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LYON COUNTY ECONOMIC DEVELOPMENT AND CONSERVATION

SEPTEMBER 10, 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. 159]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 159) to designate the Wovoka Wilderness and provide for certain land conveyances in Lyon County, Nevada, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, line 19, after “valid existing rights” insert “and to such terms and conditions as the Secretary determines to be necessary”.

2. On page 9, strike lines 8 through 17 and insert the following:

(5) OVERFLIGHTS.—

(A) MILITARY OVERFLIGHTS.—Nothing in this Act restricts or precludes—

(i) low-level overflights of military aircraft over the Wilderness, including military overflights that can be seen or heard within the Wilderness;

(ii) flight testing and evaluation; or

(iii) the designation or creation of new units of special airspace, or the establishment of military flight training routes, over the Wilderness.

(B) EXISTING AIRSTRIPS.—Nothing in this Act restricts or precludes low-level overflights by aircraft originating from airstrips in existence on the

date of enactment of this Act that are located within 5 miles of the proposed boundary of the Wilderness.

PURPOSE

The purposes of S. 159 are to direct the Secretary of the Interior to convey for fair market value approximately 11,500 acres of land administered by the Bureau of Land Management to the City of Yerington, Nevada, and to designate approximately 48,981 acres of land in the Humboldt-Toiyabe National Forest as wilderness, to be administered by the Secretary of Agriculture.

BACKGROUND AND NEED

In November, 2012, the Nevada Copper Corporation began exploratory operations on its Pumpkin Hollow mine site, located near the town of Yerington, in Lyon County, Nevada. The proposed mine site is located on private and public lands administered by the Bureau of Land Management. Yerington plans to annex the mine site and adjacent lands and the conveyance of the federal land authorized by this bill will help facilitate the development of the mine and provide Yerington with additional tax revenue.

For over 4 years, Yerington and Lyon County have been working with private business partners to develop a sustainable development plan that would enable all parties to benefit from the use of private land adjacent to Yerington for potential commercial and industrial development, mining activities, recreation opportunities, and the expansion of community and cultural events. The plan requires the conveyance of certain federal land administered by the Bureau of Land Management (BLM) to the City for fair market value.

The federal land is adjacent to the City and would be used to enhance recreational, cultural, commercial, and industrial development opportunities. The commercial and industrial development of the federal land will enable the community to benefit from the transportation, power, and water infrastructure that would be put in place with the concurrent development of commercial and industrial operations.

The approximately 49,000-acre proposed Wovoka Wilderness Area is the largest remaining tract of wild country in Lyon County, Nevada, and encompasses the southern portion of the Pine Grove Hills in western Nevada. The core of the proposed wilderness is the Forest Service's South Pine Grove Hills Inventoried Roadless Area. The Forest Service categorized this roadless area as having a high capacity for wilderness during its Forest Plan Revision initial assessment in 2006.

The Wovoka Wilderness Area comprises at least 13 miles of the East Walker River. It is also home to a diversity of landscapes and experiences, from world-class fly fishing to rugged, multi-colored canyons, piñon-juniper forests, seasonal lakes, critical habitat for the bi-state sage-grouse, rich archeological resources, and wonderful views of the Sweetwater Mountains and Mount Grant.

The wilderness area's name honors Wovoka, the Paiute spiritual leader and father of the Ghost Dance, who prophesized a message of hope to Native Americans in the 1890s. Born in the region, Wovoka worked and found inspiration in these hills.

Elevations range from 5,200 feet along the East Walker River to over 9,400 feet at the summit of Bald Mountain.

The proposed Wovoka Wilderness contains critical habitat for the bi-state sage grouse population including summer, winter, and nesting habitat.

LEGISLATIVE HISTORY

S. 159 was introduced by Senators Heller and Reid on January 28, 2013. A hearing was held on the bill by the Subcommittee on Public Lands, Forests and Mining on April 25, 2013. At a business meeting on June 18, 2013, the bill was reported favorably with amendments. An identical bill, H.R. 696, was introduced in the House of Representatives by Representative Horsford.

In the 112th Congress a similar bill, S. 3701, was introduced by Senators Heller and Reid.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 18, 2013 by a voice vote of a quorum present, recommends that the Senate pass S. 159, if amended as described herein.

COMMITTEE AMENDMENTS

During its consideration of S. 159, the Committee adopted two amendments. The first amendment requires that the land conveyance be subject to such terms and conditions as the Secretary deems necessary. The second amendment includes standard language relating to military overflights, and further specifies that nothing in this Act precludes low-level overflights from airstrips within 5 miles of the wilderness boundary.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Lyon County Economic Development and Conservation Act”, and the table of contents.

