

**Statement of
Timothy R. Spisak
Acting Assistant Director
Energy, Minerals, and Realty Management
Bureau of Land Management
U.S. Department of the Interior**

**House Committee on Natural Resources
Subcommittee on Federal Lands
H.R. 2365, Desert Community Lands Act
May 17, 2018**

Thank you for inviting the Department of the Interior (Department) to testify on H.R. 2365, Desert Community Lands Act. The bill proposes to convey to the Town of Apple Valley and Cities of Twentynine Palms, Barstow, and Victorville in California approximately 8,000 acres of public lands managed by the Bureau of Land Management (BLM).

Secretary Zinke is focused on restoring full collaboration and coordination with local communities, working with partners to promote multiple use on public lands, and making the Department a better neighbor. The Department supports the goals of the bill to provide for improved recreational opportunities and to provide for important local community development – and we appreciate the Sponsor’s efforts to develop the legislation. The Department does have concerns with some of the provisions of the bill that would transfer public land that has not been identified for disposal and that would transfer public land without receiving fair market value, as required by the Federal Land Policy and Management Act of 1976 (FLPMA).

It also should be noted that Secretary Zinke is opposed to the wide-scale sale or transfer of Federal lands. That said, Secretary Zinke is interested in working with Congress on proposals that have the specific goal of increasing access and recreational opportunities for future generations while supporting local community needs.

Background

The BLM regularly transfers public land to local governments and nonprofits for a variety of public purposes. These transfers are typically accomplished under the provisions of the Recreation and Public Purposes (R&PP) Act or through direction supplied through specific Acts of Congress. The R&PP Act is a statute frequently used by the BLM to help States, local communities, and nonprofit organizations obtain lands – at no or low cost – for important public purposes such as parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities, and public works. Because these public purpose lands are conveyed at far below market value, R&PP Act conveyances and many similar legislated conveyances include a reversionary clause requiring that lands be used for the intended public purposes or revert to the Federal government.

San Bernardino County, located in southern California, is home to over 2 million people and holds important recreational, energy development, and conservation values. The county is over 12 million acres, of which eight million acres are public lands within the California Desert

Conservation Area (CDCA) that was singled out for special management in FLPMA. Section 601 of FLPMA recognized the unique location of the CDCA, which is adjacent to the major metropolitan areas of Los Angeles and San Diego, and over 20 million residents. This location has always meant that the management of the CDCA must consider the public's desire for recreational activities, public access, energy development, rights-of-way, conservation, and other important uses. The land use plan for the CDCA was last amended as part of the Desert Renewable Energy Conservation Plan in 2016.

H.R. 2365

H.R. 2365 conveys to the Town of Apple Valley and Cities of Twentynine Palms, Barstow, and Victorville in California approximately 8,000 acres of BLM-managed public lands.

Apple Valley Off-Highway Vehicle (OHV) Recreation Area Conveyance (Section 2)

Section 2 of H.R. 2365 directs the Secretary of the Interior (Secretary) to convey approximately 4,600 surface acres managed by the BLM to the Town of Apple Valley for the establishment of a centralized OHV recreation park, subject to valid existing rights. The area is located south of the BLM's Stoddard Valley OHV area. The mineral estate would not be included as part of the conveyance. Section 2 also requires the Secretary's approval if the city seeks to dispose of the conveyed lands, but this section does not specifically provide the United States a clear reversionary interest. The Secretary would be responsible for any administrative costs associated with the conveyance (e.g., cultural and cadastral surveys).

Analysis

As a matter of policy, the Department supports working with local governments to resolve land tenure issues that advance worthwhile public policy objectives. The Department generally supports the concept of the OHV recreation conveyance to Apple Valley outlined in section 2, as it would facilitate the development of a designated OHV recreation park and related facilities in this part of the California desert. The Department notes that the BLM is unable to convey these lands administratively because they are within special management units designated under the current land use plan.

While we appreciate the use of language referencing the R&PP Act in this section, the Department would like to work with the sponsor on technical amendments to ensure that the proposed conveyance is consistent with this important authority. For example, the Department recommends the inclusion of a standard reversionary clause, which has been used in many other legislated public purpose conveyances and would ensure that the Federal government retains a reversionary interest in these lands if they are not used for the specific recreation purposes for which they would be transferred.

