



**Legislative Bulletin .....September 19, 2013**

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**H.R. 687 - Southeast Arizona Land Exchange and Conservation Act of 2013**

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**H.R. 687 - Southeast Arizona Land Exchange and Conservation Act of 2013 (Gosar, R-AZ)**

**Order of Business:** The legislation is scheduled to be considered on September 19, 2013, under a rule, [H.Res. 351](#). The rule provides for the consideration of H.R. 687, the Southeast Arizona Land Exchange and Conservation Act of 2013, H.R. 1526, the Restoring Healthy Forests for Healthy Communities Act, and H.R. 3102, the Nutrition Reform and Work Opportunity Act of 2013.

With respect to H.R. 687, the rule allows for the bill to be considered in the Committee of the Whole House on the state of the Union. The rule waives all points of order against consideration of the bill. The rule provides for one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources. After general debate, the bill shall be considered for amendment under the five-minute rule, and makes in order the amendments summarized in this document. At the conclusion of amendment consideration, the Committee shall rise and report the bill to the House. At that point, any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole. The previous question shall be considered as ordered. The rule also provides for one motion to recommit.

**Summary:** H.R. 687 authorizes the Secretary of Agriculture (Secretary) to exchange 2,422 acres in Pinal County, Arizona, to Resolution Copper Mining, LLC. Resolution Copper would be required to simultaneously convey eight separate parcels totaling approximately 5,344 acres. Of the acreage currently owned by Resolution Copper, approximately 1,194 acres would be conveyed to the Secretary of Agriculture, and 4,150 acres would be conveyed to the Secretary of the Interior.

The legislation directs the Secretary to have all parcels appraised. In the event that the U.S. government is conveying land of greater value than it is receiving, the legislation directs Resolution Copper to convey additional lands in Arizona, or make a cash payment, to the Secretary to equalize the value. In the event that Resolution Copper is conveying land of greater value than it is receiving, the legislation directs the U.S.

government to make a payment to Resolution Copper to equalize the value. These appraisals shall take into account the value of minerals located in the federal lands.

H.R. 687 directs the Secretary, upon request, to convey special use mining permits to Resolution Copper for certain lands classified as the Oak Flat Withdrawal Area. Additionally, the Secretary may issue permits to Resolution Copper for underground activities (other than commercial mineral extraction) of Apache Leap. Resolution Copper currently has rights to Apache Leap and H.R. 687 requires those rights to be surrendered.

Resolution Copper is directed to pay all costs that are associated with this land exchange and the costs of environmental review documents required by the National Environmental Policy Act of 1969.

Resolution Copper is directed to report annually to the Secretary of the Interior on the quantity of minerals produced from land conveyed by this legislation. This report is due annually by February 15<sup>th</sup>, and will be available to the state of Arizona. If the minerals produced from the lands conveyed by the U.S. government are worth more than what the appraiser originally estimated, Resolution Copper would be required to pay the U.S. government (annually by March 15<sup>th</sup>) a value adjustment payment for the quantity of the excess minerals produced. In the event of such payment, the funds are to be deposited in the Treasury and made available to the Secretary of the Interior for the maintenance and repair of Forest Service and Bureau of Land Management assets.

H.R. 687 clarifies that it does not modify, expand, diminish, amend, or otherwise affect any state law relating to the imposition, application, timing, or collection of a state excise or severance tax.

Within 30 days of enactment (if not before enactment) the Secretary shall engage in government-to-government consultations with affected Indian tribes concerning issues related to the land exchange.

**Amendments Made In Order:**

***Grijalva (D-AZ):*** As a condition of the land exchange, the amendment directs Resolution Copper to agree to “locate in the town of Superior, Arizona, or a contiguous, neighboring mining community the remote operation center for mining operations on the federal land.” The amendment also requires Resolution Copper to agree to maintain this operation center for the duration of the mining operations. The text of the amendment can be [viewed here](#).

