13 1976 (43 U.S.C. 1716(b)).

14 (C) USE OF FUNDS.—Any funds received
15 by the Secretary of Agriculture shall be consid-
16 ered to be money received and deposited in the
17 fund established under Public Law 90–171
18 (commonly known as the “Sisk Act”) (16
19 U.S.C. 484a), and may be used by the Sec-
20 retary, without further appropriation, for the
21 acquisition of land for addition to the National
22 Forest System in the State of Arizona.

23 (2) SURPLUS OF NON-FEDERAL LAND VALUE.—

24 (A) IN GENERAL.—If the final appraised
25 value of the non-Federal land exceeds the value

1 of the Federal land in an exchange under sec-
2 tion 4, the Secretary of the Interior, subject to
3 the availability of funds, shall make a payment
4 to Resolution Copper to equalize the values of
5 the land.

6 (B) WAIVER.—

7 (i) IN GENERAL.—A payment under
8 subparagraph (A) may be waived in whole
9 or in part by Resolution Copper.

10 (ii) EFFECT.—An amount waived
11 under clause (i) shall be considered to be
12 a donation by Resolution Copper to the
13 United States for all purposes of law.

14 (3) PAYMENT FOR LAND CONVEYED TO
15 TOWN.—

16 (A) IN GENERAL.—The Town shall pay the
17 Secretary of Agriculture market value for any
18 land acquired by the Town from the Secretary
19 of Agriculture under section 4(d).

20 (B) CREDIT.—If the Secretary of the Inte-
21 rior owes a payment to Resolution Copper
22 under paragraph (2)—

23 (i) the Secretary of the Interior shall
24 credit against the amount owed to Resolu-
25 tion Copper the market value of any land

1 conveyed to the Town under section 4(d);
2 and

3 (ii) the obligation of the Town to pay
4 the United States shall be reduced by the
5 amount of the credit.

6 (C) EFFECT.—An amount credited under
7 subparagraph (B) shall be considered to be a
8 donation by Resolution Copper to the Town for
9 all purposes of law.

10 **SEC. 6. CONSERVATION EASEMENT.**

11 (a) IN GENERAL.—Before the Federal land is con-
12 veyed under section 4(a), Resolution Copper shall deliver
13 to the Secretary of Agriculture an executed document
14 granting a permanent conservation easement to an entity
15 (referred to in this section as the “grantee”) that is—

16 (1) a qualified unit of government; or

17 (2) a land trust or other qualified organization
18 as defined in section 170(h) of the Internal Revenue
19 Code of 1986.

20 (b) EASEMENT AREA.—The area of the conservation
21 easement under this section shall be the surface estate of
22 Apache Leap.

23 (c) TERMS.—The conservation easement under this
24 section shall—

1 (1) prohibit surface development of the ease-
2 ment area by Resolution Copper, except for fences,
3 signs, monitoring devices, or other improvements for
4 an administrative, public health and safety, or other
5 appropriate purposes, as determined by Resolution
6 Copper and the grantee;

7 (2) prohibit commercial mineral extraction
8 under the easement area by any method that could
9 impact the surface of the easement area; and

10 (3) provide for appropriate nonmotorized public
11 access to and use of the easement area, as deter-
12 mined by Resolution Copper and the grantee.

13 (d) ADDITIONAL PUBLIC ACCESS ROUTES.—

14 (1) IN GENERAL.—Not later than 3 years after
15 the date of the conveyance under section 4(a), Reso-
16 lution Copper and the grantee, in consultation with
17 the Town and other interested parties, shall deter-
18 mine whether the area covered by the conservation
19 easement should be used to establish additional pub-
20 lic access routes (including motorized roads), trails,
21 and trailheads to Apache Leap.

22 (2) FUNDING.—If it is determined by Resolu-
23 tion Copper and the grantee that it is desirable to
24 provide additional public access routes in the ease-
25 ment area, Resolution Copper shall pay the reason-

1 able cost of establishing an additional public access
2 routes, trails, or trailheads under this subsection,
3 not to exceed \$250,000.

4 (e) EASEMENT AND APPRAISAL.—

5 (1) IN GENERAL.—The requirement for Resolu-
6 tion Copper to grant the conservation easement shall
7 not be considered in determining, or result in any
8 diminution in, the market value of the Federal land
9 for purposes of the appraisals required under section
10 5.

