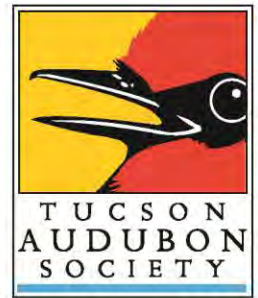


December 9, 2010

The Honorable Harry Reid  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510



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and education since 1949*

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Dear Senator Reid,

**Request to remove of S. 409 Southeast Arizona Land Exchange and Conservation Act of 2009 from the draft Omnibus legislation being considered at this time.**

Tucson Audubon Society (TAS), is a non-profit 501(c)(3) organization, located in Tucson, Arizona ([www.tucsonaudubon.org](http://www.tucsonaudubon.org)) and established in 1949. Our focus is on the preservation and restoration of wildlife habitats in Arizona, using the tools of education, conservation, and recreation. We partner with private and governmental bodies to identify and take action to counter threats to wildlife and the places they live. We take a watershed approach in conserving and restoring southwestern riparian habitats and their associated uplands.

On behalf of the Society's more than 4,000 member households in southern Arizona, we appreciate the opportunity to communicate with you regarding the inclusion of the most recent version of S. 409 Southeast Arizona Land Exchange and Conservation Act of 2009 that you are considering.

**In April 2005, Tucson Audubon wrote to the Resolution Copper Company (RCC) to express two major concerns:**

- 1) "We recommended that RCC include language indicating its willingness to comply with all federal environmental laws, specifically the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(1)), during any and all phases of its exploration, operation, reclamation and mitigation."
- 2) "We recommended that RCC clarify its intent regarding water use and disposal. It was, and still is, unclear to us if Resolution has or could acquire water rights sufficient for its operation, what the impact of the mining operation would be on local area water supplies, and how they would dispose of the wastewater associated with the operation."

**We informed our readers (in the July/August 2006 edition of our newsletter and subsequent communications) that:** In a nutshell, a foreign-owned mining company, Resolution Copper Company (RCC) (Rio Tinto of the United Kingdom owns 55% and Broken Hill Properties (BHP) of Australia owns 45%) has acquired the old Magma Mine outside Superior and wishes to expand its holdings. RCC's research indicates that it may be the largest and highest-grade copper ore deposit known, to date, in North America. RCC wants to acquire the nearby Oak Flat Campground, located in the Tonto National Forest, to mine

in the area. President Eisenhower removed Oak Flat from mineral exploration and extraction in 1955 (Public Land Order 1229). Oak Flat and the nearby Apache Leap are significant cultural sites for the Apache people.

Within the San Pedro watershed, the Pinal County Board of Supervisors approved a massive (up to 35,000 residences) mixed-use community on BHP lands (over 23,000 acres) around the community of San Manuel, along the west side of the Lower San Pedro River. Meanwhile, Resolution Copper proposes to preserve a 3,000-acre mesquite bosque (the 7B), just downstream of BHP's lands, through its exchange. BHP's proposed development will dewater and devalue not only the 7B bosque, but also dewater and devalue mitigation lands of the Salt River Project (SRP) and the Bureau of Reclamation (BOR), as well as lands owned and managed for conservation by the Nature Conservancy (TNC).

We are unable to understand how RCC proposes mitigating lands that will be devalued by their partner, BHP. While Tucson Audubon remains opposed to the exchange as currently proposed, we are hopeful that, if it moves forward, its conservation will be functional and meaningful. At a minimum, that means that BHP cannot dewater RCC's lands.

Specific language that designates the 7B parcel AND the mosaic of other mitigation lands, WITH THE ADDITION OF BHP's RIVER LANDS and some portion of their 20,000-acre feet of water rights, as a Wildlife Refuge is essential in order to adequately manage the area for conservation and avoid incompatible uses. Without the inclusion of BHP's river lands, there is no point in acquiring the 7B, and the other entities will find it difficult, if not impossible, to meet their mitigation requirements along the Lower San Pedro. Without inclusion of a designation that mandates special management, the persistence of long-term conservation values of ALL the parcels in question is doubtful.

**It is now December 2010:** to date, the issues raised have not been adequately addressed and, as the years have passed, many more questions and concerns have been raised by RCC's proposal. For example:

### **The International Importance of the San Pedro River**

The San Pedro River is a vitally important national and international resource. Anything that threatens the integrity of the ecosystem functions of the San Pedro is of international concern, especially in light of the river's ability to provide for ecoregion resilience and flexibility in the face of climate change. The area in question is an Audubon Global Important Bird Area (IBA) approved by the National Audubon Society (NAS) in 2008.

