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PATENT AND LAND RECONFIGURATION IN CLARK COUNTY AND LINCOLN COUNTY, NEVADA

AUGUST 5, 2010.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 762]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 762) to validate final patent number 27–2005–0081, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 762 is to affirm and validate a patent issued by the Bureau of Land Management for land in Clark and Lincoln Counties, Nevada, including the associated land reconfiguration.

BACKGROUND AND NEED

The Nevada-Florida Land Exchange Authorization Act of 1988 (Public Law 100–275) authorized the Bureau of Land Management (BLM) to convey approximately 29,055 acres of land outside of Las Vegas, Nevada, to Aerojet-General Corporation in exchange for approximately 5,000 acres of land owned by Aerojet in the Florida Everglades. The Act also authorized Aerojet to lease approximately 13,767 acres of BLM land within the larger tract that was conveyed to it, but only if the leased lands would remain largely undeveloped to protect desert tortoise habitat.

In 2001, the Fish and Wildlife Service asked the BLM to reconfigure the lands to avoid isolating desert tortoise populations, fragmenting its habitat, and ultimately undermining the long-term recovery of the species. In response, BLM reconfigured the parcels to

provide for habitat connectivity and issued a final patent (Patent No. 27–2005–0081) to development company Coyote Springs Investment, a successor-in-interest to Aerojet.

The Western Lands Project and Nevada Outdoor Recreation Association sued the BLM and Coyote Springs Investment, claiming the process used to reconfigure the boundary failed to comply with federal law. The parties agreed to settle the lawsuit in 2007, with the stipulation that the final patent be legislatively validated, and to stay the lawsuit pending further action by Congress. H.R. 762 would enable the settlement to be implemented by validating the patent issued to Coyote Springs Investment as a result of the land reconfiguration to protect desert tortoise habitat.

LEGISLATIVE HISTORY

H.R. 762, sponsored by Representatives Heller, Berkley, and Titus, passed the House of Representatives by a vote of 413–0 on July 15, 2009.

The Subcommittee on Public Lands and Forests held a hearing on H.R. 762 on December 17, 2009 (S. Hrg. 111–364). The Committee on Energy and Natural Resources considered the bill at its business meeting on June 16, 2010, and ordered H.R. 762 favorably reported without amendment at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass H.R. 762.

SECTION-BY-SECTION ANALYSIS

Section 1 affirms and validates Patent No. 27–2005–0081, issued by the Bureau of Land Management on December 18, 2005, as having been issued in compliance with applicable Federal laws, and ratifies the associated land reconfiguration.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 762—An act to validate final patent number 27–2005–0081, and for other purposes

H.R. 762 would validate a patent issued by the Bureau of Land Management (BLM) in 2005. The patent would convey title to about 7,000 acres of land in Clark County, Nevada, to the Coyote Springs Investment LLC (CSI). Based on information provided by BLM, CBO estimates that implementing this legislation would have no effect on the federal budget because the affected land was already conveyed to the CSI in a previously authorized land exchange. Because the act would not affect direct spending or revenues, pay-as-you-go procedures would not apply. The legislation would confirm that conveyance, which had been disputed in a lawsuit with environmental organizations.

H.R. 762 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On June 18, 2009, CBO, transmitted a cost estimate for H.R. 762, a bill to validate final patent number 27-2005-0081, and for other purposes, as ordered by reported by the House Committee on Natural Resources on June 10, 2009. The two versions of the legislation are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Sam Papenfuss, Unit Chief for Income Security and Education Cost Estimates Unit, Budget Analysis Division.

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. 762.

The Act 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. 762, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 762, as ordered 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 December 17, 2009 Subcommittee hearing on H.R. 762 follows:

STATEMENT OF EDWIN ROBERSON, ASSISTANT DIRECTOR,
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE
INTERIOR

Thank you for the opportunity to testify on H.R. 762, a bill which affirms a land patent and an associated land re-configuration completed in 2005. These land transactions protect habitat for desert tortoise and other Mojave Desert wildlife species while providing for economic development in rural south-central Nevada. The BLM supports this bill, which passed the House of Representatives without amendment on July 15, 2009.