Section 2(a) defines key terms in the bill.

Subsection (b)(1) directs the Secretary of the Interior to convey to the City of Yerington, Nevada, all right, title, and interest of the United States in and to land identified on the map entitled “Yerington Land Conveyance” dated December 19, 2012.

Paragraph (2) directs the Secretary to conduct an appraisal to determine the fair market value of the land to be conveyed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Uniform Appraisal Standards for Federal Land Acquisition, and the Uniform Standards of Professional Appraisal Practice.

Paragraph (3) requires the map to be on file and available for public inspection at the Bureau of Land Management.

Paragraph (4) clarifies that development and conduct of activities of the Federal land conveyed to the city shall be subject to all Federal laws and regulations.

Paragraph (5) requires the City of Yerington to pay an amount equal to the appraised value for the conveyed Federal lands, and all costs related to the conveyance. These costs include surveys, ap-

praisals, and other administrative costs associated with the conveyance.

Section 3(a) provides Congressional findings.

Subsection (b) provides definitions for the section.

Subsection (c)(1) designates the Federal land depicted on the map as the “Wovoka Wilderness”.

Paragraph (2) requires boundaries of the Wilderness that are bordered by a road must be set 150 feet from the centerline of the road.

Paragraph (3) directs the Secretary to prepare a map and legal description of the Wilderness.

Paragraph (4) clarifies that the Wilderness is withdrawn from: (A) all forms of entry, appropriation, or disposal under the public land laws; (B) location, entry, and patent under the mining laws; and (C) disposition under all laws relating to mineral and geothermal leasing or mineral materials.

Subsection (d)(1) establishes that the Wilderness shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.).

Paragraph (2) provides that any grazing activities established before the date of enactment of the Act, shall be allowed to continue, subject to reasonable restrictions, in accordance with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), and (B) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101–405).

Paragraph (3) incorporates any land or interest in land that is acquired within the boundary of the Wilderness into the Wilderness.

Paragraph (4) clarifies that Congress does not intend to create a protective buffer zone around the Wilderness, and non-wilderness activities outside the Wilderness boundary will be allowed to continue.

Paragraph (5) clarifies low-level overflights of military aircraft, flight testing and evaluation, the designation or creation of special airspace or military flight training routes, and low-level overflights by aircraft and originating from airstrips in existence on the date of enactment of the Act that are located within 5 miles of the proposed boundary will not be restricted over the Wilderness.

Paragraph (6) authorizes the Secretary, in accordance with 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), to take any measures necessary to control fire, insects, and diseases.

Paragraph (7) clarifies that nothing in paragraph (6) constitutes an express or implied reservation by the United States of any water or water rights within the Wilderness, or infringes on State water rights. Subparagraph (E) prohibits the United States from funding, assisting, authorizing, or issuing a license or permit for the development of any new water resource facility within the Wilderness. It also provides an exception to this restriction for the Bald Mountain grazing allotment for the purpose of livestock watering if an application is filed within 10 years after the enactment of this Act.

Paragraph (8) clarifies that nothing in this section changes State jurisdiction with respect to fish and wildlife management including regulation of hunting, fishing, and trapping. The Secretary may

conduct any management activities in the Wilderness that are necessary to maintain or restore fish and wildlife populations and their habitats.

Subsection (f) authorizes the Secretary to construct facilities for water development projects to enhance wildlife populations in the Wilderness.

Section 4 defines the withdrawal area and withdraws it from the public land laws, mining laws, and mineral leasing and geothermal laws.

Section 5 clarifies that nothing in this act alters or diminishes the treaty rights of any Indian Tribe.

COST AND BUDGETARY CONSIDERATIONS

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

S. 159—Lyon County Economic Development and Conservation Act

S. 159 would require the Secretary of the Interior to sell, at fair market value, roughly 10,000 acres of federal lands to the city of Yerington, Nevada. The bill also would designate about 47,500 acres in Nevada as wilderness. Based on information provided by the Bureau of Land Management (BLM) and the Forest Service, CBO estimates that implementing the legislation would have no significant impact on discretionary spending. Enacting S. 159 would increase offsetting receipts, which are treated as reductions in direct spending; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

Under the bill, the city of Yerington would be required to pay fair market value for the federal lands it acquires. Based on information provided by BLM regarding the appraised value of the affected lands, CBO estimates that proceeds from the sale would total \$2 million in 2014. Those amounts would be deposited in the U.S. Treasury as offsetting receipts. Because the bill would require the city to pay any administrative costs associated with the sale, CBO estimates that completing the land sale would not affect discretionary spending.

