

**TESTIMONY OF  
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SENATE ENERGY & NATURAL RESOURCES COMMITTEE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
"S. 2612 – CLARK COUNTY CONSERVATION OF PUBLIC LAND  
AND NATURAL RESOURCES ACT OF 2002"  
JULY 30, 2002**

Thank you for the opportunity to testify regarding S. 2612, the Clark County Conservation of Public Land and Natural Resources Act of 2002. Sponsored by Senators Ensign and Reid of Nevada, S. 2612 is an attempt to deal in a comprehensive fashion with a wide array of public land issues facing Clark County, Nevada. The Department of the Interior, the Bureau of Land Management (BLM) and the National Park Service (NPS) strongly support their efforts to resolve these issues. This bipartisan collaborative approach to addressing land use issues should be a model throughout the West. We have a number of specific concerns with certain provisions of the legislation which are outlined in the testimony. The Department would like to work with the sponsors and the Committee on improvements to the bill, so that once these changes are made we would be in a position to support the bill.

**Background**

Clark County is home to Las Vegas the fastest growing metropolitan area in the country. Of the 4.2 million acres within Clark County, BLM-managed public lands constitute 66 percent of those lands. The high concentration of public lands combined with their proximity to such a fast growing metropolis provide unique challenges and opportunities for the BLM, the NPS, the county, the city of Las Vegas and the many other cities in the region.

Issues of growth and conservation are difficult in the expanding West. In 1998, the Southern Nevada Public Land Management Act (SNPLMA), Public Law 105-263, addressed many of the issues in the Las Vegas Valley by providing a system for disposing of BLM-managed lands within that area to both benefit the greater Las Vegas area while protecting the interests of the American public. S. 2612 is the logical next step to P.L. 105-263.

**S. 2612**

S. 2612 presents a comprehensive approach to addressing a number of public land issues in Clark County. Among the many issues covered in the bill are: land exchanges, land conveyances, wilderness designation and release, National Conservation Area (NCA) establishment, and revisions to the Southern Nevada Public Land Management Act of 1998 (SNPLMA). I'd like to address these many issues title by title of the bill.

However, let me make a few general comments. We should note that this bill, if it were to become law, represents a substantial workload for BLM Nevada, especially the Las Vegas field office. The time frames established by the legislation will likely mean that other high priority projects will not be addressed and some of the deadlines may simply be impossible to meet. In addition, the costs of completing many of the land conveyances in the bill (for example, NEPA compliance, survey and title work and other types of clearances) should be borne by the benefitting local entity, not by the BLM. While we generally support reversionary clauses in land transfers, we believe they should be at the discretion of the Secretary to ensure that the Federal government is not burdened with potential future liability costs related to the uses of some of the lands conveyed. Also, there are numerous small technical issues as well as a number of PAYGO costs not addressed in this testimony which we would like to discuss with the Committee and the bill sponsors.

**Title I**

Title I addresses the same exchange and transfers of land as H.R. 4141, the "Red Rock Canyon National Conservation Area Protection and Enhancement Act of 2002." The BLM testified before the House Resources Committee on that bill on June 6 of this year, expressing support for the land tenure adjustments outlined in the legislation, but raising a number of issues needing resolution before the legislation moved forward.

While some of our concerns have been addressed, many remain outstanding. Title I proposes to legislate both a land exchange between the BLM and the Hughes Corporation as well as a transfer of additional public lands to Clark County for a park. The lands proposed to be acquired by the BLM in the land exchange with the Hughes Corporation border the eastern edge of the NCA and total approximately 1,068 acres in seven separate parcels. The BLM strongly supports the acquisition of these parcels and believes they will enhance the NCA. The addition of these parcels will improve boundary management and allow for better protection of rock art and other resources within the NCA.

