

## Calendar No. 273

109TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
109-172

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### CIBOLA NATIONAL WILDLIFE REFUGE PUBLIC LAND ORDER CORRECTION

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OCTOBER 27, 2005.—Ordered to be printed

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Mr. DOMENICI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany H.R. 1101]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1101) to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

#### PURPOSE

H.R. 1101 revokes Public Land Order 3442, dated August 21, 1964, insofar as it included approximately 140 acres in Imperial County, California in the Cibola National Wildlife Refuge (Cibola NWR). H.R. 1101 directs the Secretary of the Interior to resurvey and publish the new boundaries of the Refuge. The effect of the bill is to transfer administrative jurisdiction over the 140-acre parcel from the U.S. Fish and Wildlife Service to the Bureau of Land Management.

#### BACKGROUND AND NEED

H.R. 1101 will correct an error made in the designation of the Cibola NWR. In 1964, Public Land Order 3442 withdrew approximately 16,600 acres of public domain lands along the Colorado River in California and Arizona for the Cibola NWR. The withdrawal erroneously included approximately 140 acres in Imperial County at the southern boundary of the California portion of the refuge.

Prior to 1964, this property fell under the jurisdiction of the Bureau of Land Management (BLM) and, beginning in 1962, the BLM issued a permit for a public recreation concession on 18 acres of the lands now in question. Because neither the Fish and Wildlife Service nor the BLM recognized the mistake in legal descriptions on the ground, the BLM continued to renew the original permit and the recreational concession use has continued, unbroken, to the present time. However, given the discovery of the past mistake, neither the BLM nor the Fish and Wildlife Service have the authority to continue issuing the concession contract.

#### LEGISLATIVE HISTORY

H.R. 1101 was introduced by Representative Hunter on March 3, 2005 and was passed by the House of Representatives on May 23, 2005. The bill was received in the Senate and referred to the Committee on Energy and Natural Resources. The Subcommittee on Public Lands and Forests held a hearing on H.R. 1101 on July 20, 2005. At the business meeting on September 28, 2005, the Committee on Energy and Natural Resources ordered H.R. 1101 favorably reported without amendment. A similar bill, H.R. 417, was passed by the House in the 108th Congress, and was passed by the Senate with an amendment but was not acted upon by the House.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on September 28, 2005, by a unanimous voice vote of a quorum present recommends that the Senate pass H.R. 1101.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* revokes Public Land Order 3442 with respect to approximately 140 acres. The effect of the revocation is to transfer administrative jurisdiction over the lands from the U.S. Fish and Wildlife Service to the Bureau of Land Management. The lands to be conveyed include a BLM concession known as "Walter's Camp". The Committee understands that there is a proposal to expand the size and scope of the existing concession operation, which currently occupies approximately 18 acres. The Committee does not intend for the transfer of the 140 acres from the Fish and Wildlife Service to the BLM to be viewed as an endorsement of any development of the lands in question. The Committee expects that any management changes proposed by the BLM for the affected acreage will be made through the agency's standard planning process, with full opportunity for public involvement and comment from interested parties. These management changes should be consistent with existing uses and complement the purposes of the neighboring refuge lands.

The Committee does not intend for the transfer of these lands from the U.S. Fish and Wildlife Service to the BLM to result in any substantive change in the natural, cultural, and historical resources located on the land. The Committee expects that the BLM will safeguard these resources, including any sacred sites or trails, in consultation with affected Indian tribes.

*Section 2* directs the Secretary of the Interior to resurvey and notice of modified boundaries.

## COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

*H.R. 1101—An act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California*

CBO estimates that H.R. 1101 would have no significant impact on the federal budget. The legislation could increase both offsetting receipts and direct spending, but we estimate that any such effects would be negligible. Enacting the legislation would not affect revenues. H.R. 1101 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.

H.R. 1101 would revoke Public Land Order 3442 as it pertains to 140 acres of land within the Cibola National Wildlife Refuge in California. By doing so, the legislation would effectively remove that land from the refuge and return it to the jurisdiction of the Bureau of Land Management (BLM). According to BLM, this change would allow the agency to renegotiate a lease with a private concessionaire who currently operates recreational facilities on the affected land. Based on information from the agency, CBO estimates that any change in offsetting receipts from lease payments, and subsequent spending of those receipts, would be negligible.

The CBO staff contact for this estimate is Megan Carrol. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1101. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1101, as ordered reported.

## EXECUTIVE COMMUNICATIONS

Views of the Administration on H.R. 1101 were included in testimony provided by the Bureau of Land Management at the Subcommittee hearing as follows:

STATEMENT OF LAWRENCE E. BENNA, DEPUTY DIRECTOR,  
OPERATIONS, BUREAU OF LAND MANAGEMENT, U.S. DE-  
PARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify today in support of H.R. 1101, which will revoke a portion of Public Land Order 3442, dated August 21, 1964. This Public Land Order withdrew approximately 16,600 acres of public domain lands along the Colorado River in California and Arizona

for the Cibola National Wildlife Refuge (NWR). The withdrawal erroneously included a small area of approximately 140 acres in Imperial County at the southern boundary of the California portion of the Refuge. A similar bill in the 108th Congress, H.R. 417, was passed by the House and by the Senate with an amendment, but was not enacted.

Prior to 1964, this property fell under the jurisdiction of the Bureau of Land Management (BLM). In 1962, the BLM issued a permit for a public recreation concession on 18 acres of the lands now in question. The concession is known as "Walter's Camp," and consists of a recreational vehicle park, a small marina, and a store, and the BLM estimates that Walter's Camp receives 11,000 visitors per year. Because neither the Fish and Wildlife Service (FWS) nor the BLM recognized the mistake in legal descriptions on the ground, the BLM continued to renew the original permit and the recreational concession use has continued, unbroken, to the present time. The current concession contract was issued by the BLM in 1980, under the provisions of Section 10 of the Reclamation Project Act of 1939 for a period of 20 years. Four extensions to the current contract have since been issued.

The National Wildlife Refuge System Administration Act of 1966, as amended, (Act) requires that all uses of refuge lands be compatible with the purpose for which the refuge was established. Section 4(a) of the Act and section 204(j) of the Federal Land Policy and Management Act both prohibit the Secretary of the Interior from revoking withdrawals of land within NWRs. For this reason, Congressional action is required to remove these lands from the Refuge System.

Since the inclusion of these lands in Public Land Order 3442 was a mistake, due to the prior existence of the concession, we believe the most equitable solution is removal of the lands from the refuge. There are no listed species inhabiting the 140 acres and the area in question is, at best, marginal wildlife habitat. Removal of the 140 acres of land from the refuge would free-up the area necessary for the continuation of the recreational concession, while still affording more than adequate protection for the nearest significant wildlife habitat feature, Three Fingers Lake.

We believe that withdrawal of these lands will benefit all parties involved—the concessionaire, the Service, the BLM and, ultimately, the public. For this reason, we support the bill and urge prompt action on enactment of H.R. 1101.

CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 1101, as ordered reported.

