

Calendar No. 122

113TH CONGRESS }
1st Session }

SENATE

{ REPORT
113–68

MULTISPECIES HABITAT CONSERVATION PLAN IMPLEMENTATION

JUNE 27, 2013.—Ordered to be printed

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

R E P O R T

[To accompany S. 757]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 757) to provide for the implementation of the multispecies habitat conservation plan for the Virgin River, Nevada, and Lincoln County, Nevada, to extend the authority to purchase certain parcels of public land, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 757 is to amend Public Law 99–548 to provide for the implementation of the multispecies habitat conservation plan for the Virgin River in Nevada, and to extend the authority to purchase certain parcels of public land in Mesquite, Nevada.

BACKGROUND AND NEED

The Mesquite Lands Act of 1986 (Public Law 99–548) has provided the City of Mesquite, Nevada, the exclusive right to purchase certain Federal land in eastern Clark County, Nevada, under the jurisdiction of the Bureau of Land Management (BLM). The rights include the option to purchase lands at fair market value for a period of twelve years, which expired on November 21, 2011.

The City of Mesquite, located between Las Vegas and St. George, Utah, was one of the fastest growing cities in the country during the 1990s. Because it is mostly landlocked by public lands, the 1986 legislation was amended to allow the city to purchase additional lands for economic development. In addition to identifying

lands for sale, an amendment Public Law 107–282 provides that a portion of the proceeds from the sale of certain parcels be deposited in an account established under the Southern Nevada Public Land Management Act of 1998.

In addition to paying for the BLM’s costs to convey land to the City of Mesquite, the Act also provides that the funds be made available “for the development of a multispecies habitat conservation plan for the Virgin River in Clark County, Nevada, including any associated groundwater monitoring plan.” This included a mandate that the city participate in the development of a Habitat Conservation and Recovery Plan and a Hydrologic Monitoring and Mitigation Plan along the Virgin River.

The habitat conservation plan was established to provide a mechanism for Federal and non-Federal entities to work collaboratively to protect and conserve imperiled species in the Lower Virgin River Basin. The hydrologic plan provides for monitoring to assure the Virgin River is not adversely affected by the extraction of groundwater for new development.

While the amendment language in Public Law 107–282 allowed for the “development” of these plans, it inadvertently omitted “implementation” of these plans. Other land acts, such as Southern Nevada Public Lands Management Act and the Lincoln and White Pine County Lands Acts, clearly state that funds shall be expended on both development and implementation of multi-species habitat conservation plans that are associated with new development in their respective areas.

As the authority for the city to purchase further lands and access the funds expired on November 21, 2011, legislation is needed to implement both the habitat conservation and hydrologic monitor plans. It is also necessary to give more time for the Federal Aviation Administration (FAA) to complete its ongoing evaluation for a replacement airport under lands authorized in a 1999 amendment (Public Law 106–133).

LEGISLATIVE HISTORY

S. 757 was introduced by Senator Heller on April 16, 2013. A hearing was held on S. 757 by the Subcommittee on Public Lands, Forests and Mining on April 25, 2013. At its business meeting on May 16, 2013 the Committee ordered the bill favorably reported without amendment.

In the 112th Congress, similar legislation was introduced by Senator Heller, S. 1473. The Subcommittee on Public Lands and Forests held a hearing on S. 1473 on March 22, 2012 (S. Hrg. 112–642). Also in the 112th Congress, similar legislation, H.R. 2745, was introduced by Rep. Joseph Heck. H.R. 2745 was reported favorably, with amendments, by the House Natural Resources Committee on February 29, 2012.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 16, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 757.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, “Multispecies Habitat Conservation Plan Implementation Act”.

Section 2(a) inserts language authorizing the Secretary of the Interior to use funds for the implementation of a multispecies habitat conservation plan for the Virgin River in Clark County Nevada under section 4(e)(1)(C) of the Southern Nevada Public Land Management Act of 1998 (*112 Stat. 2345*). Previous language only authorized the Secretary to use funds for development purposes.

