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# IVANPAH VALLEY AIRPORT PUBLIC LANDS TRANSFER ACT

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate July 26, 2000

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

## REPORT

[To accompany H.R. 1695]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1695) to provide for the conveyance of certain Federal public lands in the Ivanpah Valley, Nevada, to Clark County, Nevada, for the development of an airport facility, and for other purposes, having considered the same reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. On page 2, line 24, strike "assessment" and insert "assessment, using the airspace management plan required by section 4(a),"

2. On page 3, lines 15 through 22, amend paragraph (2) to read as follows:

> "(2) DEPOSIT IN SPECIAL ACCOUNT.—(A) The Secretary shall deposit the payments received under paragraph (1) into the special account described in section 4(e)(1)(C) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2345). Such funds may be expended only for the acquisition of private inholdings in the Mojave National Preserve and for the protection and management of the petroglyph resources in Clark County, Nevada. The second sentence of section 4(f) of such Act (112 Stat. 2346) shall not apply to interest earned on amounts deposited under this paragraph.
>
> "(B) The Secretary may not expend funds pursuant to this section until—

(i) the provisions of Section 5 of this Act have been completed; and

(ii) a final Record of Decision pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued which permits development of an airport at the Ivanpah site.".

3. Strike page 3, line 23 and all that follows through page 4, line 2 and insert the following:

"(d) REVERSION AND REENTRY.—If following completion of compliance with section 5 of this Act and in accordance with the findings made by the actions taken in compliance with such section, the Federal Aviation Administration and the County determine that an airport should not be constructed on the conveyed lands—".

4. On page 4, line 23, strike "Secretary," and insert "Secretary, prior to the conveyance of the land referred to in section 2(a),"

5. On page 5, line 18, add the following sentence at the end of section 5: "Any actions conducted in accordance with this section shall specifically address any impacts on the purposes for which the Mojave National Preserve was created.".

## PURPOSE OF THE MEASURE

The purpose of H.R. 1695 is to provide for the sale of certain public lands in the Ivanpah Valley, Nevada, to Clark County, Nevada.

## BACKGROUND AND NEED

H.R. 1695 authorizes the Secretary of the Interior to convey certain lands in the Ivanpah Valley to Clark County, Nevada. The legislation provides for return of the land to the Department of the Interior, should airport development prove to be infeasible.

The Las Vegas metropolitan area is the fastest growing metropolitan area in the country, growing 4.7 percent, or almost 60,000 in population, in 1998. McCarran airport passenger traffic has grown by 64 percent in the last 10 years. The Clark County Department of Aviation completed an extensive review of options available for meeting the growing needs for air traffic in southern Nevada. Because of restricted airspace north of Las Vegas due to military uses, and existing full precision instrumental landing requirements of McCarran airport, the review concluded that the Ivanpah site is the only option that can accommodate the growing air traffic needs of the region. Authorization of this conveyance will allow Clark County to proceed with NEPA analysis and the proposed development of a new airport to serve southern Nevada. The Federal Aviation Administration will undertake an airspace study to develop an airspace management plan that avoids, to the maximum extent possible, overflights of the nearby Mojave National Preserve in California.

Clark County will pay fair market value for the land and the airport will be publicly owned and operated. The revenues collected by the Government for the sale will be available for use by the BLM for acquiring inholdings in the Mojave National Preserve and archaeological sites in Clark County.

## LEGISLATIVE HISTORY

H.R. 1695 was introduced by Representative Gibbons on May 5, 1999. On March 9, 2000, the bill passed the House of Representatives by a vote of 420 to 1. The Senate companion measure, S. 930, was introduced on April 29, 1999, by Senators Reid and Bryan. The Subcommittee on Forest and Public Land Management held a hearing on S. 930 on July 27, 1999. At the business meeting on July 13, 2000, the Committee on Energy and Natural Resources ordered H.R. 1695 favorably reported, with an amendment.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2000, by a voice vote of a quorum present, recommends that the Senate pass H.R. 1695, as amended herein.

## COMMITTEE AMENDMENTS

During the consideration of H.R. 1695, the Committee adopted amendments to clarify the requirements of the airspace management analysis, the timing of the purchase of the parcels in relation to the NEPA analysis of the airport facility, and the uses of the proceeds by the Department of the Interior.

## SECTION-BY-SECTION ANALYSIS

Section 1 cites the short title as the "Ivanpah Valley Airport Public Lands Transfer Act."

