

**Oversight Hearing
Subcommittee on National Parks, Forests and Public Lands
Subcommittee on Energy and Mineral Resources
HR 2944, The Southern Arizona Public Lands Protection Act
Testimony Submitted by:
 Chuck Huckelberry, County Administrator
 Pima County, Arizona
Date of Testimony: January 21, 2010**

I. Introduction

Mr. Chairman Grijalva, Mr. Chairman Costa and subcommittee members, I would like to thank you for holding this hearing on the proposed mineral withdrawal and for inviting Pima County to testify. How federal lands are used is of great importance to the residents of and visitors to southern Arizona, and therefore, I greatly appreciate this opportunity to formally convey concerns on behalf of Pima County. By way of background, you should know that much of this nation's copper and molybdenum has come from mines located in Pima County. Mineral extraction remains an important part of local employment. However, the 1872 Mining Law is threatening to undo much of the delicate balance that has been negotiated among state, local and federal partners because it treats mining as a privileged use above all others, regardless of the costs it imposes on others. The Southern Arizona Public Lands Protection Act (HR 2944) would address this inequity for National Forest and County-owned lands.

II. The Proposed Mineral Withdrawal in the Context of Local Land Use Planning

Like many western counties, Pima County has experienced tremendous population growth, and has faced the dilemma of how to continue accommodating such growth while conserving our watersheds and the unique natural open spaces that attract so many of us to this place. But unlike many western states, Pima County and its partners have been implementing a local plan, the Sonoran Desert Conservation Plan, which balances these issues without the need for federal regulatory actions that so often divide us. We now have an inter-jurisdictional road map, based on the best science available at this time, for distinguishing which lands are suitable for either development or conservation. With this road map, Pima County and its partners are directing development to areas suitable for development and conserving the areas most suitable for protection.

Not incidentally, we are also securing clean, sustainable water resources for future generations. Some of the areas that are or have been protected under the Sonoran Desert Conservation Plan provide surface water and groundwater for downstream cities and towns. But because of the 1872 Mining Law, many otherwise protected areas which are important for natural provision of runoff and recharge remain open to mining.

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Public support for the Sonoran Desert Conservation Plan has been high, as evidenced by voter approval of \$174 million in bond funds in 2004 to purchase lands for conservation. The County's current preserve network includes more than 85,000 acres, not including Federal and State grazing leases held by Pima County. The federal government has also assisted in implementing the Sonoran Desert Conservation Plan by protecting lands owned by Department of Interior within the Ironwood Forest National Monument and Las Cienegas National Conservation Area.

Other federally owned reserves in Pima County include the Organ Pipe Cactus National Monument, Saguaro National Park, Buenos Aires National Wildlife Refuge, Cabeza Prieta National Wildlife Refuge, Barry M. Goldwater Military Range, the Coronado National Forest, Pusch Ridge Wilderness Area, Rincon Wilderness Area, Mt. Wrightson Wilderness Area, Baboquivari Peak Wilderness Area, and Coyote Mountain Wilderness area, totaling over 1.5 million acres. Almost all of the federal reserves listed above are closed to mineral entry, notwithstanding mining claims that were valid at the time of their designation.

The principal exception to this is the Coronado National Forest lands, outside of wilderness areas. Over 200,000 acres of the Coronado National Forest in Pima County, including the Santa Catalina Mountain Range and the Santa Rita Mountain Range, are open to mineral entry. The Santa Rita Mountains have been designated as both an Important Bird Area and a World Biodiversity Hotspot. The Santa Rita Mountains provide water to the Cienega watershed, which includes the Las Cienegas National Conservation Area and County's Cienega Creek Natural Preserve and is a significant high-quality water source for the Tucson area. Cienega Creek is home to federally listed threatened and endangered species. Cienega Creek and its tributary Davidson Canyon have received Arizona's highest level of protection from degradation of water quality, but federal agencies have maintained that they cannot deny permits to mine to protect water quality.

