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SENATE

{ REPORT
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HOLLOMAN AIR FORCE BASE LAND EXCHANGE ACT

JULY 31, 2006.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 486]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 486) to provide for a land exchange involving private land and Bureau of Land Management land in the vicinity of Holloman Air Force Base, New Mexico, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Holloman Air Force Base Land Exchange Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FEDERAL LAND.**—The term “Federal land” means the land administered by the Secretary consisting of a total of approximately 320 acres, as depicted on the map.

(2) **MAP.**—The term “map” means the map entitled “Holloman AFB Land Exchange” and dated May 19, 2006.

(3) **NON-FEDERAL LAND.**—The term “non-Federal land” means the parcel consisting of a total of approximately 241 acres of land, as depicted on the map, that is—

(A) contiguous to Holloman Air Force Base, New Mexico; and

(B) located within the required safety zone surrounding munitions storage bunkers at the installation.

(4) **OWNER.**—The term “owner” means an owner that is able to convey to the United States clear title to the non-Federal land.

(5) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

SEC. 3. LAND EXCHANGE.

(a) **IN GENERAL.**—If the owner submits to the Secretary a request to exchange the non-Federal land for the Federal land or a portion of the Federal land, the Secretary shall convey to the owner all right, title, and interest of the United States in and to the Federal land or the applicable portion of the Federal land.

(b) **CONSIDERATION.**—As consideration for the conveyance of the Federal land under subsection (a), the owner shall convey to the United States all right, title, and interest of the owner in and to the non-Federal land.

(c) **ADDITION TO MILITARY RESERVATION.**—On acquisition of the non-Federal land by the Secretary, the Secretary shall—

(1) assume jurisdiction over the non-Federal land; and

(2) amend the withdrawal for the Holloman Air Force Base to include the non-Federal land.

(d) **INTERESTS INCLUDED IN EXCHANGE.**—Subject to valid existing rights, the land exchange under this Act shall include the conveyance of all surface, subsurface, mineral, and water rights to the Federal land and non-Federal land exchanged.

(e) **COMPLIANCE WITH FEDERAL LAND POLICY AND MANAGEMENT ACT.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary shall carry out the land exchange under this section in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(2) **CASH EQUALIZATION.**—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), a cash equalization payment may be made in excess of 25 percent of the appraised value of the Federal land.

(f) **NO AMENDMENT TO MANAGEMENT PLAN REQUIRED.**—The exchange of Federal land and non-Federal land shall not require an amendment to the White Sands Resource Management Plan.

(g) **DISPOSITION AND USE OF PROCEEDS.**—

(1) **DISPOSITION OF PROCEEDS.**—The Secretary shall deposit any cash equalization payments received under this Act in the Federal Land Disposal Account established under section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)).

(2) **USE OF PROCEEDS.**—Amounts deposited under paragraph (1) shall be expended in accordance with section 206(c) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(c)).

(h) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require any additional terms and conditions for the land exchange that the Secretary considers to be appropriate to protect the interests of the United States.

PURPOSE OF THE MEASURE

The purpose of H.R. 486 is to provide for a land exchange involving private land and Bureau of Land Management land in the vicinity of Holloman Air Force Base, New Mexico, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base.

BACKGROUND AND NEED

In the mid 1990's, Holloman Air Force Base (Holloman) began increased training operations with the German Air Force. Those operations necessitated increased use of a munitions storage area ("MSA") and triggered a new safety review of the area in 1997. That review resulted in a recommendation that the explosive clear zone ("ECZ") surrounding the MSA be expanded. Since this zone encroached on neighboring private property, Holloman needed to secure restrictive easements or ownership of the lands in order to meet their safety regulations with regard to the MSA.

Without an explosive clear zone, Holloman is unable to use the entire designed capacity of the bunker. This directly affects the ability of Holloman Air Force Base to meet fully its mission.

Though Holloman was able to negotiate several restrictive easements on private lands within the ECZ, they were unable to come to agreement on the lands identified in this bill. This bill resolves

the issue to the satisfaction of both parties and allows Holloman to secure the full safety zone required.

LEGISLATIVE HISTORY

H.R. 486 was introduced by Representative Pearce on February 1, 2005. The House of Representatives passed H.R. 486 by a voice vote on March 14, 2005. The Subcommittee on Public Lands and Forests held a hearing on H.R. 486 on May 5, 2005. At the business meeting on May 24, 2006, the Committee on Energy and Natural Resources ordered H.R. 486 favorably reported with an amendment. H.R. 4808, a similar bill, was introduced during the 108th Congress by Representative Pearce and passed the House of Representatives on September 28, 2004, by voice vote. Similar language was included in the Senate as an amendment to H.R. 620 which passed the Senate on December 7, 2004.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 24, 2006, by a unanimous voice vote of a quorum present recommends that the Senate pass H.R. 486, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of H.R. 486, the Committee adopted an amendment in the nature of a substitute. The amendment captures the intent of the original bill, clarifies where receipts are deposited, and makes other changes recommended by the Department of the Interior.