The public lands identified for exchange to the Hughes Corporation total approximately 998 acres and were identified for disposal under SNPLMA. It is our understanding that these lands would be used for the expansion of a master-planned housing community. Under SNPLMA, proceeds from the disposal of BLM-managed lands are divided between the State of Nevada general education fund (5%), the Southern Nevada Water Authority (10%), and a special account in the Treasury for acquisition of environmentally-sensitive lands in Nevada and other purposes (85%). Section 4 of SNPLMA mandates that in the case of a land exchange, the non-Federal party remains liable for the 5% and 10% payments. The legislation is silent on this point, and therefore we make the assumption that these provisions of SNPLMA would apply to the Hughes Corporation land exchange.

The bill would also require the BLM to transfer approximately 1,344 acres of additional public lands to Clark County for purposes of a park. These lands are adjacent and intermingled with the lands to be exchanged to the Hughes Corporation. While we do not oppose the transfer of these lands to the County we believe they should be transferred at fair market value or through a Recreation and Public Purposes (R&PP) lease/conveyance.

The legislation is silent on responsibility for any potential hazardous materials that may preexist on these parcels. We believe that this must be addressed in the legislation. In addition, the public lands identified for disposal are currently encumbered by rights-of-way for roads, water pipelines, gas pipelines, and power lines as well as mining claims. We would like to ensure that these current uses are appropriately addressed by the legislation. Likewise if there are any encumbrances on the private lands to be acquired, this would need to be addressed.

Finally, and very importantly, the issue of land values is critical to our support of this Title. The Hughes Corporation contracted with a private appraiser to complete an appraisal of these lands. The BLM in Nevada received that appraisal in late June and is currently reviewing it. Following our review, we would like the opportunity to modify the acreage of the lands involved in the exchange to ensure that the exchange is of equal value. While the legislation appears to address this issue in section 104(c) and section 105(c), we believe that the language is confusing. The valuation issue must be addressed adequately before markup in order to ensure that all interests are protected.

## **Title II**

Title II moves the wilderness debate in Clark County, Nevada, forward both by designating lands as wilderness and releasing other lands from wilderness study area (WSA) status. Senators Ensign and Reid have worked diligently with their local constituencies to seek consensus on these designations and releases. We hope that this approach can be a model and provide an impetus for other states and regions to take similar actions. It is up to Congress to resolve the long simmering WSA question. The Senators from Nevada have proven that this can be done in a collaborative bipartisan fashion that deserves our support.

The bill would release approximately 233,192 acres of BLM-managed lands from WSA status and interim protection of their wilderness values under section 603(c) of the Federal Land Policy and Management Act (FLPMA). In addition, 223,858 acres of BLM-managed lands, 183,809 acres of National Park Service-managed lands, and 36,252 acres of Forest Service-managed lands would be designated wilderness. The 1979 Preliminary Wilderness Proposal for Lake Mead National Recreation Area recommended wilderness designation for 273,327 acres in Nevada. S. 2612 recommends approximately 182,000 acres in Nevada approximately 91,000 acres less than the recommended proposal.

All told the bill would designate 20 new wilderness areas and expand one preexisting area. This is an important legacy for the people of Las Vegas, Nevada, and the entire country. At the same time, this legislation also provides important opportunities for urban growth.

The legislation releases over 230,000 acres from FLPMA's WSA interim management protection. Of that, over 180,000 acres will be returned to the full range of non-wilderness multiple uses.

We would like the opportunity to work with the sponsors and the Committee on improvements to the wilderness management language before the bill is marked up. First and foremost, we strongly urge the Committee to clarify expressly that this legislation shall not constitute or be construed to constitute either an express or implied reservation of any water rights with respect to the designated areas. In addition there is unnecessary language (for example the air quality language in section 203(d) which is superfluous), confusing language (for example, the hunting, fishing, and trapping language in section 208(b) and the grazing language with respect to the NPS), or nontraditional language (for example the motorized vehicles and access language). The Department would like the Act to recognize the differences in land management policies that arise from FLPMA and the NPS Organic Act, and nothing in the Act should supersede management authorities and policies arising from each agency's organic legislation. Likewise, the addition of language withdrawing these wilderness areas from the public land, mining, and mineral leasing laws will prevent any future misinterpretation. While we do not oppose what we believe are the goals of these provisions, there are preferred ways of addressing them that are widely understood and accepted.

