

(Pub. L. 111–11, title I, §1808, Mar. 30, 2009, 123 Stat. 1060.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (b)(2), is subtitle K (§§1801–1808) of title I of Pub. L. 111–11, Mar. 30, 2009, 123 Stat. 1052, which enacted this section and subchapter CXXXIII of chapter 1 of this title, amended section 1274 of this title, enacted provisions set out as notes under sections 460vvv and 1274 of this title, and enacted and amended provisions listed in a table of Wilderness Areas set out under section 1132 of this title. For complete classification of subtitle K to the Code, see Tables.

The National Forest Management Act of 1976, referred to in subsec. (c)(1)(B), is Pub. L. 94–588, Oct. 22, 1976, 90 Stat. 2949, which enacted sections 472a, 521b, 1600, and 1611 to 1614 of this title, amended sections 500, 515, 516, 518, 576b, and 1601 to 1610 of this title, repealed sections 476, 513, and 514 of this title, and enacted provisions set out as notes under sections 476, 513, 528, 594–2, and 1600 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of this title and Tables.

DEFINITIONS

For definitions of terms used in this section, see section 1801 of Pub. L. 111–11, set out as a note under section 460vvv of this title.

§ 539p. Southeast Arizona land exchange and conservation

(a) Purpose

The purpose of this section is to authorize, direct, facilitate, and expedite the exchange of land between Resolution Copper and the United States.

(b) Definitions

In this section:

(1) Apache Leap

The term “Apache Leap” means the approximately 807 acres of land depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Apache Leap” and dated March 2011.

(2) Federal land

The term “Federal land” means the approximately 2,422 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Federal Parcel–Oak Flat” and dated March 2011.

(3) Indian tribe

The term “Indian tribe” has the meaning given the term in section 5304 of title 25.

(4) Non-Federal land

The term “non-Federal land” means the parcels of land owned by Resolution Copper that are described in subsection (d)(1) and, if necessary to equalize the land exchange under subsection (c), subsection (c)(5)(B)(i)(I).

(5) Oak Flat Campground

The term “Oak Flat Campground” means the approximately 50 acres of land comprising approximately 16 developed campsites depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Oak Flat Campground” and dated March 2011.

(6) Oak Flat Withdrawal Area

The term “Oak Flat Withdrawal Area” means the approximately 760 acres of land depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Oak Flat Withdrawal Area” and dated March 2011.

(7) Resolution Copper

The term “Resolution Copper” means Resolution Copper Mining, LLC, a Delaware limited liability company, including any successor, assign, affiliate, member, or joint venturer of Resolution Copper Mining, LLC.

(8) Secretary

The term “Secretary” means the Secretary of Agriculture.

(9) State

The term “State” means the State of Arizona.

(10) Town

The term “Town” means the incorporated town of Superior, Arizona.

(11) Resolution mine plan of operations

The term “Resolution mine plan of operations” means the mine plan of operations submitted to the Secretary by Resolution Copper in November, 2013, including any amendments or supplements.

(c) Land exchange

(1) In general

Subject to the provisions of this section, if Resolution Copper offers to convey to the United States all right, title, and interest of Resolution Copper in and to the non-Federal land, the Secretary is authorized and directed to convey to Resolution Copper, all right, title, and interest of the United States in and to the Federal land.

(2) Conditions on acceptance

Title to any non-Federal land conveyed by Resolution Copper to the United States under this section shall be in a form that—

(A) is acceptable to the Secretary, for land to be administered by the Forest Service and the Secretary of the Interior, for land to be administered by the Bureau of Land Management; and

(B) conforms to the title approval standards of the Attorney General of the United States applicable to land acquisitions by the Federal Government.

(3) Consultation with Indian tribes

(A) In general

The Secretary shall engage in government-to-government consultation with affected Indian tribes concerning issues of concern to the affected Indian tribes related to the land exchange.

(B) Implementation

Following the consultations under paragraph (A), the Secretary shall consult with Resolution Copper and seek to find mutually acceptable measures to—

(i) address the concerns of the affected Indian tribes; and

(ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper under this section.

(4) Appraisals

(A) In general

As soon as practicable after December 19, 2014, the Secretary and Resolution Copper shall select an appraiser to conduct appraisals of the Federal land and non-Federal land in compliance with the requirements of section 254.9 of title 36, Code of Federal Regulations.