Subsection (b) inserts language authorizing the Secretary of the Interior to use funds for the implementation of a multispecies habitat conservation plan for Lincoln County, Nevada. Previous language only authorized the Secretary to use funds for development purposes.

Section 3(1) strikes sunset provisions in paragraphs (1), (3), and (5) and extends them to November 29, 2021.

Paragraph (2) strikes the twelve year sunset provision and extends it to November 29, 2021.

COST AND BUDGETARY CONSIDERATIONS

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

S. 757—Multispecies Habitat Conservation Plan Implementation Act

S. 757 would give the city of Mesquite, Nevada, the exclusive right to purchase certain federal lands administered by the Bureau of Land Management (BLM). The bill also would authorize BLM and the U.S. Fish and Wildlife Service (USFWS) to spend proceeds from those sales on specified activities. Based on information provided by the affected agencies, CBO estimates that implementing S. 757 would increase direct spending by \$3 million in 2022; therefore, pay-as-you-go procedures apply. Enacting S. 757 would not affect revenues.

Based on information from BLM and the city of Mesquite, CBO expects that, under current law, the affected lands would be sold under the Federal Land Policy and Management Act (FLPMA). CBO estimates that proceeds from those sales would total about \$3 million in 2022. Under FLPMA, 96 percent of all proceeds from land sales are deposited in the U.S. Treasury. Because S. 757 would authorize BLM and USFWS to spend those proceeds, without further appropriation, to implement plans to conserve multispecies habitat in Nevada and to carry out certain other activities, CBO estimates that implementing the bill would increase direct spending.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 757 would increase direct spending; therefore, pay-as-you-go procedures apply. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR S. 757, THE MULTISPECIES HABITAT CONSERVATION PLAN IMPLEMENTATION ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON MAY 16, 2013

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013– 2018	2013– 2023
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	3	0	0	3

S. 757 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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. 757.

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. 757, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 757, 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 testimony provided by the Bureau of Land Management at the April 25, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 757 follows:

STATEMENT OF JAMIE CONNELL, ACTING DEPUTY DIRECTOR,
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the Department of the Interior on S. 757, which amends the Mesquite Lands Act of 1986 in order to renew and extend certain authorizations which had expired in late 2011. The BLM supports the goals of S. 757 to provide for the economic development needs of Mesquite, Nevada, and for the implementation of habitat conservation plans in Clark County and in Lincoln County, Nevada. The BLM notes that existing authorities, such as sales under the Federal Land Policy Management Act (FLPMA), allow BLM to achieve similar purposes through the development

of Resource Management Plans and include opportunities for public comment.

BACKGROUND

The Mesquite Lands Act of 1986 (P.L. 99-548) afforded the City of Mesquite in eastern Clark County, Nevada, the exclusive right to purchase certain parcels of public land, at fair market value, for a period of years. In a series of amendments over the last 17 years, the Mesquite Lands Act was amended to add additional parcels, authorize funding to develop a habitat conservation plan for the Virgin River, and to direct a conveyance to the City. The authorizations under the Mesquite Lands Act expired in late 2011. The Lincoln County Land Act of 2000 (P.L. 106-298) similarly authorized the use of certain funds for development of a habitat conservation plan in Lincoln County. While the City of Mesquite acquired approximately 7,700 acres of public lands under the Mesquite Lands Act, as amended, it was not able to complete all of the acquisitions it sought in the prescribed time period.

S. 757

S. 757 extends certain authorizations in the Mesquite Lands Act, as amended, for an additional ten years to November 29, 2021. The bill also allows for the use of certain funds for the implementation (in addition to the development) of habitat conservation plans for the Virgin River in Clark County as well as for a habitat conservation plan in Lincoln County. It also extends the withdrawal of the lands from all forms of location, entry and appropriation under the public land laws, including mining laws, and from operation of mineral leasing and geothermal leasing laws, subject to valid existing rights.