Section 2(a) directs the Secretary of the Interior to convey lands to Clark County, Nevada, for the purpose of developing an airport facility and related infrastructure.

Subsection (b)(1) requires the Secretary of the Interior to convey the land only after Clarke County conducts an airspace assessment to identify any potential adverse effects.

Paragraph (2) requires the Secretary of the Interior to convey the land only after the Administrator of the Federal Aviation Administration certifies that the assessment is thorough and alternatives have been developed to address each adverse effect identified in the assessment.

Paragraph (3) requires the Secretary of the Interior to convey the land only after Clark County enters into an agreement with the Secretary to retain ownership of Jean Airport and to maintain and develop Jean Airport as a general aviation airport.

Subsection (c)(1) requires Clark County to pay fair market value for each parcel conveyed.

Paragraph (2) requires the proceeds of the sale to be deposited in the special account established under the Southern Nevada Public Land Management Act of 1998, and can only be used for the purchase of inholdings in the Mojave National Preserve, and for the protection of petroglyphs in Clarke County.

Subsection (d)(1) requires the Secretary of the Interior to refund all payments to Clark County if the NEPA analysis required in section 5 determines an airport cannot be constructed on the site.

Paragraph (2) requires that upon the return of the payments to Clark County, that all right, title, and interests in the conveyed

lands shall revert to the United States, and the Secretary of the Interior may reenter the lands.

Section (3) directs that the parcels purchased are withdrawn from mineral entry.

Section (4) requires the Secretary of Transportation to consult with the Secretary of the Interior to develop an airspace plan that safely, and to the extent practicable, restricts activity over the Mojave National Preserve.

Section (5) requires a NEPA analysis on the lands conveyed to Clark County prior to construction of the airport facility.

Section (6) defines the terms used in the Act.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 20, 2000.*

Hon. FRANK H. MURKOWSKI,
*Chairman, Committee on Energy and Natural Resources,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1695, the Ivanpah Valley Airport Public Lands Transfer Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 1695—Ivanpah Valley Airport Public Lands Transfer Act*

Summary. H.R. 1695 would direct the Secretary of the Interior to convey to Clark County, Nevada, about 6,400 acres of public land for the purpose of developing an airport facility and related infrastructure. The county would pay fair market value for the land. The legislation would authorize the Secretary to spend the proceeds of the land sale. CBO estimates that implementing H.R. 1695 would result in an increase in offsetting receipts in 2001, but that those receipts would be fully offset by a corresponding increase in direct spending over fiscal years 2005 through 2007. Because H.R. 1695 would affect direct spending (including offsetting receipts), pay-as-you-go procedures would apply. Implementing the legislation also could increase spending subject to appropriation, but CBO estimates that any additional discretionary spending would be less than $500,000 a year.

H.R. 1695 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Clark County would probably incur some costs as a result of this legislation's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government. The estimated budgetary impact of H.R. 1695 is shown in the following table. The legislation also could affect spending subject to appropriation, but

CBO estimates that any changes in discretionary spending would be less than $500,000 a year. The costs of this legislation fall within budget function 300 (natural resources and the environment).

| | By fiscal year, in millions of dollars | | | | |
|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 |
| CHANGES IN DIRECT SPENDING | | | | | |
| Asset sale proceeds: | | | | | |
| Estimated budget authority | 0 | −6 | 0 | 0 | 0 |
| Estimated outlays | 0 | −6 | 0 | 0 | 0 |
| Spending of proceeds: | | | | | |
| Estimated budget authority | 0 | 6 | 0 | 0 | 0 |
| Estimated outlays | 0 | ([1]) | 0 | 0 | 2 |
| Net changes: | | | | | |
| Estimated budget authority | 0 | 0 | 0 | 0 | 0 |
| Estimated outlays | 0 | −6 | 0 | 0 | 2 |

[1] Less than $500,000.

Basis of estimate: For the purposes of this estimate, CBO assumes that H.R. 1695 will be enacted by the end of fiscal year 2000. Estimates of outlays are based on historical spending patterns for similar activities, and the requirement under this legislation that development of the airport be approved before proceeds from the sale can be spent.