In addition, there are a number of mapping issues we would like to address before markup. The BLM in Nevada and the NPS at Lake Mead National Recreation Area are in the process of carefully reviewing each proposed wilderness boundary to ensure that these boundaries are as manageable as possible. We would like the opportunity to propose minor changes, when making such changes would increase manageability of the wilderness and ensure that we are not inadvertently affecting important current uses.

The Department may require further clarification to ensure that this legislation is consistent with the provisions of Public Law 106-181, which directs the FAA in cooperation with the NPS to develop air tour management plans for units with commercial air tours for the purpose of mitigating or preventing significant adverse impacts of commercial air tour operations upon the natural or cultural resources, and visitor experiences.

Section 207(d) addresses rights-of-way within the Sunrise Mountain Instant Study Area (ISA) and the Meadow Valley Range WSA. Sections 703 and 706 also effect lands within the Sunrise Mountain ISA. It is our conclusion that the best way to address these issues is to release the entire Sunrise Mountain ISA from WSA status and from wilderness interim management protection. With the number of exceptions we have noted, the remaining ISA becomes unwieldy and difficult to manage for wilderness values. In addition, we recommend that the portion of the Meadow Valley Range WSA originally recommended not suitable by the BLM in 1992 be likewise released from wilderness protection. The provisions of section 207(d) would no longer be necessary with such releases.

Finally, Section 208(d) addresses wildlife water development projects. General management policies of the NPS do not permit the construction of wildlife water development projects and artificial manipulation of habitat except to restore natural features that have been disrupted due to human development or

activities. Lake Mead NRA has coordinated with the Nevada Division of Wildlife for the maintenance of wildlife drinkers where there has been a finding that original sources of water have been lost to development or irreversible disruption of natural processes. We recommend this section be rewritten to authorize construction of wildlife drinkers where such construction is not in conflict with other applicable state and federal law or policy.

### **Title III**

Title III provides for the transfer of BLM-managed lands to the Fish and Wildlife Service and the National Park Service. Substantial acreage in the case of the former and a small site in the case of the latter.

Three BLM-managed WSAs would be released from interim protection under section 603(c) of FLPMA and then transferred to the Fish and Wildlife Service for inclusion in the Desert National Wildlife Range. Because this area is a long narrow piece abutting the eastside of the Wildlife Range we believe that this is a sensible proposal. In addition, 10 acres of public land east of Searchlight, Nevada, would be transferred from BLM management to the National Park Service for purposes of an administrative site for Lake Mead National Recreation Area.

We support these transfers, but would like the opportunity to work on language which would provide for a direct legislative transfer rather than a more cumbersome time-consuming administrative withdrawal process.

### **Title IV**

Title IV modifies the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105-263. The bill would substitute a new map for the map used in the original bill which outlines the "disposal area" within the Las Vegas Valley. Under the new map, the area subject to the disposal provisions of SNPLMA are expanded by approximately 23,600 acres of federal land. The additions are primarily on the north side of Las Vegas (three WSAs are released from protection under section 603(c) of FLPMA in Title II of the bill and the majority of those acres are placed inside the disposal boundary) as well as scattered areas to the west and east of Las Vegas. We do not oppose these additions to the disposal boundary.

In addition to providing for the disposal of certain public lands in the Las Vegas area, the SNPLMA also provided for the disposition of receipts from those disposals. 85 percent of the receipts are deposited in a special account. The special account funds are then spent to acquire environmentally-sensitive lands in Nevada, pay for capital improvements in certain Clark County federal sites (such as the National Park Service's Lake Mead National Recreation Area and BLM's Red Rock Canyon National Conservation Area (NCA)), develop parks, trails and natural areas in Clark County in cooperation with local governmental units, and for other specified purposes.