As mentioned above, approximately 4,000 acres of the lands proposed for conveyance to Apple Valley are within the Stoddard/Johnson Special Recreation Management Area and the Northern Lucerne Wildlife Linkage, both of which the BLM designated as part of the land use planning process for the CDCA as amended by the DRECP. This area is currently managed and extensively used for OHV recreation on designated routes and trails, while also serving to connect a number of wildlife and plant populations, including bighorn sheep, golden eagle, desert tortoise, and the Mojave monkey flower. These lands are not currently identified as

potentially suitable for disposal. The remaining approximately 600 acres of the proposed conveyance are identified under the CDCA land use plan as potentially suitable for disposal if such transfer would facilitate renewable energy development or would not preclude such development. This designation is referred to as a Developmental Focus Area (DFA). The Department would also like the opportunity to work with the sponsor and the Subcommittee to prepare new maps for this legislation that reflect current land use status. We also appreciate that the sponsor appropriately provides for the transfer of the lands subject to valid existing rights, but note that there are more than 50 mining claims on the public lands proposed for conveyance. Historically, the BLM has rarely conveyed land with these types of substantial, valid existing rights, but it is not unprecedented.

As currently written, the bill also authorizes training and other commercial services on the lands to be conveyed to Apple Valley. This would permit public lands obtained for no cost to be used for potentially large-scale revenue generation by third party users without providing a fair return for the American taxpayer. The Department notes that the BLM, as a matter of both policy and practice, and in accordance with FLPMA, generally requires fair market value for public lands or interests transferred out of public ownership. As such, the Department recommends that the conveyance be at fair market value or require the acquisition of a Federal reversionary interest before these activities may be authorized.

Finally, the Department believes as a general policy matter that all administrative costs related to the conveyance, including surveys, cultural review, and related legal clearances should be borne by the benefiting entity, not by the Federal government.

City Conveyances (Sections 3, 4, & 5)

Sections 3, 4, and 5 of H.R. 2365 direct the Secretary to convey approximately 3,600 surface acres managed by the BLM to the Cities of Twentynine Palms, Barstow, and Victorville, respectively. Each of these conveyances would be at no cost, subject to valid existing rights, not include the mineral estate, and occur no later than one year after the bill's enactment. Of the approximately 3,600 surface acres, approximately 2,800 acres were identified through the BLM's land use planning process as potentially suitable for disposal under specific conditions. The remaining acres were not identified as potentially suitable for disposal.

Analysis

The proposed approximately 80-acre conveyance to Twentynine Palms is located north of Joshua Tree National Park and does not have any recorded encumbrances or mining claims. Roughly 290 acres of the nearly 300-acre proposed conveyance to Barstow is within the Stoddard/Johnson Special Recreation Management Area. While this area has no mining claims, it contains at least five rights-of-way, including a water reservoir site, a natural gas pipeline, a highway, and a railroad.

Finally, approximately 2,500 acres of the approximately 3,200-acre conveyance to Victorville are within an administratively designated DFA. The public land proposed for conveyance to Victorville have one mineral materials permit and more than 16 active rights-of-way, including power transmission lines, a railroad, a landfill, water quality monitoring wells, and an aquifer restoration system used by the U.S. Army Corps of Engineers and the U.S. Air Force.

As with other land conveyance proposals, we recommend amending H.R. 2365 to ensure the payment of fair market value for each of the parcels. However, the Department recognizes that there may be circumstances, as determined by Congress, in which the public benefits of a proposed transfer outweigh financial considerations. Again, the Department also believes that the Cities of Twentynine Palms, Barstow, and Victorville should be responsible for the administrative costs associated the transfers.

The Department is also committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice. We recommend the bill be modified to include standard appraisal language in sections 3, 4, and 5 and to specify that the appraisal process will be managed by DOI's Appraisal and Valuation Services Office. The Appraisal and Valuation Services Office provides credible, timely, and efficient valuation services to ensure public trust in Federal property transactions. The Department would like to work with the sponsor and Subcommittee on modifications to the bill that would account for time to process the conveyances and ensure payment of fair market value to the United States.

Conclusion

Thank you for the opportunity to present the Department's views on H.R. 2365. The Department recognizes the importance of local community development and looks forward to working with the sponsor and the Subcommittee on modifications to the bill that will meet the needs of Apple Valley, Twentynine Palms, Barstow, and Victorville and benefit the American people.

**Statement of
Timothy R. Spisak
Acting Assistant Director
Energy, Minerals, and Realty Management
Bureau of Land Management
U.S. Department of the Interior**

**House Committee on Natural Resources
Subcommittee on Federal Lands
H.R. 4824, Rural Broadband Permitting Efficiency Act
May 17, 2018**

Thank you for the opportunity to present the views of the Department of the Interior (Department) on H.R. 4824, the Rural Broadband Permitting Efficiency Act. H.R. 4824 requires the establishment of a program jointly with the Department of Agriculture (USDA) that would allow States to assume responsibility for environmental review and approval of broadband projects in existing road rights-of-way on public lands managed by the Bureau of Land Management (BLM) and the USDA Forest Service (USFS).