*Direct spending (including offsetting receipts)*

H.R. 1695 would direct the Secretary of the Interior to convey about 6,400 acres of public land to Clark County, Nevada, at fair market value. Certain conditions would have to be met before the conveyance could occur. Based on information from the Bureau of Land Management (BLM) and the Department of Transportation, CBO estimates that those requirements would be completed during fiscal year 2002 and that the land would be sold in that year. Under current law, BLM has no plans to sell the land, and the land does not generate any receipts for the federal government. According to BLM, the proceeds from sale of the land are highly uncertain since an appraisal has not been conducted and there are virtually no other comparable land sales in that area. Based on information from the local airport authority and BLM, CBO estimates that sale proceeds would total about $6 million in fiscal year 2002.

Current law provides that states receive 5 percent of the net proceeds of sales of public lands within their limits. Thus, we estimate that payments to the state of Nevada would total about $300,000 in fiscal year 2002 as a result of implementing H.R. 1695.

H.R. 1695 provides that proceeds from sale of the land shall be deposited in a special account in the Treasury created by section 4(e)(1)(C) of the Southern Nevada Public Land Management Act (Public Law 105–263). We assume that such deposits will be net of the payments to Nevada discussed above. The net proceeds would be available to the Secretary of the Interior, without further appropriation, to purchase environmentally sensitive land in Nevada, reimburse agency costs incurred in arranging the land disposal, and for certain other purposes.

Under H.R. 1695, the proceeds from the sale could not be spent until the Secretary of the Interior and the Secretary of Transportation complete all actions required under the National Environ-

mental Policy Act of 1969 (NEPA) and the development of the airport has been approved. Based on information from BLM and the Department of Transportation, CBO expects these requirements would be met by the start of fiscal year 2005 and that the Secretary would spend $2 million a year over the 2005–2007 period for the purposes specified in the legislation.

*Spending subject to appropriation*

H.R. 1695 would make the land conveyance contingent on Clark County conducting an airspace assessment to identify any potential adverse effects on access to the Las Vegas Basin resulting from the construction and operation of an airport on the land to be conveyed. Further, the conveyance would be contingent on the Federal Aviation Administration certifying that the county's assessment is thorough and considers alternatives to any adverse effects identified in the assessment. H.R. 1695 would require the Secretary of the Interior and the Secretary of Transportation to meet the requirements of NEPA prior to constructing and operating the airport. Finally, the legislation would direct the Secretary of Transportation to develop an airspace management plan for the Ivanpah Valley Airport that restricts arrivals and departures over the Mojave Desert Preserve in California. Based on information from the departments, we estimate that the total cost to the federal government of implementing these provisions would be less than $500,000 each year over the 2001–2005 period, assuming appropriation of the necessary amounts.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted. Under the Balanced Budget Act, proceeds from nonroutine asset sales (sales that are not authorized under current law) may be counted for pay-as-you-go purposes only if the sale would entail no financial cost to the government. Based on information provided by BLM, CBO estimates that the sale of the public land specified in H.R. 1695 would result in a net savings to the government, and therefore, the proceeds would count for pay-as-you-go purposes.

| | By fiscal year, in millions of dollars | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
| Changes in outlays | 0 | 0 | −6 | 0 | 0 | 2 | 2 | 2 | 0 | 0 | 0 |
| Changes in receipts | (1) | (1) | (1) | (1) | (1) | (1) | (1) | (1) | (1) | (1) | (1) |

[1] Not applicable.

Estimated impact on state, local, and tribal governments: H.R. 1695 contains no intergovernmental mandates as defined in UMRA. The conveyance authorized by this legislation would be voluntary on the part of Clark County and any costs they would incur to fulfill the conditions of the conveyance also would be voluntary. This would include paying fair market value for the land and conducting an airspace assessment. The county would benefit from the opportunity to acquire this land, and the state of Nevada would

benefit because they would receive a portion of the receipts from the sale.

Estimated impact on the private sector: The legislation would impose no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On November 4, 1999, CBO transmitted a cost estimate for H.R. 1695, as ordered reported by the House Committee on Resources on October 20, 1999. At that time, we assumed that H.R. 1695 would be enacted early in fiscal year 2000 and that the sale would occur during fiscal year 2001. In contrast, we now assume that the legislation will be enacted by the end of fiscal year 2000 and that the sale would occur during fiscal year 2002. In addition, two significant differences between the two versions account for differences in our cost estimates for this legislation.