(B) Requirements

(i) In general

Except as provided in clause (ii), an appraisal prepared under this paragraph shall be conducted in accordance with nationally recognized appraisal standards, including—

(I) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(II) the Uniform Standards of Professional Appraisal Practice.

(ii) Final appraised value

After the final appraised values of the Federal land and non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to re-appraise or update the final appraised value—

(I) for a period of 3 years beginning on the date of the approval by the Secretary of the final appraised value; or

(II) at all, in accordance with section 254.14 of title 36, Code of Federal Regulations (or a successor regulation), after an exchange agreement is entered into by Resolution Copper and the Secretary.

(iii) Improvements

Any improvements made by Resolution Copper prior to entering into an exchange agreement shall not be included in the appraised value of the Federal land.

(iv) Public review

Before consummating the land exchange under this section, the Secretary shall make the appraisals of the land to be exchanged (or a summary thereof) available for public review.

(C) Appraisal information

The appraisal prepared under this paragraph shall include a detailed income capitalization approach analysis of the market value of the Federal land which may be utilized, as appropriate, to determine the value of the Federal land, and shall be the basis for calculation of any payment under subsection (e).

(5) Equal value land exchange

(A) In general

The value of the Federal land and non-Federal land to be exchanged under this section shall be equal or shall be equalized in accordance with this paragraph.

(B) Surplus of Federal land value

(i) In general

If the final appraised value of the Federal land exceeds the value of the non-Federal land, Resolution Copper shall—

(I) convey additional non-Federal land in the State to the Secretary or the Secretary of the Interior, consistent with the requirements of this section and subject to the approval of the applicable Secretary;

(II) make a cash payment to the United States; or

(III) use a combination of the methods described in subclauses (I) and (II), as agreed to by Resolution Copper, the Secretary, and the Secretary of the Interior.

(ii) Amount of payment

The Secretary may accept a payment in excess of 25 percent of the total value of the land or interests conveyed, notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(iii) Disposition and use of proceeds

Any amounts received by the United States under this subparagraph shall be deposited in the fund established under section 484a of this title and shall be made available to the Secretary for the acquisition of land or interests in land in Region 3 of the Forest Service.

(C) Surplus of non-Federal land

If the final appraised value of the non-Federal land exceeds the value of the Federal land—

(i) the United States shall not make a payment to Resolution Copper to equalize the value; and

(ii) except as provided in subsection (h), the surplus value of the non-Federal land shall be considered to be a donation by Resolution Copper to the United States.

(6) Oak Flat Withdrawal Area

(A) Permits

Subject to the provisions of this paragraph and notwithstanding any withdrawal of the Oak Flat Withdrawal Area from the mining, mineral leasing, or public land laws, the Secretary, upon enactment of this Act, shall issue to Resolution Copper—

(i) if so requested by Resolution Copper, within 30 days of such request, a special use permit to carry out mineral exploration activities under the Oak Flat Withdrawal Area from existing drill pads located outside the Area, if the activities would not disturb the surface of the Area; and

(ii) if so requested by Resolution Copper, within 90 days of such request, a special use permit to carry out mineral exploration activities within the Oak Flat Withdrawal Area (but not within the Oak Flat Campground), if the activities are conducted from a single exploratory drill pad which is located to reasonably mini-

mize visual and noise impacts on the Campground.

(B) Conditions

Any activities undertaken in accordance with this paragraph shall be subject to such reasonable terms and conditions as the Secretary may require.

(C) Termination

The authorization for Resolution Copper to undertake mineral exploration activities under this paragraph shall remain in effect until the Oak Flat Withdrawal Area land is conveyed to Resolution Copper in accordance with this section.

(7) Costs

As a condition of the land exchange under this section, Resolution Copper shall agree to pay, without compensation, all costs that are—

- (A) associated with the land exchange and any environmental review document under paragraph (9); and
- (B) agreed to by the Secretary.

(8) Use of Federal land

The Federal land to be conveyed to Resolution Copper under this section shall be available to Resolution Copper for mining and related activities subject to and in accordance with applicable Federal, State, and local laws pertaining to mining and related activities on land in private ownership.

(9) Environmental compliance

(A) In general

Except as otherwise provided in this section, the Secretary shall carry out the land exchange in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Environmental analysis

Prior to conveying Federal land under this section, the Secretary shall prepare a single environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which shall be used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of-way, or approvals for the construction of associated power, water, transportation, processing, tailings, waste disposal, or other ancillary facilities.