BACKGROUND

The Nevada-Florida Land Exchange Authorization Act of 1988 (NFLEA, P.L. 100-275) authorized the exchange of approximately 29,055 acres ("fee" lands) of BLM-administered lands in Coyote Springs Valley, Clark and Lincoln Counties, Nevada, for approximately 5,000 acres of private land in the Florida Everglades owned by Aerojet-General

Corporation (Aerojet). The purpose of the land exchange was to protect habitat in Florida needed for the recovery of wildlife species listed under the Endangered Species Act (ESA). The NFLEA also entitled Aerojet to lease an additional 13,767 acres (“leased” lands) of BLM-administered land in Coyote Spring Valley for 99 years, with an automatic 99-year lease renewal term unless terminated by the lessee.

Aerojet initially intended to use the fee lands for the construction of rocket manufacturing facilities. The Federal leased lands were to remain substantially undeveloped and serve as a conservation area and buffer for the rocket facilities. Aerojet never built the manufacturing facilities and the fee lands changed ownership in 1996 and 1998. In accordance with the NFLEA, the Secretary of the Interior approved the assignment of the leased lands from Aerojet to Harrich Investments LLC, and then from Harrich Investments to Coyote Springs Investment LLC (CSI), respectively.

CSI proposed to develop a planned community on the original Aerojet fee lands. Because the proposed development would affect critical habitat for the desert tortoise, an ESA listed species, the U.S. Fish and Wildlife Service (FWS) asked the BLM in 2001 to consider reconfiguring the boundary of the leased lands to benefit desert tortoise habitat. Reconfiguration of the leased lands was undertaken pursuant to the NFLEA.

Under the original configuration, the leased land was an island surrounded by the fee lands acquired by Aerojet. This configuration was designed to meet the needs of the planned Aerojet manufacturing facilities, but it provided limited habitat conservation benefits. Reconfiguring the lands would enhance conservation by consolidating the fee lands in a single parcel adjacent to U.S. Highway 93, and by placing the leased lands contiguous to protected habitat on BLM-managed public lands. This configuration would increase habitat connectivity and provide more effective conservation for desert tortoise and other Mojave Desert species.

In 2005 the Bureau of Land Management (BLM) issued a corrective patent to CSI for the reconfigured lands in Clark County. The Western Lands Project and the Nevada Outdoor Recreation Association (plaintiffs), who claimed that the BLM should have prepared an analysis of the corrective patent under the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management (FLPMA), subsequently brought suit in the U.S. District Court in Nevada. The action has been stayed and has not yet been briefed on the merits.

Continuing with its project proposal, CSI then prepared a Multiple Species Habitat Conservation Plan (MSHCP) to protect tortoise habitat and, consistent with the ESA, applied to the U.S. Fish and Wildlife (FWS) for an “incidental take” permit necessary for project approval. The FWS, with the BLM as a cooperating agency, assessed the

CSI proposal in an Environmental Impact Statement completed in July 2008. In October 2008, the FWS issued a Record of Decision authorizing an incidental take permit to CSI with numerous conservation stipulations to protect desert tortoise habitat. A key conservation stipulation is the land reconfiguration authorized by the BLM's corrective patent.

In November 2008, the plaintiffs stipulated with the BLM to a stay of the lawsuit for one year pending action by Congress on legislation affirming the corrective patent.

H.R. 762

H.R. 762 affirms and validates the corrective patent issued by the BLM in 2005 and its associated land reconfiguration. The bill enables implementation of the land reconfiguration stipulated in the Coyote Spring MSHCP, which will protect critical habitat while allowing economic development in south-central Nevada. The BLM supports the bill, which passed by the House of Representatives without amendment on July 15, 2009.

Thank you for the opportunity to testify. 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 the Act H.R. 762, as ordered reported.