First, the Senate version includes a provision that would delay the spending of proceeds from the sale of land under H.R. 1695 until certain requirements are met. The House version contains no such provision; hence, we estimated that under that version the increase in offsetting receipts from the sale would be fully offset by a subsequent increase in direct spending of those receipts over the 2001–2004 period. In contrast, we estimate that under the Senate version, such receipts would be only partially offset by subsequent spending over the 2001–2005 period, but that they would be fully offset by 2007.

Second, under the House version of this legislation, interest earned on the proceeds from the sale of land would be available to be spent by the Secretary of the Interior. Hence, we estimated that the House version would have resulted in a net increase in direct spending of about $1 million over five years. The Senate version of H.R. 1695 contains no such provision; thus, we estimate that, over the 2001–2007 period, enacting this legislation would not result in a net change in direct spending.

Estimate prepared by: Federal Costs: Megan Carroll. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Lauren Marks.

Estimate 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. 1695.

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. 1695, as ordered reported.

## EXECUTIVE COMMUNICATIONS

On July 13, 2000, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth

Executive agency recommendations on H.R. 1695. These reports had not been received at the time the report on H.R. 1695 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing on S. 930 follows:

STATEMENT OF JOHN REYNOLDS, REGIONAL DIRECTOR, PACIFIC WEST REGION, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to be here today before the subcommittee to present the views of the Department of the Interior on S. 930, a bill to provide for the conveyance of certain public land in the Ivanpah Valley, Nevada, to the Clark County, Nevada, Department of Aviation.

The department cannot support this bill as currently written as it provides for a mandatory conveyance of public lands circumventing existing statutory requirements for land use planning and sale of public lands. This change creates a poor precedent and restricts our ability to adequately evaluate the effects of this transfer on the affected public lands and the natural and cultural resources located therein. Further, it prevents any meaningful evaluation of alternative sites for the airport facility. These are exactly the kind of issues that are appropriately examined in a thorough environmental analysis and through the planning process. Unfortunately, the legislation appears to waive that analysis. The department believes that the preparation of an environmental impact statement (EIS) is mandatory before any land conveyances occur. An EIS would not only document the impact of any airport, but would examine alternative sites to determine if a more suitable location for the airport and its accompanying infrastructure can be found. The EIS process would also allow for public input into the decision on siting of the airport. Unfortunately, the public involvement called for in the Federal Land Policy and Management Act (FLPMA) is eliminated in this legislation.

S. 930 would direct the Secretary of the Interior to convey parcels of land to Clark County, Nevada, for the purpose of establishing an airport facility and related infrastructure. The proposed lands are along Interstate 15 between Jean and Primm, Nevada, and are approximately ten miles north of the Mojave National Preserve's boundary. Due to prevailing winds from the south, the airport proposal provides only for a north-south runway, which would mean that departing planes would typically fly over the northern portion of the preserve.

The Mojave National Preserve was created in October 1994, under the California Desert Protection Act. The act was established to protect one of the most diverse desert environments in the world. Creosote bushes, pinyon pines, juniper woodlands, sand dunes, volcanic cinder cones, Joshua tree forests, vast vistas and mile-high mountains can all be found within the Mojave Desert. Visitors to the

Mojave National Preserve come to enjoy the wild splendors of the rugged, isolated solitude of the desert, and to sightsee, hike, and camp among the fascinating flora and fauna.

Thus, the National Park Service is deeply concerned with the potential effects the proposed airport would have on the Mojave National Preserve's resources and visitor experience, especially in several wilderness areas. The proposed airport is envisioned to be a cargo airport with major warehousing facilities. Large, low-flying jet aircraft would be a significant intrusion on a visitor's solitude and enjoyment of the quiet desert environment that is currently available. Few aircraft now fly over the preserve and commercial aircraft are normally at crusing altitudes and barely visible. While there are occasional military flights through the preserve, they do not have the enormous impact on park resources and visitors that regular overflights of departing or approaching jets would have.

There are real concerns that jets departing at regular intervals would adversely impact the nearby desert bighorn sheep in the wilderness of Clark Mountain. The desert bighorn sheep is one of the most distinctive and easily recognized desert animals and is generally found in isolated areas of the desert ranges. There is research that shows that repeated jet noise at regular intervals can increase stress in animals and potentially have long-term effects on their reproduction and ability to detect and escape predators.

Another desert animal that could be impacted by the noise generated by a proposed airport is the threatened desert tortoise. This long-lived reptile was listed as a threatened species by the U.S. Fish and Wildlife Service in 1992, and continues to face threats to its survival. Ivanpah Valley is designated critical habitat for the desert tortoise, whose populations have declined dramatically over the last twenty years. Increased urban development has fragmented and reduced suitable habitat. Studies and recover efforts are ongoing to help protect and preserve this threatened species.