(C) Impacts on cultural and archeological resources

The environmental impact statement prepared under subparagraph (B) shall—

- (i) assess the effects of the mining and related activities on the Federal land conveyed to Resolution Copper under this section on the cultural and archeological resources that may be located on the Federal land; and
- (ii) identify measures that may be taken, to the extent practicable, to minimize po-

tential adverse impacts on those resources, if any.

(D) Effect

Nothing in this paragraph precludes the Secretary from using separate environmental review documents prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable laws for exploration or other activities not involving—

- (i) the land exchange; or
- (ii) the extraction of minerals in commercial quantities by Resolution Copper on or under the Federal land.

(10) Title transfer

Not later than 60 days after the date of publication of the final environmental impact statement, the Secretary shall convey all right, title, and interest of the United States in and to the Federal land to Resolution Copper.

(d) Conveyance and management of non-Federal land

(1) Conveyance

On receipt of title to the Federal land, Resolution Copper shall simultaneously convey—

(A) to the Secretary, all right, title, and interest that the Secretary determines to be acceptable in and to—

(i) the approximately 147 acres of land located in Gila County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Turkey Creek” and dated March 2011;

(ii) the approximately 148 acres of land located in Yavapai County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Tangle Creek” and dated March 2011;

(iii) the approximately 149 acres of land located in Maricopa County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Cave Creek” and dated March 2011;

(iv) the approximately 640 acres of land located in Coconino County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–East Clear Creek” and dated March 2011; and

(v) the approximately 110 acres of land located in Pinal County, Arizona, depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Apache Leap South End” and dated March 2011; and

(B) to the Secretary of the Interior, all right, title, and interest that the Secretary of the Interior determines to be acceptable in and to—

(i) the approximately 3,050 acres of land located in Pinal County, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act

of 2011–Non-Federal Parcel–Lower San Pedro River” and dated July 6, 2011;

(ii) the approximately 160 acres of land located in Gila and Pinal Counties, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Dripping Springs” and dated July 6, 2011; and

(iii) the approximately 940 acres of land located in Santa Cruz County, Arizona, identified as “Lands to DOI” as generally depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Non-Federal Parcel–Appleton Ranch” and dated July 6, 2011.

(2) Management of acquired land

(A) Land acquired by the Secretary

(i) In general

Land acquired by the Secretary under this section shall—

(I) become part of the national forest in which the land is located; and

(II) be administered in accordance with the laws applicable to the National Forest System.

(ii) Boundary revision

On the acquisition of land by the Secretary under this section, the boundaries of the national forest shall be modified to reflect the inclusion of the acquired land.

(iii) Land and Water Conservation Fund

For purposes of sections 100506(c) and 200306 of title 54, the boundaries of a national forest in which land acquired by the Secretary is located shall be deemed to be the boundaries of that forest as in existence on January 1, 1965.

(B) Land acquired by the Secretary of the Interior

(i) San Pedro National¹ Conservation Area

(I) In general

The land acquired by the Secretary of the Interior under paragraph (1)(B)(i) shall be added to, and administered as part of, the San Pedro National¹ Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area.

(II) Management plan

Not later than 2 years after the date on which the land is acquired, the Secretary of the Interior shall update the management plan for the San Pedro National¹ Conservation Area to reflect the management requirements of the acquired land.

(ii) Dripping springs

Land acquired by the Secretary of the Interior under paragraph (1)(B)(ii) shall be managed in accordance with the Federal Land Policy and Management Act of 1976

(43 U.S.C. 1701 et seq.) and applicable land use plans.

(iii) Las Cienegas National Conservation Area

Land acquired by the Secretary of the Interior under paragraph (1)(B)(iii) shall be added to, and administered as part of, the Las Cienegas National Conservation Area in accordance with the laws (including regulations) applicable to the Conservation Area.

(e) Value adjustment payment to United States

(1) Annual production reporting

(A) Report required

As a condition of the land exchange under this section, Resolution Copper shall submit to the Secretary of the Interior an annual report indicating the quantity of locatable minerals produced during the preceding calendar year in commercial quantities from the Federal land conveyed to Resolution Copper under subsection (c). The first report is required to be submitted not later than February 15 of the first calendar year beginning after the date of commencement of production of valuable locatable minerals in commercial quantities from such Federal land. The reports shall be submitted February 15 of each calendar year thereafter.