Title IV of this bill would require that a minimum of 25 percent of the special account fund be used for cooperative agreements for parks, trails, and natural areas. While we share the cooperative sentiment behind this proposal, we believe the amendment is limiting. To place arbitrary floors on certain uses of the special account, ties the agency's hands and may result in less than optimal use of the funds in the special account. For example, in the most recent, and third round, of recommendations for expenditures of the SNPLMA special account, over 33 percent of the expenditures would be for these cooperative agreements. Cumulatively expenditures for cooperative agreements have been over 26 percent of the total. The process of local working groups establishing priorities is working and the establishment of a cap is an unnecessary and limiting restriction. Section 401(2)(A) should be deleted.

Finally, we would like the opportunity to have discussions with the bill's sponsors regarding a slight modification to the expenditure provisions of section 4(e)(3) of the SNPLMA. While capital improvements and acquisitions of environmentally-sensitive lands are allowed under the Act, it is silent on restoration and rehabilitation. Along with preserving and protecting important environmentally-sensitive lands, there

are significant opportunities for careful restoration and conservation work. This may be an appropriate use of these funds and we would like to discuss those options.

## **Title V**

It appears that the intent of this Title is primarily twofold: first, to protect a potential utility corridor to serve the proposed Ivanpah Airport; and, second, to transfer approximately 15,500 acres of public land to the Clark County Airport Authority.

We believe that this Title, especially the transfer of lands, is premature. In late 2000, the Congress passed the "Ivanpah Valley Airport Public Lands Transfer Act," (P.L. 106-362). That Act provides for the sale of approximately 5,900 acres to Clark County at fair market value. Those lands are for the purpose of airport development. The sale of public lands under that Act is to take place once the FAA certifies an airspace assessment which has been completed by the County. Following the sale by the BLM to the County, the County is then required to complete an Environmental Impact Statement (EIS). The completion of that EIS is expected to take several years. A final decision on whether or not to build an airport will not be made until that EIS is complete. We oppose the transfer of additional lands, as directed in section 501(b), until this underlying issue is addressed.

We would also note that some of the lands in the southwest portion of the area identified for inclusion in the Ivanpah Airport Noise Compatibility Area are important Desert Tortoise habitat and are within the Desert Tortoise translocation area under the Clark County Habitat Conservation Plan (CCHCP). If acreage is conveyed out of Federal ownership within the CCHCP it could jeopardize Clark County's section 10 permit with the U.S. Fish & Wildlife Service under the Endangered Species Act. Finally, these lands are currently managed for a variety of multiple uses including utility corridors and OHV recreational use which we urge be considered before any transfer of lands.

We have additional concerns with section 501(a). We note that it establishes a 173,000-acre Interstate 15 corridor south of Las Vegas and terminates an existing mineral withdrawal for that corridor. Other purposes of this corridor are unclear. This subsection also establishes a transportation and utility corridor surrounding the proposed Ivanpah Airport, which again appears premature.

Section 501(b) may affect the provisions of Public Law 106-362, which directed that funds received from the sale of public lands are to be used 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. Park Service would like the opportunity to work with the Sponsor and the Committee to clarify this issue.

Finally, section 501(c) segregates and withdraws from the operations of the mining laws certain Areas of Critical Environmental Concern (ACECs) identified in the BLM's 1998 Las Vegas Resource Management Plan (RMP). We support this provision which is consistent with the RMP as well as the CCHCP.

## **Title VI**

Title VI establishes the Sloan Canyon National Conservation Area (NCA). The Sloan Canyon area south and east of Las Vegas is a strikingly beautiful area with important cultural and archaeological sites. It rightly deserves the recognition and the meaningful protections that are inherent in a National Conservation Area designation.