S. 159 also would add 47,500 acres to the National Wilderness Preservation System and withdraw those lands from programs to develop mineral and geothermal resources. Because the affected lands are already protected for conservation and wilderness values, CBO estimates that implementing the bill would have no significant impact on the cost of administering those lands. We also expect that any costs to modify existing maps and other materials would be minimal. Finally, because the affected lands currently produce no income (and are not expected to do so in the future), we estimate that enacting this provision would not affect offsetting receipts.

S. 159 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs in 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. 159.

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. 159, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 159, 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 National Park Service and the Forest Service at the April 23, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 159 follows:

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

Thank you for the opportunity to testify today on S. 159, the Lyon County Economic Development and Conservation Act, which presents economic development opportunities for the western Nevada city of Yerington. This bill would allow the city to purchase, at fair market value, over 10,000 acres of surface land and the subsurface mineral estate managed by the Bureau of Land Management (BLM) that surround a copper mine development located on approximately 1,500 acres of private land. The BLM has a few concerns with the legislation and proposes some modifications and amendments, including provisions related to timing of the conveyance that would ensure that the Federal government receives full value for the lands and associated mineral interests. In addition, Sections 3 and 4 of S. 159 designate an addition to the National Wilderness Preservation System—the Wovoka Wilderness Area—on National Forest System lands managed by the U.S. Forest Service. The Department of the Interior defers to the U.S. Department of Agriculture on provisions that apply to lands and programs under its management.

BACKGROUND

Yerington is a small community located southeast of Carson City in Lyon County, Nevada. The BLM manages approximately 570,000 acres of public land in the county. Historically, mining and agriculture have been significant contributors to the local economy, but today, Yerington has

an unemployment rate that is higher than the national average.

In February 2012, Nevada Copper Corp. broke ground on an exploratory operation at its Pumpkin Hollow mine site on private lands that are at the center of the proposed conveyance area. The city plans to annex the mine as well as the conveyance area, which will increase the tax base of both the city and Lyon County. Nevada Copper will fund the land acquisition costs for the city as well as land surveys, appraisals and cultural and natural resource evaluations required for the conveyance. In return, the city will either lease or sell certain lands that Nevada Copper requires for the development of its mine complex. Nevada Copper will also work with the city to extend water and sewer services beyond those needed for the Pumpkin Hollow mine. The city's plans envision an area where transportation, power, and water infrastructure installed for the mine will benefit other industrial and commercial users and facilitate the development of cultural and recreational areas for the benefit of Yerington.

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S. 159 (Section 2) requires the Secretary of the Interior to convey to the city of Yerington for fair market value over 10,000 acres of BLM-managed land and the underlying mineral estate—if the city agrees to the conveyance. Under the bill, the Secretary would establish the value of the land and the mineral estate in accordance with the Federal Land Policy and Management Act and uniform appraisal standards. The city will pay the fair market value for the property and all costs related to the conveyance, including surveys, appraisals, and other administrative expenses.

The bill's 180-day time period for conveyance does not allow sufficient time to complete reviews and consultation with parties under the National Environmental Policy Act and the National Historic Preservation Act or conduct appraisals to establish the fair market value of the surface and mineral estates. To its credit, the city has moved ahead and already sought and been granted permission to perform cultural survey work on the area. The preliminary findings of this survey indicate that there are sites in the conveyance area that may be eligible for inclusion in the National Register of Historic Properties. Resolution of adverse effects, or an agreement for the resolution or preservation, should be addressed before the sites pass from Federal ownership. The BLM recommends a one-year time period to complete all the necessary work associated with the conveyance.

The area's longstanding relationship to mining poses two other challenges not taken into account in the bill. Although originally there were a number of mining claims held by parties other than Nevada Copper, the BLM understands Nevada Copper has purchased many of these mining claims. According to the BLM's mining claim data-

base, there are 11 other outstanding mining claims. We understand that Nevada Copper is making arrangements that may resolve this issue. The BLM generally does not convey lands with mining claims. If left unresolved, S. 159 leaves open the question of who would administer these other mining claims, which by default leaves the responsibility to the BLM to conduct validity exams and resolve other issues such as site remediation. According to the city, one of the stated goals of this bill is to “expedite near term and long term development of mining facilities.” If the BLM manages these claims but not the surrounding surface rights, conflicts may occur that would hobble this goal of expedited development.