SECTION-BY-SECTION ANALYSIS

Section 1 and 2 provides the short title and defines key terms used in the bill.

Section 3(a) directs the Secretary of the Interior to exchange all right, title, and interest of the United States in certain Federal lands in New Mexico for certain non-Federal lands if requested by the owner of the non-Federal lands.

Subsection (b) directs the owner, in exchange for such conveyance, to convey to the United States all right, title, and interest in the non-Federal land.

Subsection (c) directs the Secretary to assume jurisdiction over the non-Federal land and to amend the withdrawal for Holloman Air Force Base to include the non-Federal land.

Subsection (d) provides that the interests included in the exchange are subject to valid existing rights and shall comprise all surface, subsurface, mineral and water rights in the lands.

Subsection (e) requires the Secretary to carry out the land exchanges in accordance with the Federal Land Policy Management Act of 1976, except that it authorizes a cash equalization payment to the Government in excess of 25 percent of the appraised value of the public lands.

Subsection (f) specifies that the exchange shall not require an amendment to the White Sands Resource Management Plan.

Subsection (g) directs that cash equalization payments to be deposited and used in accordance with the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(c)).

Subsection (e) provides the Secretary discretion to include additional terms and conditions to protect the interests of the United States.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 486—Holloman Air Force Base Land Exchange Act

H.R. 486 would provide for an exchange of federal and private land near Holloman Air Force Base in New Mexico. CBO estimates that implementing the act would increase offsetting receipts and associated direct spending, but we expect that these effects would offset each other over the next few years. Enacting H.R. 486 would not affect revenues.

H.R. 486 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not significantly affect the budgets of state, local, or tribal governments.

H.R. 486 would direct the Secretary of the Interior to convey 320 acres of federal land and associated interests in New Mexico to private landowners. In exchange, those landowners would convey 241 acres of land and interests to the Secretary. The act would provide that the exchange would be carried out under the Federal Land Policy and Management Act of 1976 (FLPMA), which requires that cash payments be made to equalize the value of the two properties. In contrast with FLPMA, however, H.R. 486 would allow such payments to exceed 25 percent of the value of the federal property. Any payment received by the federal government would be deposited into BLM's federal land disposal account and would be available, without further appropriation, to acquire land in New Mexico.

Based on recent land sales near Holloman and the relative size of the two parcels of land to be exchanged under the bill, CBO estimates that the Bureau of Land Management (BLM) would receive a cash equalization payment of about \$2 million in fiscal year 2007. We estimate that BLM would spend this amount, without further appropriation, over the next few years to acquire other New Mexico lands for the Department of the Interior.

CBO expects that other budgetary effects of the bill would be minimal. According to BLM, the property to be conveyed by the federal government generates no significant offsetting receipts (a credit against direct spending) and is not expected to do so over the next 10 years.

Also, we estimate that administrative costs related to the exchange, which would be subject to the availability of appropriated funds, would be less than \$200,000. Those costs would include upfront appraisal and mapping expenses as well as ongoing costs to manage newly acquired land.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, 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 H.R. 486. 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 H.R. 486.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF THOMAS P. LONNIE, ASSISTANT DIRECTOR,
MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU
OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the U.S. Department of the Interior on H.R. 486, legislation providing for an exchange of public and private land in the vicinity of Holloman Air Force Base¹ in New Mexico. In previous testimony on similar legislation (H.R. 4808) given in the 108th Congress, we raised significant concerns, several of which have been addressed in H.R. 486. One concern previously identified in our testimony on H.R. 4808 remains outstanding, and we have identified new concerns described more fully in this testimony. The Department has significant concerns with H.R. 486 and could support the bill if our concerns are addressed.

BACKGROUND

As an initial matter, the Department views this as a unique situation using Bureau of Land Management (BLM) lands and the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 (P.L. 94-579) to resolve this issue involving the military's need for private lands in Otero County, New Mexico. Given this, we do not expect this matter to serve as precedent for future BLM land exchanges.

Approximately 241 acres of the Mesa Verde Ranch, owned by Randall, Jeffrey, and Timothy Rabon, are situated within the explosive safety zone surrounding a Munitions Storage Area at Holloman AFB. The safety zone for the Munitions Storage Area was previously included in easements immediately adjacent to the eastern boundary of the base, but several of the safety zone easements have terminated. To secure the safety zone around the Muni-

¹Holloman AFB is in south-central New Mexico, near the town of Alamogordo in Otero County. Operated by the United States Air Force, the installation covers nearly 60,000 acres. It is located on lands withdrawn from the public domain for military purposes under Public Land Order 833.

tions Storage Area, Holloman AFB considered acquiring the Rabons' 241 acres through acquisition, land trade, conservation easement, or condemnation. Acting on behalf of Holloman AFB, the U.S. Army Corps of Engineers offered to buy the 241 acres from the Rabons. However, the parties failed to reach agreement on a purchase price.

