

Calendar No. 274

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 112-112

MOHAVE VALLEY LAND CONVEYANCE ACT

JANUARY 13, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of December 17, 2011

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

R E P O R T

[To accompany S. 526]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 526) to provide for the conveyance of certain Bureau of Land Management land in Mohave County, Arizona, to the Arizona Game and Fish Commission, for use as a public shooting range, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mohave Valley Land Conveyance Act of 2011”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **COMMISSION.**—The term “Commission” means the Arizona Game and Fish Commission.

(2) **COUNTY.**—The term “County” means Mohave County, Arizona.

(3) **FEDERAL LAND.**—The term “Federal land” means the public land in the County, comprising approximately 315 acres as generally depicted on the map entitled “Boundary Cone Road Location” and dated November 7, 2011.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. CONVEYANCE OF PUBLIC LAND IN MOHAVE COUNTY, ARIZONA.

(a) **IN GENERAL.**—On the request of the Commission submitted to the Secretary by the date that is not later than 1 year after the date of enactment of this Act and subject to the provisions of this Act, the Secretary shall convey to the Commission all right, title, and interest of the United States in and to the Federal land for use as a public shooting range.

(b) **CONDITIONS.**—The conveyance under subsection (a) shall be—

(1) by quitclaim deed; and

(2) subject to—

(A) valid existing rights; and

- (B) such terms and conditions as the Secretary may require, including appropriate conditions to address the impact of the shooting range on cultural resources.
- (c) COSTS.—If the Commission accepts the conveyance of the Federal land, the Commission shall be responsible for paying—
- (1) consideration to the Secretary for the Federal land in an amount that is consistent with conveyances to governmental entities for recreational purposes under the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (43 U.S.C. 869 et seq.); and
 - (2) the reasonable administrative costs associated with the conveyance.
- (d) REQUIREMENT.—The land conveyed under subsection (a) shall be managed by the Commission—
- (1) as a public shooting range; and
 - (2) for recreation and other public purposes, consistent with the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (43 U.S.C. 869 et seq.).
- (e) REVERSION.—
- (1) IN GENERAL.—If the Federal land ceases to be used for the purposes described in subsection (d), the Federal land shall, at the option of the Secretary, revert to the United States.
 - (2) RESPONSIBILITY OF LOCAL GOVERNMENTAL ENTITY.—If the Secretary determines pursuant to paragraph (1) that the land should revert to the United States, and if the Secretary determines that the land is contaminated with hazardous waste, the local governmental entity to which the land was conveyed shall be responsible for remediation of the contamination.
- (f) CORRECTION OF MAP ERRORS.—The Secretary may correct any clerical or typographical error in the map described in section 2(3).

PURPOSE

The purpose of S. 526 is to provide for the conveyance of approximately 315 acres of public land to the Arizona Game and Fish Commission (“Commission”) for use as a public shooting range.

BACKGROUND AND NEED

In 1999, the Commission submitted an application to the Bureau of Land Management (“BLM”) to develop a shooting range on public lands near Boundary Cone Butte, about 10 miles southeast of Bullhead City in Mohave County, Arizona. In 2006, the BLM developed an environmental assessment to consider conveying approximately 315 acres for the shooting range through the Recreation and Public Purposes Act.

Boundary Cone Butte has figured prominently in the stories and histories of the Fort Mojave Indian Tribe and Hualapai Indian Tribe, and the BLM identified it as a traditional cultural property that is eligible for inclusion on the National Register of Historic Places. As a result, the BLM formally consulted with the Advisory Council on Historic Preservation beginning in 2006 and continuing through 2008. On February 10, 2010, the BLM issued a revised environmental analysis and a Decision Record authorizing the conveyance. The Tribes appealed the BLM’s decision to the Interior Board of Land Appeals (IBLA), and the IBLA upheld the BLM’s decision (IBLA 2010–94; Dec. 7, 2010).

S. 526 provides for the final conveyance of the parcel to the Commission in a manner that is consistent with the ongoing administrative conveyance process.

LEGISLATIVE HISTORY

S. 526 was introduced by Senators McCain and Kyl on March 9, 2011. The Subcommittee on Public Lands and Forests held a hearing on the bill on May 18, 2011 (S. Hrg. 112–39). At its business

meeting on November 10, 2011, the Committee on Energy and Natural Resources ordered S. 526 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on November 10, 2011, by a voice vote of a quorum present, recommends that the Senate pass S. 526, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 526, the Committee adopted an amendment in the nature of a substitute. The substitute eliminates the statement of purposes and the provision declaring the BLM's record of decision of February 8, 2010, final and legally sufficient. It adds provisions requiring that: the conveyance be made subject to valid existing rights and terms and conditions prescribed by the Secretary, payment for the Federal land be made in an amount consistent with conveyances to governmental entities under the Recreation and Public Purposes Act, the land conveyed be used as a public shooting range, and the local governmental entity to which the land was conveyed be responsible for remediation of any contamination in the event of a reversion. The provisions of the substitute are described in more detail in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2 provides the definitions for key terms used in the bill.