Recent research and analysis by US Geological Survey (Flint and Flint 2007) has identified the amounts of water available for runoff and groundwater recharge for the western United States. Much of the area in the proposed mineral withdrawal was examined in detail. In this area, runoff from the mountains routinely discharges onto the piedmont slopes and valley floor and has the potential to become groundwater recharge. This study indicates that some areas, including the Santa Rita, Tumacacori, and Whetstone units of the Coronado National Forest, provide disproportionately high amounts of runoff and in-place recharge for our region. This validates the wisdom of our forebears, who established a national system of forest reserves fundamentally for watershed protection.

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Not only is the Coronado National Forest important from a biological and hydrological standpoint, it also socially vital as a “traditional cultural place”. Past tribal consultations and current expressed resolutions of the Tohono O’odham Nation show that the area in question is important to American Indian religious and cultural practices. In fact, many different cultural groups have ancestral ties to various archeological and historic sites in the Forest, including burial grounds. The Forest also serves as a playground and respite for southern Arizonans who live in the warmer elevations. The mountains provide the dominant visual reference and contribute to a sense of place for Tucson and Green Valley and the communities to the east, west, and south.

Thus, the proposed mineral withdrawal is consistent with local land use planning and is undergirded by recent federal research showing the importance of the Coronado National Forest land for generating runoff and recharge for areas outside the Forest. The withdrawal would end the ability for new mining claims to be established on the federal mineral estate located under culturally significant landscapes in the Forest and within County lands.

III. History of Mineral Withdrawals in Pima County: Federal Lands

Like mining itself, mineral withdrawals have a long history in Pima County. One of the earliest mineral withdrawals occurred in the 1920s when land in the Tucson Mountains was being homesteaded, ranched, and mined. In 1928, Pima County agricultural agent C.B. Brown advocated to have a portion of the area removed from homesteading and mining encroachments. The Pima County Board of Supervisors requested that the US Department of the Interior set aside 30,000 acres of lands in the Tucson Mountains for park purposes. With the help of US Senator Carl Hayden, less than three weeks after the County’s request, the Interior Department withdrew 28,988 acres in the Tucson Mountains from mining and homesteading in accordance with the Recreation Act of 1926. In August 1959, the Department of the Interior reopened 7,600 acres of land within the Tucson Mountain Park to mining entry. After public outcry and protest, a hearing was held. The order to reopen the park to mining was withdrawn in December 1959. In an effort to prevent renewed mineral entry in that area, the northern portion of the Tucson Mountain Park was transferred to the National Park Service under the authority of the Antiquities Act. Eighty years after the initial park designation, the remainder of Tucson Mountain Park continues to serve the community as a natural resource park.

Most of the subsequent mineral withdrawals in Pima County have occurred in the context of establishing new federal monuments, wildlife refuges, or wilderness areas. Congressional withdrawals have also secured military bases from appropriation or

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claims by private interests that would be incompatible with military activities in areas such as the Barry M. Goldwater Military Range.

On federal lands, at least in theory, the Forest Service and Bureau of Land Management can resolve conflicts in favor of non-mineral resources by requesting the Secretary of Interior to make temporary, administrative mineral withdrawals, limited to twenty-year terms. In practice, agencies have not obtained temporary withdrawals, even in areas such as the Santa Rita Rosemont Ranch, where the conflicts between public land management responsibilities and private mining uses have been apparent for decades. Withdrawal proposals associated with a number of small, non-controversial cultural sites or research natural areas in the Coronado National Forest have languished for decades. The Forest Service (2008) rejected a mineral withdrawal requested by Arizona State Parks to protect water for Kartchner Caverns, which is one of the most economically important State Parks in Arizona. Absent effective administrative avenues, the only remedy is Congressional action.

IV. History of Mineral Withdrawals in Pima County: The Split-Estate Problem

Turning now to private lands, in 1962, Congress withdrew large areas around Tucson and Phoenix from mineral entry to prevent a recurrence of spurious claims on otherwise valuable private land (Lacy 1976). Claims were placed for iron ore in the 1960s under Casas Adobes Estates, a subdivision in Tucson. After a costly court battle with the surface-owning residents, the claims were successfully contested. The claims brought to light the problems posed by the 1872 Mining Law for privately owned lands. Most of the minerals under private land in Tucson at that time was reserved to the federal government and therefore open to new claims. This is the so-called "split estate" problem, where the federal mineral estate lies beneath private lands.