***Napolitano (D-CA):*** The amendment adds a new section to the end of the legislation. The amendment states that the bill shall not be “construed to affect any other provision of law protecting water quality and availability.” The text of the amendment can be [viewed here](#).

***Lujan (D-NM):*** The amendment prohibits any Native American sacred or cultural sites, whether surface or subsurface, from being transferred under the legislation. The

Secretary is required to consult with the affected Indian tribes to determine appropriate measures necessary to protect and preserve sacred and cultural sites. The text of the amendment can be [viewed here](#).

**Additional Information:** Similar legislation, H.R. 1904, passed the House of Representatives on October 26, 2011, by a [roll call vote of 235-186](#). The RSC Legislative Bulletin for H.R. 1904 can be [viewed here](#).

The land currently owned by the federal government reportedly includes the third largest undeveloped copper mine in the world. H.R. 687 would transfer that land to a private company where a mining operation could take place.

An independent analysis of the economic impact of the proposed mining operation estimates that it would generate over \$61.4 billion in economic activity over the life of the project. The project is estimated to support around 3,700 jobs annually. A report on the economic and fiscal impact of this land exchange can be [viewed here](#).

According to [House Report 113-167](#):

“Resolution Copper Mining LLC (Resolution Copper) owns land and holds mining claims near the Town of Superior, in southeastern Arizona. In the late 1990s, Resolution Copper's exploratory activities revealed the existence of a very large copper deposit on its claims, located between 4,500 to 7,000 feet below the surface. Resolution Copper is interested in developing a large underground mine where the ore would be extracted and removed.

The Oak Flat Campground, part of the Tonto National Forest, is located in the center of Resolution Copper's land holdings and mining claims. Approximately 760 acres of National Forest lands in and around the Oak Flat Campground were withdrawn from entry under the mining laws in 1955 along with numerous other tracks of land for the purpose of establishing several campgrounds on the public lands. See Public Land Order 1229 (Sept. 27, 1955); 20 Fed. Reg. 7336-37 (Oct. 1, 1955).

Members of the Arizona Delegation have proposed a land exchange allowing Resolution Copper to acquire the campground and adjacent withdrawn National Forest lands so the company can proceed with development of the mine. The Secretary of Agriculture would convey to Resolution Copper certain lands and interests in the Tonto National Forest, Arizona, in exchange for private lands of environmental and archeological significance in the State of Arizona for management by the U.S. Forest Service and the Bureau of Land Management (BLM). Legislation is required for the proposed land exchange because it includes National Forest System lands.”

**Outside Groups:** The sponsor's office has received several letters of support for H.R. 687, which can be viewed in their [entirety here](#). Below are letters from state government officials, county governments and officials, as well as from the national business community:

Arizona State Government Letters of Support:

[Governor Jan Brewer \(R\) Letter of Support](#)

[Senate President Andy Biggs \(R\) Letter of Support](#)

[State Sen. Barb McGuire \(D\) - Letter of Support](#)  
[State Rep. Frank Pratt \(R\) Letter of Support](#)  
[State Rep. TJ Shoppe \(R\) Proclamation of Support](#)  
[State Rep. Brenda Barton \(R\) Letter of Support.](#)  
[Bicameral Arizona Legislature Letter of Support](#)

County Government Letters of Support:

[Gila County Supervisor Michael Pastor \(D\) Letter of Support](#)  
[Gila County Supervisor Tommie Martin \(R\) Letter of Support](#)  
[Gila County Supervisor John Marcanti \(D\) Letter of Support](#)  
[Gila County Board of Supervisors Resolution of Support](#)  
[Pinal County Board of Supervisors Resolution of Support](#)  
[Maricopa County Board of Supervisors Resolution of Support](#)

National Business Community Letters of Support:

[American Supply Association Letter of Support](#)  
[American Clean Energy Resources Trust Letter of Support](#)  
[Associated General Contractors of America Letter of Support](#)  
[Northwest Mining Association](#)

The National Congress of American Indians opposes the legislation. More information on their position can be [viewed here](#).