Section 3(a) provides that, if the Commission requests the conveyance of the Federal land within 1 year of the date of enactment, the Secretary shall proceed with the conveyance, subject to the other provisions of the bill.

Subsection (b) provides that the conveyance would be subject to valid existing rights and such terms and conditions as the Secretary may require. The BLM, the Commission, and the Tribes currently are working on a plan to reduce potential impacts of the shooting range on cultural resources in the area, and this provision makes clear that the bill would not disrupt that process.

Subsection (c) requires the Commission to pay certain compensation and administrative costs associated with the conveyance. The required compensation and costs are the same as would be required—and currently are contemplated—by the ongoing administrative process for conveying the Federal land.

Subsection (d) provides that the Federal land must be used as a public shooting range and for other public purposes.

Subsection (e) provides for the reversion of the Federal land if the Commission ceases to use it as a public shooting range and, in that case, requires the Commission to remediate any hazardous waste conditions associated with the Federal land.

Subsection (f) clarifies that the Secretary may correct any clerical or typographical errors on the map referenced in the bill.

COST AND BUDGETARY CONSIDERATIONS

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

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S. 526 would require the Bureau of Land Management (BLM) to convey 315 acres of federal land to the Arizona Game and Fish Commission to be used as a public shooting range. Based on information provided by the agency, CBO expects that BLM will convey the affected lands to the commission in 2012 using existing authorities. Thus, we estimate that implementing the legislation would have no impact on the federal budget. Enacting S. 526 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

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.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, 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 S. 526.

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 S. 526, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 526, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at the May 18, 2011, hearing (S. Hrg. 112–39), which is provided below.

STATEMENT OF MIKE POOL, DEPUTY DIRECTOR, BUREAU OF
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 526, the Mohave Valley Land Conveyance Act of 2011, which proposes to transfer 315 acres of public lands managed by the Bureau of Land Management (BLM) to the Arizona Game and Fish Department (AGFD) for use as a public shooting range. The BLM supports the goals of S. 526 but does not support the legislation as currently drafted. BLM is work-

ing with local governments and tribes to resolve land tenure issues. BLM's decision to authorize the land transfer included important mitigation measures which are not in the current legislation.

For the past ten years, the BLM has been working with the AGFD, the Fort Mojave Indian Tribe, the Hualapai Tribe, and the public to find appropriate lands for a public shooting range within the Mohave Valley in Arizona. On February 10, 2010, the BLM made the decision to authorize the transfer of BLM lands to the AGFD (through the Recreation and Public Purposes Act of 1926, as amended, 43 U.S.C. 869 et seq.; R&PP) for use as a public shooting range. The decision, which is consistent with the goals of S. 526, provides a safe, designated shooting environment for the public and includes stipulations designed to respect the traditional beliefs of the Fort Mojave and Hualapai Tribes. The BLM will continue working with interested parties as we move forward with authorizing the shooting range.

BACKGROUND

In 1999, the AGFD first submitted an application to the BLM for development of a public shooting range on BLM-managed lands in Mohave County, near Bullhead City in northwestern Arizona. As a result, the BLM began working with the AGFD and other interested parties to assess appropriate lands to transfer to the AGFD for the purposes of a shooting range under the R&PP.

The BLM evaluated the AGFD's application through an environmental assessment (EA) and considered numerous alternative locations throughout the Mohave Valley. The evaluation process was conducted with full public and tribal participation. There is an identified need for a designated public shooting range in this region because of the lack of a nearby facility, the amount of dispersed recreational shooting occurring on public and private lands raising public safety concerns, and the associated natural resource impacts from spent ammunition and associated waste.

In 2002, the BLM began consultations with the Fort Mojave Indian Tribe and the Hualapai Tribe. In 2003, the BLM initiated consultation with the Arizona State Historic Preservation Officer (SHPO); and in 2006, the BLM initiated Section 106 consultation with the Advisory Council on Historic Preservation (ACHP). These consultations, as required by Section 106 of the National Historic Preservation Act and other authorities, ensure Federal agencies consider the effects of their actions on historic properties, and provide the ACHP and SHPO an opportunity to comment on Federal projects prior to implementation.

In addition to the Section 106 consultation process, the BLM initiated a year-long Alternative Dispute Resolution (ADR) process in 2004 to help identify issues, stakeholder perspectives, and additional alternatives to meet the criteria for a safe and effective public shooting range in the

Mohave Valley. However, the ADR process failed to reconcile differences between several consulting parties regarding a proposed location.

In 2006, as part of continued Section 106 consultation with the ACHP, the BLM initiated site visits by the concerned parties and also continued efforts to identify alternative sites. Unfortunately, despite these efforts, the BLM was unable to reach an agreement with the consulted Tribes on any area within the Mohave Valley that the Tribes would find acceptable for a shooting range. The Tribes maintained their position that there is no place suitable within the Mohave Valley, which encompasses approximately 140 square miles between Bullhead City, Arizona, and Needles, California.