The area’s mining legacy poses a second and potentially dangerous situation. The Nevada Division of Minerals has identified abandoned mine features on the public lands to be conveyed to the city, a few of which may present potential hazards to the public. We would like to work with the proponents of this bill to resolve this issue. For example, the United States government should be indemnified from any future liabilities arising from any hazardous features. In addition, there are a few technical changes the BLM suggests for the bill on matters such as the conveyance parcel boundary.

CONCLUSION

Thank you again for the opportunity to testify on S. 159. This legislation is important to the people of this area, and the BLM looks forward to working with the sponsor and the committee. I would be glad to answer your questions.

STATEMENT OF JAMES M. PEÑA, ASSOCIATE DEPUTY CHIEF,
NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Barrasso, and members of the Committee, thank you for inviting me here today to testify regarding S. 159, the Lyon County Economic Development and Conservation Act.

Section 2 of the bill pertains to public lands managed by the Bureau of Land Management. This testimony will address Sections 3 and 4 in my comments as they pertain to the management of the Toiyabe National Forest.

Section 3 of S. 159 would add the Wovoka Wilderness to the National Wilderness Preservation System. These 47,449 acres are the largest remaining tract of wild country in Lyon County, Nevada, encompassing the southern portion of the Pine Grove Hills south of Yerington, Nevada. The core of this proposed wilderness is the Forest Service South Pine Grove Hill Inventoried Roadless Area. The Forest Service categorized this roadless area as having a high capacity for wilderness during its Forest Plan Revision wilderness evaluation in 2006.

Designation of the Wovoka Wilderness would preserve sage-grouse habitat, protect prehistoric cultural resources, ensure the availability of primitive recreational resources,

and maintain high air and water quality in the area, while ensuring the conservation of ecologically diverse and important habitats. Further, the bill encourages the collaboration between the Department and the Lyon County Commission on local wildfire and forest management planning. The Department supports these worthy goals and would support S. 159, if the bill is amended to address the following concerns.

S. 159 would provide for several standard provisions for the management of wilderness area within the National Wilderness Preservation System. However, it introduces several new provisions that raise concerns.

Section 3(c)(2) would require that the wilderness boundary be placed 150 feet from the centerline of adjacent roads when they border the boundary. While this is generally a good policy, we are concerned that the term “roads” is open to interpretation. We would prefer the use of the term “forest roads” or “public roads” which reflects those roads designated by the Forest Service during our travel planning process or by other jurisdictions. This will avoid any confusion about the intent of the provision during creation of the legal description.

The Department objects to Section 3(d)(7), relating to water rights. Specifically, Section 3(d)(7)(E)(ii)(I) would prohibit the Forest Service from developing for its own purposes any water resource facility other than a wildlife guzzler. Additionally, Section 3(d)(7)(E)(ii)(II) would require the Forest Service to approve applications for the development of water resource facilities for livestock purposes within the Bald Mountain grazing allotment submitted by Bald Mountain grazing allotment permittees within 10 years of designation of the wilderness. The President’s discretion under the Wilderness Act to review and approve any potential water development structure or facility that is deemed in the national interest should not be limited by these provisions.

Section 3(e), relating to wildlife management, also presents concerns. Section 3(e)(3) would give the State authority to use helicopters and other aircraft for specified wildlife management purposes without specific permission from the Forest Service. Section 3(e)(4) would constrict the Forest Service’s authority to restrict hunting or fishing, and section 3(e)(5) would perpetuate in perpetuity the application of a 1984 Memorandum of Understanding between the Forest Service and the State to State wildlife management activities in this wilderness area.

The Department objects to Section 3(f) Wildlife Water Development Projects, which would require the Secretary to authorize structures and facilities for wildlife water development where the Secretary determines that the development will enhance wilderness values by providing more naturally distributed wildlife populations and the visual impacts of the structures and facilities can be visually minimized. This language, while it provides some flexibility, still removes Secretarial discretion to consider the

impact of wildlife water developments on other wilderness values. The Department already has the discretion to consider the placement of wildlife water developments consistent with the Wilderness Act and House Report 101-405. This section is an unnecessary abridgement of the Secretary's discretion.

Section 4 of the bill would withdraw an area of National Forest from (1) entry, appropriation, or disposal under public land laws, (2) location, entry and patent under the mining laws, and (3) operation of the mineral laws, geothermal leasing laws and mineral materials laws. The use of motorized and mechanical vehicles within the withdrawn area would be limited.

The Department would like to work with the committee and the sponsor of the bill to ensure all valid existing rights may continue in the future.

This concludes my testimony and I would be happy to answer any questions that you 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 S. 159, as ordered reported.