11 (2) EFFECT.—The market value of the con-
12 servation easement and any amount paid by Resolu-
13 tion Copper under subsection (d)(2) shall be consid-
14 ered to be a donation by Resolution Copper to the
15 United States.

16 (f) MINING ACTIVITIES.—

17 (1) IN GENERAL.—Except as provided in sub-
18 section (c) and other Federal law (including regula-
19 tions) relating to mining activities on private land,
20 the conservation easement shall not impose any ad-
21 ditional restrictions on mining activities carried out
22 by Resolution Copper after the date of the convey-
23 ance under section 4(a).

24 (2) LIABILITY.—Resolution Copper shall not be
25 liable for any damage to the easement area caused

1 by future use or failure of any tunnel or other un-
2 derground mining works established on the Federal
3 land on or before the date of the conveyance under
4 section 4(a).

5 (g) ROLE OF SECRETARY.—Unless otherwise agreed
6 by the Secretary of Agriculture and Resolution Copper,
7 the Secretary of Agriculture shall not be—

8 (1) a party to the conservation easement under
9 this section; or

10 (2) involved in the drafting, monitoring, or en-
11 forcement of the conservation easement.

12 **SEC. 7. INCORPORATION, MANAGEMENT, AND STATUS OF**
13 **ACQUIRED LAND.**

14 (a) LAND ACQUIRED BY THE SECRETARY OF AGRIC-
15 CULTURE.—

16 (1) IN GENERAL.—Land acquired by the Sec-
17 retary of Agriculture under this Act shall—

18 (A) become part of the National Forest
19 within which the land is located; and

20 (B) be administered in accordance with the
21 laws (including regulations) applicable to the
22 National Forest System.

23 (2) BOUNDARIES.—For purposes of section 7 of
24 the Land and Water Conservation Fund Act of 1965
25 (16 U.S.C. 4601 et seq.), the boundaries of a Na-

1 tional Forest in which land acquired by the Sec-
2 retary of Agriculture is located shall be deemed to
3 be the boundaries of that forest as in existence on
4 January 1, 1965.

5 (b) LAND ACQUIRED BY THE SECRETARY OF THE IN-
6 TERIOR.—Land acquired by the Secretary of the Interior
7 under this Act shall—

8 (1) become part of the administrative unit or
9 area within which the land is located; and

10 (2) be administered in accordance with the laws
11 (including regulations) applicable to public land.

12 **SEC. 8. PUBLIC USES OF FEDERAL LAND.**

13 (a) OAK FLAT CAMPGROUND.—

14 (1) REPLACEMENT CAMPGROUND.—

15 (A) IN GENERAL.—Not later than 2 years
16 after the date of enactment of this Act, the Sec-
17 retary of Agriculture, in consultation with Reso-
18 lution Copper, the Town, and other interested
19 parties, shall design and construct in the Globe
20 Ranger District of the Tonto National Forest a
21 replacement campground or campgrounds for
22 the Oak Flat Campground (including an access
23 route or routes thereto).

24 (B) PUBLIC FACILITIES.—The replacement
25 campground or campgrounds shall be designed

1 and constructed in a manner that adequately
2 (as determined in the sole discretion of the Sec-
3 retary of Agriculture) replaces, or improves on,
4 the facilities, functions, and amenities available
5 to the public at the Oak Flat Campground.

6 (2) COSTS OF REPLACEMENT.—Resolution Cop-
7 per shall pay the cost of designing, constructing, and
8 providing access to the replacement campground or
9 campgrounds under this subsection, not to exceed
10 \$500,000.

11 (3) INTERIM OAK FLAT CAMPGROUND AC-
12 CESS.—

13 (A) IN GENERAL.—The document con-
14 veying the Federal land to Resolution Copper
15 under section 4(a) shall specify that the Sec-
16 retary of Agriculture shall continue to operate
17 and maintain the Oak Flat Campground until
18 the earlier of—

19 (i) the date that is 2 years after the
20 date of enactment of this Act; or

21 (ii) the date on which the replacement
22 campground under this subsection is devel-
23 oped and opened for public use.

24 (B) LIABILITY.—During the interim period
25 described in subparagraph (A), Resolution Cop-

1 per shall not be liable for any public use of the
2 Oak Flat Campground.