Through the EA process, the BLM identified the Boundary Cone Road alternative to be the preferred location. Boundary Cone Butte, a highly visible mountain on the eastern edge of the Mohave Valley, lies approximately 3 miles east of the Boundary Cone Road site, and is of cultural, religious, and traditional importance to both the Fort Mojave Indian Tribe and the Hualapai Tribe. In an effort to address the primary concerns expressed by the Tribes over visual and sound issues, the BLM and AGFD developed a set of potential mitigation measures. Again, there was a failure to agree between the consulting parties on possible mitigation. In the end, the BLM formally terminated the Section 106 process with the ACHP in September 2008. In November 2008, ACHP provided their final comments in a letter from the Chairman of the ACHP to then-Secretary of the Interior Kempthorne.

Although the Section 106 process was terminated, the BLM continued government-to-government consultations with the Tribes. In May of 2009, the BLM met with the Chairman of the Fort Mojave Indian Tribe, the AGFD, and the Tri-State Shooting Club in a renewed effort to find a solution. On February 3, 2010, after continued efforts to reach a mutually agreeable solution, the BLM presented the decision to approve the shooting range to the Fort Mojave Indian Tribe and the AGFD. The final decision included mitigation measures to address the concerns of the Tribes such as reducing the amount of actual ground disturbance; reducing noise levels with berm construction; monitoring and annual reporting on noise levels; and fencing to avoid culturally sensitive areas. The Secretary has the authority to take action to revert title to the land covered by the proposed R&PP patent if the AGFD fails to comply with mitigation measures. The final decision to amend the Kingman Resource Management Plan and dispose of the lands through the R&PP was signed on February 10, 2010.

The BLM decision was appealed to the Interior Board of Land Appeals (IBLA) on February 23, 2010, by a private landowner near the proposed shooting range; and on March 15, 2010, a joint appeal by the Fort Mojave Indian Tribe and Hualapai Tribe was filed. The IBLA dismissed

the appeal of the private landowner on July 29, 2010. The IBLA issued a stay of the BLM decision on April 15, 2010, at the request of the Tribes. A final decision by the IBLA on the Tribes' appeal was issued on December 7, 2010 (180 IBLA 158). The IBLA affirmed the BLM's decisions and determined that the BLM had taken a "hard look" at the impacts of conveying public lands to the AGFD for a shooting range. The IBLA decision stated that the EA had an appropriate range of alternatives and the environmental consequences were insignificant or if significant could be reduced or eliminated by mitigation. The IBLA also confirmed that the BLM complied with National Historic Preservation Act obligations. This decision allows the BLM to move forward in conveying the public lands to the AGFD.

On December 21, 2010, the BLM informed the AGFD of the next steps for processing the administrative action of conveying the land for the shooting range. The AGFD is required to: (1) purchase the mineral estate or obtain a non-development agreement for the Santa Fe Railroad mineral estate (390 acres) under the disposal and buffer lands; (2) provide a detailed Plan of Development (Plan) that addresses the mitigation measures found in the BLM's Decision Record; (3) develop a Cooperative Management Agreement with the BLM for the 470-acre buffer area; and (4) provide the funds (\$3,150) for purchase of the property. It is the BLM's understanding that the AGFD is negotiating a purchase agreement to acquire the mineral estate. The AGFD also submitted a draft Plan and is currently revising the Plan to address the additional guidance provided by the BLM, including the request to incorporate the Cooperative Management Agreement into the Plan.

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S. 526 provides for the conveyance to the AGFD of all right, title, and interest to the approximately 315 acres of BLM-managed public lands as identified in the final decision signed by the BLM on February 10, 2010, to be used as a public shooting range. Furthermore, the legislation makes a determination that the February 10, 2010, Record of Decision is "final and determined to be legally sufficient" and "not be subject to judicial review . . ." The bill also provides that the lands must be used for purposes consistent with the R&PP Act and provides for an appropriate reversionary clause.

As a matter of policy, the BLM supports working with local governments, tribes, and other stakeholders to resolve land tenure issues that advance worthwhile public policy objectives. The BLM acknowledges the lands proposed for development as a shooting range are of cultural, religious, and traditional significance to the Tribes which is why we support important mitigation measures. The bill as drafted does not include such mitigation measures. In general, the BLM supports the goals of the proposed conveyance, as it is similar to the transfer the BLM has been

addressing through its administrative process for the last ten years. As noted, a decision has been made through the BLM administrative process and the IBLA affirmed the BLM decision, thereby dismissing the Tribes' appeal that the BLM did not comply with various environmental laws. Under the provisions of S. 526, judicial review would be prohibited. The BLM will continue working to complete the conveyance of the lands to the AGFD for a shooting range.

If the Congress chooses to legislate this conveyance, the BLM would recommend some improvements to the bill, including changes to section 4(b), the incorporation of mitigation measures to address Tribal concerns, protection of valid existing rights, and an appropriate map reference.

CONCLUSION

Thank you for the opportunity to testify. Resolution of this conveyance in a manner that is acceptable to all parties has been an important goal of the BLM as evidenced by more than ten years of negotiations and review. The BLM is confident the issued decision addresses the concerns of the interested parties, while providing critical recreational opportunities and benefits to the public.

CHANGES IN 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 bill S. 526 as ordered reported.

APPENDIX