The BLM supports S. 757 and its goal of providing for the long-term economic development needs of the City. It would allow more time to complete the environmental reviews (and to develop possible mitigation of impacts) of proposed land uses on the parcels. The U.S. Fish and Wildlife Service has been working cooperatively with the BLM in the development of the habitat conservation plan for the Virgin River. The additional authorizations in S. 757 to implement habitat conservation plans will enhance the Department's habitat protection efforts in Clark County and in Lincoln County, Nevada.

CONCLUSION

Thank you for the opportunity to present testimony on S. 757. I will be glad to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 757, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is

printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 99-548, as amended

AN ACT To transfer certain real property to the City of Mesquite, Nevada

* * * * *

SEC. 3. NOTIFICATION AND SALE PERIODS.

* * * * *

(d) **FOURTH AREA.**—(1) No later than ten years after the date of enactment of this Act, the City of Mesquite shall notify the Secretary as to which if any of the public lands identified in paragraph (2) of this subsection the city wishes to purchase.

* * * * *

(3) **USE OF PROCEEDS.**—The proceeds of the sale of each parcel completed after the date of enactment of this subsection shall be deposited in the special account established under section 4(e)(1)(C) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2345); and shall be available for use by the Secretary—

(A) to reimburse costs incurred by the local offices of the Bureau of Land Management in arranging the land conveyances directed by this section;

(B) for the development *and implementation* of a multispecies habitat conservation plan for the Virgin River in Clark County, Nevada, including any associated groundwater monitoring plan; and

(C) as provided in section 4(e)(3) of that Act (112 Stat. 2346).

(4) **TIMING.**—Not later than 90 days after the date of enactment of this section, the Secretary shall complete the sale of any parcel authorized to be conveyed pursuant to this section and for which the Secretary has received notification from the city under paragraph (1).

(e) **FIFTH AREA.**—

(1) **RIGHT TO PURCHASE.**—

(A) **IN GENERAL.**—**[For a period of 12 years after the date of the enactment of this Act]** *Until November 29, 2021*, the City of Mesquite, Nevada, subject to all appropriate environmental reviews, including compliance with the National Environmental Policy Act and the Endangered Species Act, shall have the exclusive right to purchase the parcels of public land described in paragraph (2).

(B) **APPLICABILITY.**—Subparagraph (A) shall apply to a parcel of land described in paragraph (2) that has not been identified for disposal in the 1998 Bureau of Land Management Las Vegas Resource Management Plan only if the conveyance is made under subsection (f).

(2) **LAND DESCRIPTION.**—The parcels of public land referred to in paragraph (1) are as follows:

* * * * *

(3) **NOTIFICATION.**—**[Not later than 10 years after the date of the enactment of this subsection]** *Not later than November 29, 2021*, the city shall notify the Secretary which of the par-

cels of public land described in paragraph (2) the city intends to purchase.

(4) CONVEYANCE.—Not later than 1 year after receiving notification from the city under paragraph (3), the Secretary shall convey to the city the land selected for purchase.

(5) WITHDRAWAL.—Subject to valid existing rights, until [the date that is 12 years after the date of the enactment of this subsection] *November 29, 2021*, the parcels of public land described in paragraph (2) are withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws.

* * * * *

(f) SIXTH AREA.—

* * * * *

(3) WITHDRAWAL.—Subject to valid existing rights, until [the date that is 12 years after the date of the enactment of this subsection] *November 29, 2021*, the parcels of public land described in paragraph (2) are withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal laws.

* * * * *

LINCOLN COUNTY LAND ACT OF 2000

Public Law 106–298

AN ACT To direct the Secretary of the Interior to sell certain public land in Lincoln County through a competitive process.

* * * * *

SEC. 5. DISPOSITION OF PROCEEDS.

* * * * *

(b) AVAILABILITY OF SPECIAL ACCOUNT.—

(1) IN GENERAL.—Amounts in the special account (including amounts earned as interest under paragraph (3)) shall be available to the Secretary of the Interior, without further Act of appropriation, and shall remain available until expended, for—

(A) inventory, evaluation, protection, and management of unique archaeological resources (as defined in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb)) in the County;

(B) development *and implementation* of a multispecies habitat conservation plan in the County;

* * * * *