The centerpiece of the nearly 48,000-acre NCA is the Sloan Canyon site. The Canyon includes over 3/4 of a mile of more than 300 rock art panels with nearly 1,000 designs. The age of these petroglyphs and pictographs range from pre-Columbian to historic times, clearly illustrating the rich human history of the area. This canyon continues to hold spiritual meaning to the native peoples of the area where it remains a sacred site for the intertribal community.

Each of the NCAs designated by Congress and managed by the BLM is unique. However, for the most part they have certain critical elements, these include: public land, mining, and mineral leasing law withdrawal, OHV use limitations, and language which charges the Secretary to only allow those uses which further the purposes for which the NCA is established. Furthermore, NCA proposals do not diminish the protections that currently apply to the lands. The Sloan Canyon NCA proposal largely honors this spirit. However, the uses language in section 605(c) is open to interpretation. We would recommend that this be amended to include either the traditional "only such uses" language or at a minimum to delete the word "any" in this subsection.

In addition, we recommend that the hunting language in section 605(f) be revised. As currently written it implies that the Secretary of the Interior is responsible for the permitting of hunting on public lands. In Nevada, as in most other States, state officials exercise primary responsibility for the regulation of hunting, fishing, and trapping on federal public lands. We would be happy to work with the Committee and the sponsors so as to modify this language in an appropriate fashion.

Section 605(h) requires the BLM to issue a right-of-way to the city of Henderson for a road connecting the main portion of Henderson to the community of Anthem. A portion of this right-of-way would cut through the Sloan Canyon NCA. BLM currently has an application for this right-of-way on file. However, we should note that the Nevada Division of Wildlife has raised concerns about the possible effect of this road on the bighorn sheep population. We would recommend that before a decision is made on this right-of-way full environmental impacts need to be determined through the NEPA process. This would take longer than the 90 days specified in 605(h). In addition, we would seek the flexibility to revise the right-of-way as necessary to address any serious issues discovered in the NEPA process.

Section 606 provides for the sale of a 500-acre parcel to the west of the NCA to the highest bidder. 87 percent of the funds generated from this sale are earmarked for uses related to the Sloan Canyon NCA. We would hope the sponsors would consider a wider use of these funds for other conservation and science costs related to the implementation of this bill. In addition, we believe this sale should comply with section 203 of FLPMA to ensure that proper procedures are followed and the public interest is protected.

We would also like to work with the Committee on other minor modifications including map references and proposed minor boundary modifications.

## **Title VII**

Title VII of the legislation provides for a number of land conveyances to various entities. While in general we do not oppose these transfers, there are a number of complicating factors that need to be addressed. I will discuss each conveyance individually.

The lands involved in **section 702** were transferred from the BLM to Clark County Department of Aviation in the SNPLMA. Under SNPLMA, conveyance of these lands resulted in 85 percent of their value being transferred to the SNPLMA special account. This section would transfer approximately 115 acres of these lands to the University of Nevada, Las Vegas (UNLV) at no cost for a technology research center. While we do not oppose the transfer to UNLV we do believe that the same restriction on future sale, lease, or other conveyance which applied to the Clark County Department of Aviation should now apply to UNLV.

**Section 703** of the bill proposes to convey approximately 176 acres, described as "Tract F," to the Las Vegas Metropolitan Police Department. The southern half of this parcel is currently leased under the R&PP Act to the city of Las Vegas for a Police Department shooting range. The north half of the parcel is vacant public land within the Sunrise Mountain ISA. Because these lands are within the ISA the BLM cannot convey them to the city without Congressional action. As we noted in this testimony under Title II we recommend that the entire Sunrise Mountain ISA be released by Congress from interim wilderness management.