(B) Sharing reports with State

The Secretary shall make each report received under subparagraph (A) available to the State.

(C) Report contents

The reports under subparagraph (A) shall comply with any recordkeeping and reporting requirements prescribed by the Secretary or required by applicable Federal laws in effect at the time of production.

(2) Payment on production

If the cumulative production of valuable locatable minerals produced in commercial quantities from the Federal land conveyed to Resolution Copper under subsection (c) exceeds the quantity of production of locatable minerals from the Federal land used in the income capitalization approach analysis prepared under subsection (c)(4)(C), Resolution Copper shall pay to the United States, by not later than March 15 of each applicable calendar year, a value adjustment payment for the quantity of excess production at the same rate assumed for the income capitalization approach analysis prepared under subsection (c)(4)(C).

(3) State law unaffected

Nothing in this subsection modifies, expands, diminishes, amends, or otherwise affects any State law relating to the imposition, application, timing, or collection of a State excise or severance tax.

(4) Use of funds

(A) Separate fund

All funds paid to the United States under this subsection shall be deposited in a spe-

¹So in original. The word “Riparian” probably should precede “National”.

cial fund established in the Treasury and shall be available, in such amounts as are provided in advance in appropriation Acts, to the Secretary and the Secretary of the Interior only for the purposes authorized by subparagraph (B).

(B) Authorized use

Amounts in the special fund established pursuant to subparagraph (A) shall be used for maintenance, repair, and rehabilitation projects for Forest Service and Bureau of Land Management assets.

(f) Withdrawal

Subject to valid existing rights, Apache Leap and any land acquired by the United States under this section are withdrawn from all forms of—

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) disposition under the mineral leasing, mineral materials, and geothermal leasing laws.

(g) Apache Leap Special Management Area

(1) Designation

To further the purpose of this section, the Secretary shall establish a special management area consisting of Apache Leap, which shall be known as the “Apache Leap Special Management Area” (referred to in this subsection as the “special management area”).

(2) Purpose

The purposes of the special management area are—

- (A) to preserve the natural character of Apache Leap;
- (B) to allow for traditional uses of the area by Native American people; and
- (C) to protect and conserve the cultural and archeological resources of the area.

(3) Surrender of mining and extraction rights

As a condition of the land exchange under subsection (c), Resolution Copper shall surrender to the United States, without compensation, all rights held under the mining laws and any other law to commercially extract minerals under Apache Leap.

(4) Management

(A) In general

The Secretary shall manage the special management area in a manner that furthers the purposes described in paragraph (2).

(B) Authorized activities

The activities that are authorized in the special management area are—

- (i) installation of seismic monitoring equipment on the surface and subsurface to protect the resources located within the special management area;
- (ii) installation of fences, signs, or other measures necessary to protect the health and safety of the public; and
- (iii) operation of an underground tunnel and associated workings, as described in the Resolution mine plan of operations,

subject to any terms and conditions the Secretary may reasonably require.

(5) Plan

(A) In general

Not later than 3 years after December 19, 2014, the Secretary, in consultation with affected Indian tribes, the Town, Resolution Copper, and other interested members of the public, shall prepare a management plan for the Apache Leap Special Management Area.

(B) Considerations

In preparing the plan under subparagraph (A), the Secretary shall consider whether additional measures are necessary to—

- (i) protect the cultural, archaeological, or historical resources of Apache Leap, including permanent or seasonal closures of all or a portion of Apache Leap; and
- (ii) provide access for recreation.

(6) Mining activities

The provisions of this subsection shall not impose additional restrictions on mining activities carried out by Resolution Copper adjacent to, or outside of, the Apache Leap area beyond those otherwise applicable to mining activities on privately owned land under Federal, State, and local laws, rules and regulations.

(h) Conveyances to Town of Superior, Arizona

(1) Conveyances

On request from the Town and subject to the provisions of this subsection, the Secretary shall convey to the Town the following:

(A) Approximately 30 acres of land as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Federal Parcel–Fairview Cemetery” and dated March 2011.

(B) The reversionary interest and any reserved mineral interest of the United States in the approximately 265 acres of land located in Pinal County, Arizona, as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Federal Reversionary Interest–Superior Airport” and dated March 2011.