The scientific community is only beginning to investigate and understand how animal species like the tortoise, bighorn, and insects communicate. They have already observed that jet noise can disrupt communication of spade food toads, creating opprotunities for increased predation.

Another potentially significant impact to the Mojave National Preserve from the proposed airport is the deterioration of the natural quiet and the current night sky darkness that visitors enjoy at the park. Light pollution is becoming a recognized problem to many rural and rustic areas, such as the Mojave Desert. Currently, opportunities to enjoy natural quiet and the natural darkness of the nighttime are being slowly impacted by development at Primm and Laughlin. A nearby airport with runway lights, tower lights, and other lighting requirements would adversely change the dark night landscape and quiet character of the Mojave National Preserve.

BLM has expressed concerns that there may be potential hydrologic complications due to the proposed location of an airport on a dry lakebed. This lakebed floods periodically and displaced waters could affect other development in the area. Off-site issues that need to be examined include the potential effects from ancillary facilities needed to support the construction and operations of the airport, as well as the impact on natural resources in the area, including the endangered species, and cultural resources.

We note that, in its latest assessment of the Nation's projected airport needs, called the National Plan of Integrated Airport Systems (NPIAS), the FAA has identified a need in the future for a new airport to serve the Las Vegas area. Nonetheless, this issue, as well as others that we note today, are appropriately examined in a thorough environmental analysis and through the planning process already in place for new airport site selection. Unfortunately, the legislation appears to waive that analysis.

In addition to the concerns of the National Park Service, the Bureau of Land Management (BLM) has four major concerns with the proposed legislation that we ask the committee to consider:

- Resource conflicts;
- Compliance with NEPA, FLPMA, and other environmental laws, including the Endangered Species Act and the Historic Preservation Act;
- Agency costs associated with the transfer; and
- Fair market value determination.

As the BLM testified on a similar bill before the House Subcommittee on National Parks and Public Lands in the 105th Congress, the passage of this bill will create conflicts with current uses and resources of these lands. These lands have not been identified for disposal through existing land use plans because of those uses and resources. As mentioned previously, the threatened desert tortoise is indigenous to the area. The area also supports a number of recreational pursuits including off-highway vehicle use, and it encompasses a Special Recreation Management Area within the boundary of the proposed land transfer. Two mining claims encumber the land and the area is the location of two state of Nevada mineral materials permits issued by BLM for road maintenance gravel.

There are a number of costs associated with implementation of the bill, including land and resource surveys, appraisals, and land transfer patent expenses. Because the transfer benefits Clark County, the bill should specify either that Clark County should absorb these costs or that the funds described in section 2(d) could be used for all administrative costs associated with the transfer.

The legislation specifies (section 2(d)) that fair market value should be paid by Clark County for the federal land, but that the value determined based on the land "in its unimproved state and shall not reflect any enhancement in value to the parcel based upon the existence or planned construction of infrastructure. . . ." This, in fact, does not

represent the fair market value of the lands and raises potentially serious concerns. We would urge the subcommittee to address this, either by deleting the provision or by requiring that should these lands later be sold, leased or otherwise conveyed by Clark County, the difference between what the County paid and the price it later receives should be remitted to the federal account specified in section 2(d)(3). This is consistent with language in section 4(g)(4) of Public Law 105–263, the Southern Nevada Public Land Management Act of 1998. The American people need to know that their assets are being protected and that any financial gain benefits the public.

Section 203 of the FLPMA requires that the government, when contemplating the sale of public land, consider whether the sale would "serve an important public objective, . . . which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objective and values. . . ." This legislation waives that very important analysis. We think that this is a mistake.

Because of the large number of concerns raised by the National Park Service and the Bureau of Land Management, the department believes it is critical that a decision on siting on this airport be made only after compliance with all requirements of the Federal Land Policy and Management Act and the National Environmental Policy Act. Additionally, the BLM would like the opportunity to address and potentially resolve more minor concerns with the bill, and is prepared to work with your staff to do so.

Mr. Chairman, thank you for the opportunity to share with the subcommittee the department's position on S. 930. This concludes my formal remarks. I will be pleased to answer any question you or other members of the subcommittee may have.

## 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 Act, H.R. 1695, as ordered reported.

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