**Section 704** provides for the conveyance of approximately 511 acres, described as "Tract H," to the city of Henderson for the Nevada State College at Henderson. Nevada State College is admitting its first class of students this fall into its four-year baccalaureate program and has been authorized by the Nevada Board of Regents as part of the University and Community College System of Nevada. 230 of these acres are within the SNPLMA disposal boundary and the State of Nevada has applied for an R&PP lease for these acres. A number of unresolved issues exist on the other 281 acres which lie outside the disposal boundary. Among the complicating factors related to this proposed conveyance are flood control structures, communications sites (with concomitant hazardous materials problems), significant cultural sites and neighborhood concerns about the College. These issues need to be addressed before such a transfer is approved.

**Section 705** provides for the conveyance of two parcels, the 20-acre "Tract C" and the 10-acre "Tract D," to the city of Las Vegas for the purposes of affordable housing. These lands are within the SNPLMA disposal boundary. "Tract C" is currently under an R&PP lease to the city of Las Vegas for a public park and "Tract D" is vacant BLM-managed land.

Section 7(b) of the SNPLMA made provisions for the transfer of lands at less than fair market value and in consultation with the Department of Housing and Urban Development (HUD) for affordable housing purposes under certain circumstances. We would prefer utilizing that authority in the cases of Tracts C and D. However, at a minimum we believe that section 705 needs to be both coordinated with and consistent with the 7(b) language of SNPLMA.

**Section 706** proposes to transfer 688 acres, identified as "Tract G," to the city of Henderson, if requested by the city, for the purpose of economic development. These lands are within the SNPLMA disposal boundary. While resale, lease, or other conveyance of these lands by Henderson would result in a deposit to the SNPLMA special account consistent with that Act, we are concerned about unlimited administrative costs which Henderson can charge against the funds. A reasonable limit on such costs should be established by the legislation.

**Section 707** transfers 917 acres of land identified as "Tract E" to Clark County. These lands comprise the Sunrise Mountain Landfill and portions of it are within the Sunrise Mountain ISA. Clark County is currently working on landfill closure in conjunction with the EPA. In our earlier discussion of Title II we recommended that the entire Sunrise Mountain ISA, including these lands, be released from WSA status and from interim wilderness protection. While we support the transfer of the landfill to Clark County, many of the specific provisions of section 707 appear to put the Federal government at a distinct disadvantage. We believe the transfer should take place immediately, or within a very short time frame. Delaying this transfer places the Federal government at risk of liability for an area for which it has no responsibility. In addition, the Department should be released from any liability arising from the land before or after the transfer. Finally, the map for the landfill fails to include a small section of the current landfill. The map should be modified to include all of the landfill.

**Section 708** proposes to establish an "Open Space Land Grant" for the city of Henderson. This is a new and innovative concept. Under this section the BLM would transfer approximately 2,442 acres of land, identified as "Tract B," which abuts the proposed Sloan Canyon NCA on the northwest, to Henderson for "open space." This area would be used for conservation, recreation, and flood control facilities. We support the provision, but would like the opportunity to address some minor map modifications which may be necessary in order to avoid apparent duplicate uses of some of the lands or creating an unmanageable isolated parcel of public land. In addition, we would support language providing for cooperation in the planning efforts for the NCA established by Title VI and this "open space" area.

It appears that the intent of **section 709** is to remove a right-of-way from lands patented to Aerojet-General Corporation by the Federal government in 1988. When these lands were conveyed to Aerojet-General as part of a land exchange, the existence of the right-of-way reduced the appraised value of the lands. Relocation of the right-of-way would result in enhanced value of the lands which have since been

sold by Aerojet-General to a private party. We believe that the Federal government should be compensated at fair market value for the removal of this right-of-way.

### **Conclusion**

Thank you for the opportunity to testify on S. 2612. This is a significant bill; but it is also a detailed and complex bill. We look forward to the opportunity to work with Senators Reid and Ensign and the Committee to adequately address the concerns we have raised so that this important proposal can be finalized.