(C) The approximately 250 acres of land located in Pinal County, Arizona, as depicted on the map entitled “Southeast Arizona Land Exchange and Conservation Act of 2011–Federal Parcel–Superior Airport Contiguous Parcels” and dated March 2011.

(2) Payment

The Town shall pay to the Secretary the market value for each parcel of land or interest in land acquired under this subsection, as determined by appraisals conducted in accordance with subsection (c)(4).

(3) Sisk Act

Any payment received by the Secretary from the Town under this subsection shall be deposited in the fund established under section 484a of this title and shall be made available to the Secretary for the acquisition of land or interests in land in Region 3 of the Forest Service.

(4) Terms and conditions

The conveyances under this subsection shall be subject to such terms and conditions as the Secretary may require.

(i) Miscellaneous provisions**(1) Revocation of orders; withdrawal****(A) Revocation of orders**

Any public land order that withdraws the Federal land from appropriation or disposal under a public land law shall be revoked to the extent necessary to permit disposal of the land.

(B) Withdrawal

On December 19, 2014, if the Federal land or any Federal interest in the non-Federal land to be exchanged under subsection (c) is not withdrawn or segregated from entry and appropriation under a public land law (including mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.)), the land or interest shall be withdrawn, without further action required by the Secretary concerned, from entry and appropriation. The withdrawal shall be terminated—

(i) on the date of consummation of the land exchange; or

(ii) if Resolution Copper notifies the Secretary in writing that it has elected to withdraw from the land exchange pursuant to section 206(d) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716(d)).

(C) Rights of Resolution Copper

Nothing in this section shall interfere with, limit, or otherwise impair, the unpatented mining claims or rights currently held by Resolution Copper on the Federal land, nor in any way change, diminish, qualify, or otherwise impact Resolution Copper's rights and ability to conduct activities on the Federal land under such unpatented mining claims and the general mining laws of the United States, including the permitting or authorization of such activities.

(2) Maps, estimates, and descriptions**(A) Minor errors**

The Secretary concerned and Resolution Copper may correct, by mutual agreement, any minor errors in any map, acreage estimate, or description of any land conveyed or exchanged under this section.

(B) Conflict

If there is a conflict between a map, an acreage estimate, or a description of land in this section, the map shall control unless the Secretary concerned and Resolution Copper mutually agree otherwise.

(C) Availability

On December 19, 2014, the Secretary shall file and make available for public inspection in the Office of the Supervisor, Tonto National Forest, each map referred to in this section.

(3) Public access in and around Oak Flat Campground

As a condition of conveyance of the Federal land, Resolution Copper shall agree to provide

access to the surface of the Oak Flat Campground to members of the public, including Indian tribes, to the maximum extent practicable, consistent with health and safety requirements, until such time as the operation of the mine precludes continued public access for safety reasons, as determined by Resolution Copper.

(Pub. L. 113-291, div. B, title XXX, § 3003, Dec. 19, 2014, 128 Stat. 3732.)

REFERENCES IN TEXT

Enactment of this Act, referred to in subsec. (c)(6)(A), means the enactment of Pub. L. 113-291, which was approved Dec. 19, 2014.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(9), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (d)(2)(B)(ii), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, which is classified principally to chapter 35 (§ 1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

The Geothermal Steam Act of 1970, referred to in subsec. (i)(1)(B), is Pub. L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§ 1001 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 30 and Tables.

CODIFICATION

In subsec. (d)(2)(A)(iii), “sections 100506(c) and 200306 of title 54” substituted for “section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9) [sic]” on authority of Pub. L. 113-287, § 6(e), Dec. 19, 2014, 128 Stat. 3272, which Act enacted Title 54, National Park Service and Related Programs.

§ 539q. Hermosa Creek watershed protection**(a) Definitions**

In this section:

(1) City

The term “City” means the city of Durango, Colorado.

(2) County

The term “County” means La Plata County, Colorado.

(3) Secretary

The term “Secretary” means the Secretary of Agriculture.

(4) Special Management Area

The term “Special Management Area” means the Hermosa Creek Special Management Area designated by subsection (b)(1).

(5) State

The term “State” means the State of Colorado.

(b) Designation of Hermosa Creek Special Management Area**(1) Designation**

Subject to valid existing rights, certain Federal land in the San Juan National Forest