**Committee Action:** H.R. 687 was introduced on February 14, 2013, and referred to the House Natural Resources Subcommittee on Public Lands and Environmental Regulation, and the Subcommittee on Energy and Mineral Resources. A [full committee markup](#) was held on May 15, 2013, and the legislation was agreed to, as amended, by a [vote of 23-19](#).

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** CBO estimates that implementing the bill would cost less than \$500,000 annually, assuming the availability of appropriated funds. Those costs would include preparing management plans and administering private lands received in exchange for federal land. CBO's report can be [found here](#).

**Does the Bill Expand the Size and Scope of the Federal Government?:** H.R. 687 authorizes the Secretary of Agriculture to exchange 2,422 acres in Pinal County, Arizona, to Resolution Copper Mining, LLC in exchange for eight separate parcels totaling approximately 5,344 acres. This would result in an increase in the amount of acreage owned by the federal government, which is arguably an increase in the size of the federal government. However, this legislation would allow the private sector to operate on lands formally held by the federal government, this is arguably a decrease in the size and scope of the federal government.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** CBO states "The bill contains no intergovernmental or private-

sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.”

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.**

**Constitutional Authority:** The [Constitutional Authority Statement](#) accompanying the bill upon introduction states:

“Congress has the power to enact this legislation pursuant to the following:

Article IV of the Constitution provides the authority of Congress over federal property as a general matter. Article IV, Sec. 3 refers to the managerial authority over property owned by the Federal Government, and provides in relevant part:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; ... By virtue of this enumerated power, Congress has governing authority over the lands, territories, or other property of the United States--and with this authority Congress is vested with the power accredited to all owners in fee, the power to sell, lease, dispose, exchange, transfer, trade, mine, or simply preserve land. The appropriate acreage to be held under Federal dominance is not the subject of this bill. Turning to the power of Article IV, Sec. 3, the Supreme Court has described this enumerated grant as one “without limitation” *Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976) (“And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that ‘[t]he power over the public land thus entrusted to Congress is without limitations’ “Citing *United States v. San Francisco*, 310 U.S. 29. The Court in *Kleppe* further explained that “In short, Congress exercises the powers both of a proprietor and of a legislature over the public domain.” *Id.* Like any “proprietor” Congress has the power to sell or exchange federal property.

It is now generally accepted that the Federal Government may own and manage property in the manner and form mandated by Congress. *United States v. Gratiot*, 39 U.S. 526 (1840); *Camfield v. United States*, 167 U.S. 518 (1897). However, the wisdom of the Federal Government owning large tracts of land, particularly in the Western States, is subject to question on policy grounds, and some contend on Constitutional grounds based on the decision in *Pollard's Lessee v. Hagan*, 44 U.S. 212 (where the Court stated that “a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new States were formed, except for temporary purposes ...” Historically, the early federal government transferred ownership of federal property to either private ownership or to state ownership in order to pay off the then crushing Revolutionary War debts and to assist with the development of infrastructure. These are still acceptable goals for federal property sale or transfer.

The land exchange here is one that comports with good policy and constitutional strictures since by exchanging the land set forth in this bill, a large commercial grade copper mine will be able to proceed with the attendant economic benefits with which such a proposition inures (assuming compliance with other requirements set forth in the bill), but the Federal Government also gains equally valuable land that has significance for other purposes. Article 1, Sec. 8, Cl. 17 addresses property ceded by a state and conveys exclusive regulatory federal jurisdiction over these federal properties and enclaves. Section 8, Cl. 17 may also provide some guidance here to the extent it grants Congress the power to “exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts,

Magazines, Arsenals, dock-Yards and other needful Buildings.” But it is Article IV that this bill is grounded upon.”

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