The Lower San Pedro River *Important Bird Area* was identified by state and national Audubon IBA science committees for providing essential habitat supporting a suite of riparian species listed by various agencies (i.e., Arizona Game and Fish Department, U.S. Fish and Wildlife Service, National Audubon, International Union for the Conservation of Nature) as species of high conservation concern under their programs, and that occur with significant populations within this reach of river. The "Global IBA" designation in 2008 upgraded the "Arizona IBA" designation (2007), for the determined globally significant population of Bell's Vireo within this river reach.

The San Pedro River is also the last major undammed river in the American Southwest, and exhibits a remarkably intact riparian system including extensive stands of Fremont cottonwood *Populus fremontii*--- Goodding's willow *Salix gooddingii* gallery forest and large mesquite *Prosopis velutina* bosques.

According to the American Bird Conservancy, southwestern riparian habitat is the fifth most threatened habitat type in the nation. The San Pedro River serves as a corridor between the Sky Islands of the Madrean Archipelago in northern Sonora and southern Arizona in its southernmost reaches and, in the north, Arizona's Central Highlands. The river is not only a major corridor between varied habitat types and ecoregions; it

represents a ribbon of water and riparian vegetation in an otherwise arid environment. The river thus exhibits a remarkably high biodiversity, both in resident and migratory species.

More than 100 species of breeding birds, including 36 species of raptors, and another approximately 250 species of migrant and wintering birds, occur in the area, representing roughly half the number of known breeding species in North America. The San Pedro River serves as a migratory corridor for an estimated 4 million migrating birds each year.

The abundance of mammals, reptiles, and amphibians is also high; more than 80 species of the former and more than 40 species of the latter. Fourteen species of native fish formerly occurred in the San Pedro River; two persist today. TNC is working with the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program to restore an artesian spring-fed Cienega (wetland) and reestablish endangered Gila topminnow *Poeciliopsis occidentalis occidentalis* and lowland leopard frog *Rana yavapaiensis* on the 7B Ranch.

The high importance of the Lower San Pedro River for the recovery of the endangered Southwestern Willow Flycatcher contributed to its designation as critical habitat for the species. Critical habitat includes approximately 60 river miles of the Lower San Pedro River between a point approximately 3.5 river miles south of Hot Springs Canyon to the Gila River confluence.

Aravaipa Creek, a major tributary to the Lower San Pedro River, contains an intact native fish assemblage, including the currently threatened and proposed endangered (Federal Register October 28, 2010) spikedace *Meda fulgida* and loach minnow *Tiaroga cobitis*. The presence of a robust population of these fishes in a tributary stream and the largely unregulated hydrology of both waters led to an approximately 13-mile reach of the Lower San Pedro River currently designated as spikedace critical habitat.

#### **Potential Adverse Impacts to the Lower San Pedro**

Due to the currently proposed development of RCC partner BHP's San Manuel properties, the ecosystem functions of the existent mosaic of conservation and mitigation lands along the Lower San Pedro are threatened. Investments by the Salt River Project (SRP), which mitigate for impacts at the Roosevelt Dam in order to supply the metropolitan Phoenix area with drinking water, could be rendered moot. Also affected are mitigation lands of the Bureau of Reclamation (BOR) and the conservation lands managed by the Nature Conservancy (TNC). BHP's development potential, approved by Pinal County, may also have a domino effect and impact the extensive adjacent land holdings of the Arizona State Land Department, increasing pressure to develop those lands with additional resulting water demands.

#### **Ownership and Management**

When and how would exchange parcels come into federal ownership? Which agencies are best suited, and funded, to manage the lands acquired? In the case of the lands along the Lower San Pedro River specifically, and considering the mosaic of federal mitigation and conservation lands in which they occur, we suggest that the USFWS is the preferred agency, offering an appropriate higher level of protection and associated management practices due to the numerous endangered species issues involved. The designation of a Lower San Pedro River Wildlife Refuge is the logical "resolution" and solution. Interim and long-range conservation management directives and long term dedicated funding for management is essential. Dedicated funding for additional conservation land acquisitions along the Lower San Pedro would be appropriate. In addition to the 7B ranch referenced, we strongly recommend that BHP's 3700 acres of flood plain and 3100 acres of desert upland terrace, with associated water rights, be included in this exchange and protected.

We have commented previously on our concerns regarding the appraisal process, the need to conserve cultural and biologic resources of national significance, royalties, the potential precedent set by undoing President Eisenhower's Presidential Executive Order (Public Land Order 1229), mitigation and reclamation planning, and NEPA compliance IN ADVANCE of the proposed development, as proscribed by law.

This bill is far from ready and we request that it be removed from the draft Omnibus legislation being considered at this time. Thank you for considering the concerns of the environmental community and our constituents.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Green". The signature is stylized with a large, looping initial "P" and a smaller "G".

Dr Paul Green | Executive Director

A handwritten signature in black ink, appearing to read "Christina McVie". The signature is written in a cursive, flowing style.

Christina McVie | Conservation Chair