The Department supports the goals of H.R. 4824 to streamline the permitting of broadband facilities on public lands, and looks forward to working with the sponsor and the subcommittee on some modifications to enhance the effectiveness of the bill.

Background

It is the policy of the Administration to accelerate the deployment of modern high-speed broadband connectivity, which has the potential to connect underserved rural communities and promote economic opportunities throughout the Nation. According to the Federal Communications Commission, nearly 23 million Americans in rural parts of the country lack access to broadband. In modern society, this cuts them off from many services and potential jobs.

Lands managed by the BLM and other agencies within the Department are crucial to facilitating the deployment of wired and wireless broadband communications infrastructure. Already the BLM supports a wide range of communication facilities and related technologies (e.g. radio, television, cellular, and microwave) on public lands by issuing right-of-way grants, permits, or leases. The BLM has issued over 3,800 communication use rights-of-way involving approximately 1,500 sites on public lands. Currently, the BLM and the USFS use a common application form, SF-299, to evaluate such projects on Federal lands. The BLM and USFS assess cost recovery fees for processing applications and monitoring compliance.

Executive Order 13821, *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*, and the “Presidential Memorandum on Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior,” reiterate the importance of the Department’s role in the establishment of broadband access for rural communities.

Secretary Zinke is committed to reducing barriers, removing obstacles, and more efficiently employing government resources, as demonstrated by Secretarial Order 3355, *Streamlining NEPA Reviews and Implementation of Executive Order 13807*, among other Secretarial actions. By improving processes and making Federal assets more available for broadband infrastructure, the BLM and other agencies within the Department can ensure that all Americans benefit from Federal management of the public lands for multiple uses.

H.R. 4824

H.R. 4824 requires the Department to establish a program jointly with the USDA that would allow States to assume responsibility for environmental review and approval of broadband projects in existing highway rights-of-way on public lands. Under the auspices of the program, States would enter into a memorandum of understanding (MOU) with either the Department for projects on BLM-managed public lands or USDA for projects on National Forest System lands. Per the MOU, the State would then assume full or partial responsibility, varying for each memorandum, for any environmental review required by Federal law for the permitting of the broadband projects contemplated.

Legislation like H.R. 4824 could provide an opportunity for the BLM to strengthen its partnership with States in the management of the public lands. Under Title V of the Federal Land Policy and Management Act (FLPMA), the BLM and the USFS is given the authority by Congress for permitting and administration of all rights-of-way on public lands and National Forest System lands. The BLM and the USFS also has authority under FLPMA to enter into agreements with third parties for the preparation of environmental documents, and often do so to make this important process more efficient and effective. H.R. 4824 would transfer the BLM's authority under FLPMA for permitting broadband projects in highway rights-of-way to the States. Working with states to share responsibility for ensuring compliance with Federally-required environmental reviews for these types of projects could help expedite the permitting process. However, we would like to work with the sponsor to ensure alignment between state and Federal environmental review standards, and develop a model format for MOUs for use across all BLM jurisdictional areas. Use of a MOU with familiar terms would ensure consistency and provide certainty to proponents undertaking projects in multiple states.

This approach also presents a few practical considerations related to program administration. For instance, FLPMA, and in some cases title 23 rules, require the BLM and the USFS, or the State Department of Transportation, receive fair market value for the use of public lands and National Forest System lands. It is unclear whether the agencies would receive fair market rental from the project proponent, or if the State would receive it on their behalf. H.R. 4824 does not address certain other aspects of program administration, such as tracking use authorizations on the public lands and verifying consistency with Federal legal requirements. The BLM would like to work with the sponsor on amendments to ensure that these and other responsibilities are accounted for consistently in any MOUs drafted as a result of this legislation.

Section 5 of H.R. 4824 directs the BLM and the USFS to create a categorical exclusion that designates any project within a highway right-of-way as an action categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. The

BLM supports efforts to streamline the environmental review process, and believes categorical exclusions can be an effective tool for reducing delay and cost in permitting.

Conclusion

Thank you again for the opportunity to testify on H.R. 4824, the Rural Broadband Permitting Efficiency Act. The Department supports efforts to streamline the permitting of broadband facilities. We look forward to working with the sponsor and the Subcommittee to ensure that H.R. 4824 accomplishes its purpose most effectively.