The long history of abuses of the 1872 Mining Law provides a context for understanding mineral withdrawals. The federal government has and must resort to using withdrawals as a tool for dealing with the impasses created by congressional failures to reform the 1872 Mining Law. Without such a tool, the highest and best use of any tract of land or any body of water would always be a mine, regardless of any other factor. This is of particular significance for the 57 million acres of split-estate lands in the United States. Three million acres of split-estate lands remain in Arizona.

The 1962 Congressional withdrawal affecting lands in Tucson and Phoenix exemplifies a mineral withdrawal as a supra-zoning activity that ended the free access to minerals otherwise provided under the 1872 Mining Law, and thus cleared title for future economic development. Figure 1 shows the area of the 1962 mineral withdrawal, which

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far exceeded development of the City of Tucson as it existed at that time. Figure 2 compares the extent of the built environment we see today to the area of the 1962 mineral withdrawal. Development now fills the area of the 1962 withdrawal and extends beyond it. These maps illustrate the foresight of Congress in using mineral withdrawals as a tool for dealing with the 1872 Mining Law. They also illustrate the need for a new mineral withdrawal to support the full implementation of the Sonoran Desert Conservation Plan, which includes provision for future economic development as well as protection of natural resources and cultural heritage.

V. Consequences of Mineral Withdrawals

Withdrawals do not prevent the development of valid mineral claims. After formal withdrawal, all mining activities under the 1872 Mining Law will be prohibited, except actions authorized under an approved Plan of Operations on mining claims with prior valid existing rights. In order to establish valid existing rights in the withdrawal area, a mining claim must have been staked prior to the Federal Register notice date for the withdrawal. In addition, the mining claimant must have proof that a valuable mineral had been discovered on the claim prior to the date of the Federal Register notice. Pima County has raised issues concerning the validity of claims based on discovery that the Forest Service has refused to investigate.

The landscape of the western United States is littered with mining claims that survive indefinitely, whether mining occurs or not. The 1872 Mining Law makes it possible for individuals to “lock up” access to the mineral estate, even when there is no real intent to mine. For instance, in the 1970s, a person named Merle Zweifel filed claims on 600,000 acres of land along the future route of the Central Arizona Project (CAP). While he reportedly acknowledged that he would never actively explore for minerals there, Zweifel did apparently make money filing nuisance claims (Newman 1972). The federal government had to sue Zweifel to clear the claims placed on the five billion-dollar CAP route. The free access to minerals on state, private, county and federal lands under the 1872 Mining Law supersedes and can frustrate other federal and local intentions.

By requiring the determination of who actually does have valid claims to the mineral estate of the nation, withdrawals provide a vital service. There are over 29,000 claims filed in Pima County (Figure 3). Federal land-managing agencies have avoided any discretionary examination of these claims, choosing to leave the mess to some future generation. Pima County has repeatedly requested that the agencies initiate their own validity examinations, without Congressional action, but this has not occurred here, and it has seldom occurred elsewhere without a federal mandate.

The main purpose of a mineral withdrawal is to prevent new mineral claims. It would end the practice of issuing new claims on the federal lands and federal mineral estate in Pima County. Thus a mineral withdrawal falls short of true protection for those areas with valid claims to develop a new mine. In fact, a mineral withdrawal can actually benefit existing mines by preventing nuisance claims or recreational mining that might otherwise interfere with their operation. Despite these limitations, withdrawals are the only tool available for limiting the scope of the mining claims on National Forest and County land at this time. Because water development and contamination is usually associated with mining, withdrawals also in effect act to limit future mine-related water impacts.