3 (b) ROCK CLIMBING.—

4 (1) REPLACEMENT ROCK CLIMBING AREA.—

5 (A) IN GENERAL.—Not later than 1 year
6 after the date of consummation of the land ex-
7 change under section 4, the Secretary of Agri-
8 culture, in consultation with the Secretary of
9 the Interior, Resolution Copper, the Town, local
10 climbing organizations, and other interested
11 parties, shall identify and provide a replacement
12 rock climbing area or areas (including public
13 access thereto) on National Forest land or pub-
14 lic land.

15 (B) CHARACTERISTICS.—The replacement
16 rock climbing area under subparagraph (A)
17 shall possess, to the maximum extent prac-
18 ticable (in the sole discretion of the Secretary
19 of Agriculture), the general characteristics of
20 the rock climbing area on the Federal land.

21 (2) COSTS OF REPLACEMENT.—Resolution Cop-
22 per shall pay any costs incurred by the Secretary of
23 Agriculture or the Secretary of the Interior in study-
24 ing, accessing, and developing the replacement rock

1 climbing area or areas under this subsection, not to
2 exceed \$250,000.

3 (3) INTERIM USE.—

4 (A) IN GENERAL.—The document con-
5 veying the Federal land to Resolution Copper
6 under section 4(a) shall specify that the Sec-
7 retary of Agriculture—

8 (i) for a period of 2 years after the
9 date of enactment of this Act, shall con-
10 tinue to administer and allow public access
11 to the rock climbing area on the Federal
12 land; and

13 (ii) for a period of 5 years after the
14 date of enactment of this Act, may issue
15 once each year a special use permit for
16 public access to the bouldering area on the
17 Federal land for purposes of the annual
18 “BoulderBlast” competition.

19 (B) LIABILITY.—During the periods de-
20 scribed in subparagraph (A), Resolution Copper
21 shall not be liable for any public use of—

22 (i) a rock climbing area on the Fed-
23 eral land; or

24 (ii) a bouldering area on the Federal
25 land.

1 (4) ADDITIONAL ROCK CLIMBING PROVI-
2 SIONS.—[TO BE SUPPLIED]

3 **SEC. 9. MISCELLANEOUS PROVISIONS.**

4 (a) CONTRACTORS.—

5 (1) IN GENERAL.—Any work relating to a con-
6 veyance or exchange under section 4 performed by
7 a contractor shall be subject to the mutual agree-
8 ment of the Secretary concerned and Resolution
9 Copper, including—

10 (A) the selection of the contractor; and

11 (B) the scope of the work performed by the
12 contractor.

13 (2) REVIEW AND APPROVAL.—Review and ap-
14 proval of any work performed by a contractor under
15 this paragraph shall be—

16 (A) performed by the Secretary concerned;
17 and

18 (B) subject to Federal, State, and local
19 laws (including regulations).

20 (3) LEAD ACTOR AGREEMENT.—The Secretary
21 of Agriculture and the Secretary of the Interior may
22 agree that the Secretary of Agriculture shall be the
23 lead actor for any action under this subsection.

24 (b) REVOCATION OF ORDERS; WITHDRAWAL.—

1 (1) REVOCATION OF ORDERS.—At the time of
2 the conveyance under section 4(a), any public land
3 order that withdraws the Federal land from appro-
4 priation or disposal under a public land law shall be
5 revoked.

6 (2) WITHDRAWAL.—On the date of enactment
7 of this Act, if the Federal land is not withdrawn or
8 segregated from entry and appropriation under a
9 public land law (including mining and mineral leas-
10 ing laws and the Geothermal Steam Act of 1970 (30
11 U.S.C. 1001 et seq.)), the Federal land shall be
12 withdrawn from entry and appropriation, subject to
13 any right of Resolution Copper, until the date of its
14 conveyance under section 4(a).

15 (c) MAPS, ESTIMATES, AND DESCRIPTIONS.—

16 (1) MINOR ERRORS.—The Secretary of Agri-
17 culture and Resolution Copper may correct by agree-
18 ment any minor error in a map, acreage estimate, or
19 description of the Federal land or non-Federal land
20 exchanged under section 4.

21 (2) DISCREPANCIES.—If there are any discrep-
22 ancies between a map, an acreage estimate, or a de-
23 scription of the land exchanged under section 4, the
24 map shall be the controlling document, unless the

1 Secretary of Agriculture and Resolution Copper
2 agree otherwise.

3 (3) PUBLIC INSPECTION.—Upon the enactment
4 of this Act, the Secretary of Agriculture shall file
5 and make available for public inspection in the Of-
6 fice of the Supervisor, Tonto National Forest, any
7 map referred to in this Act.

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