Opponents of mineral withdrawals will point out withdrawals would prevent the exploitation of mineral resources that may be needed for national security. We bear in mind, however, that Congress can and has terminated or revoked mineral withdrawals when necessary. In this manner, withdrawals preserve options for future generations in a way that the 1872 Mining Law cannot. The existing Mining Law provides almost no ability for the United States to control who, how or when the mineral is removed. As it is today, the 1872 Mining Law provides free access to our nation's mineral estate to foreign enterprise, without payment of royalties, and with a guarantee that the nothing will stand in their way. By contrast, mineral withdrawals might actually expedite the re-allocation of resources to any true national security purpose because the validity of any claims would have been decided.

V. Consistency of HR 2944 with Pima County Resolution 2007-33

On February 20, 2007, the Pima County Board of Supervisors approved Resolution 2007-33 to request that the Arizona Congressional delegation first, initiate the permanent withdrawal from mining and mineral exploration all federal lands within the Santa Rita Mountain Range of the Coronado National Forest in Pima County (52,000 acres currently open to mineral entry); second, initiate the permanent withdrawal from mining and mineral exploration of the remaining federal lands within the Coronado National Forest in Pima County (186,000 acres currently open to mineral entry); and third, initiate the permanent withdrawal from mining and mineral exploration of all County-owned natural preserves where the federal government owns the subsurface mineral rights.

The Southern Arizona Public Lands Protection Act of 2009 is consistent with the resolution of the Pima County Board of Supervisors. It deals with both the Forest lands and County preserves. Many of the County preserves are split-estate lands (Figure 4).

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Among these are the newer portions of Tucson Mountain Park, Tortolita Mountain Park, Colossal Cave Mountain Park, Sweetwater Preserve, Cienega Creek Natural Preserve, our Lords Ranch inholding within the Ironwood Forest National Monument, Rancho Seco, and the Six-Bar and A-7 Ranches in the San Pedro Watershed. There are 3,812 mining claims on federal minerals within County open-space reserves. This legislation will help protect County land from new mining claims.

The bill goes further than the Board's resolution in several ways: it would withdraw National Forest in Santa Cruz County and all federal interests in Bureau of Land Management lands in Pima County and all federal interests on County lands outside the preserve network.

Pima County is concerned that appropriate language be used to ensure that federal lands remain open to uses other than mining. If the legal interpretation for the phrase "*all forms of entry, appropriation, and disposal under the public land laws,*" would prohibit grazing, recreation, and other sustainable activities, then it would be inconsistent with the Pima County Board of Supervisor's recommendation. Congresswoman Giffords has reassured citizens that this bill has been carefully drafted to apply restrictions only to mining, mineral activities, geothermal energy development, and various means of privatizing public lands (disposal). If passed, we understand the bill would in no way constrain or modify rules of access for other activities.

That being said, we do have a question about one remaining issue: on split-estate lands owned by Pima County, many of the original conveyances of land under the homestead acts also reserved to the federal government the ability to use the land for canals and water conveyances. It is unclear to us what effect, if any, this bill would have on these federal reservations. We would prefer that the reservation of canal rights-of-way be removed from County-owned split-estate lands, but would support the bill regardless.

VI. Summary and Recommendations

In summary, the legacy of mining in Pima County has negatively impacted our natural open spaces, public health and water supply, and the tax base. Despite this, the agencies which manage the federal land give preference to mining over all other uses, and the state agencies which manage water cannot deny mines access to water, regardless of the impacts on others.

The remaining Forest lands are too important to the existing water supply, economy, Native American heritage, and well-being of Pima County for additional mining to be given automatic preference over all other uses. Pima County supports withdrawal of

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free access to the nation's remaining, unclaimed mineral estate on Forest lands in Pima County. We consider this a necessary, albeit partial response to the problems created by federal and state preferences given to mining over all other land and water uses. Addressing the split-estate problem of federal minerals under County preserves through withdrawal is also essential, and supports implementing the Sonoran Desert Conservation Plan. Ultimately, reform of the 1872 Mining Law will be needed to fully address mining impacts.

Again, thank you for inviting Pima County to provide testimony on these most important issues.

Respectfully submitted,

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Attachments (Figures 1-4)

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