On December 29, 2003, the Rabons submitted a land exchange proposal to the BLM under which they would convey the 241 acres to Holloman AFB in exchange for BLM conveying to them certain inholdings—parcels of BLM-managed public land located within the Rabons' ranch. On July 9, 2004, H.R. 4808 was introduced, which directed the exchange of the Rabons' 241 acres for parcels of BLM-managed public land located within the Mesa Verde Ranch (the same parcels identified in the Rabons' proposal to the BLM of December 29, 2003). At a September 14, 2004, hearing of the House Resources Subcommittee on National Parks, Recreation, and Public Lands, the BLM testified that it had significant concerns with H.R. 4808. The legislation was not enacted. In the meantime, the military still has been unable to reach agreement with the Rabons on a price at which Holloman AFB could purchase the land.

H.R. 486

Under H.R. 486, the Rabons would convey to the United States three parcels of private land, totaling approximately 241 acres, contiguous to Holloman AFB and located within the required safety zone surrounding munitions storage bunkers at the base. H.R. 486 directs the Secretary of the Interior (Secretary) to convey to the Rabons approximately 320-acres of public domain land currently managed by the BLM in the state of New Mexico. As distinguished from the BLM parcels identified in H.R. 4808 in the last Congress, the 320-acre parcel of public land which the Secretary is directed to convey to the Rabons under H.R. 486 is not located within the boundaries of the Mesa Verde Ranch; rather, it is located near the southern portion of the city of Alamogordo, New Mexico, and has been identified for retention under the BLM's land use planning process.

H.R. 486 directs the Secretary to carry out the exchange in the manner provided in section 206 ["Exchanges"] of the Federal Land Policy and Management Act (FLPMA) of 1976 (P.L. 94-579), but waives the provision in section 206(b) which limits the amount of cash that may be paid to equalize exchange values of the Federal land conveyed.

We commend the bill's sponsor for addressing in H.R. 486 several of the concerns we previously raised in testimony on H.R. 4808. Specifically:

- In response to our concern that H.R. 4808 should specify which acres of public land and privately-owned lands are intended for the exchange, H.R. 486 provides a precise description of the lands to be involved in the exchange.

- We asked for the opportunity to develop a map to portray accurately the exchange proposed in H.R. 4808, and to include reference to the map in the legislation. Subsequent to the September 14, 2004, hearing on H.R. 4808, the Rabons selected different parcels of public land they wished to acquire. The BLM developed a map, which is referenced in section 1(a) of H.R. 486. We note that the bill should be amended to reflect the name of the map as “Alamogordo Rabon Exchange”.

- We objected to the provision in H.R. 4808 that would have deducted the Rabons’ previous expenses (incurred in their response to the military’s efforts to purchase the 241 acres) from any cash equalization payment due to the Federal government as contrary to the public interest. This provision does not appear in H.R. 486.

- In response to our assertion that it was important that lands involved in the proposed exchange be of equal value based upon appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition, H.R. 486 directs the Secretary to carry out the exchange in the manner provided in section 206 of FLPMA. This will assure that the appraisals will comply with Federal appraisal standards and the U.S. Department of Justice Uniform Standards for Federal Land Acquisition.

CONCERNS WITH H.R. 486

One provision in H.R. 486 remains unchanged from H.R. 4808. We testified as to our concern with this provision at the September 14, 2004, hearing on H.R. 4808. We continue to have concerns with this provision.

Specifically, as in H.R. 4808, H.R. 486 requires the Secretary of the Interior to assume administrative jurisdiction over the 241-acre parcel to be conveyed by the Rabons. As stated in our testimony on H.R. 4808, this acquired land should *not* be placed under the administrative jurisdiction of the Secretary of the Interior. The Federal government’s sole purpose in acquiring this 241-acre parcel is for the protection of military interests at Holloman AFB. The acquired land should therefore be withdrawn to the Secretary of the Army for that purpose and included within existing Public Land Order 833.

H.R. 486 directs the Secretary to carry out the land exchange in the manner provided in section 206 of FLPMA. Under section 206, lands proposed for exchange with the United States government must be of equal value with the lands to be conveyed out of Federal ownership. If lands proposed for an exchange are not of equal value, subsection (b) of section 206 provides for a cash payment to be made by either the government or the private-property owner, as appropriate, in order to equalize the values of the lands involved in the exchange, provided the payment

amount does not exceed 25 percent of the total value of the lands transferred out of Federal ownership.

H.R. 486 [section 1(d)(1)] waives the 25 percent limitation in section 206(b) of FLPMA. The effect of this provision in H.R. 486 is that the dollar amount of any cash payment to equalize the values in this exchange would not be limited. This is inconsistent with the section 206 FLPMA process. In addition, generally an exchange proponent is responsible for paying appraisal costs. If the legislation requires the government to pay this cost, funds should be provided for this purpose.

We would like to work with the Committee to address these concerns.

Thank you again for the opportunity to testify on H.R. 486. I would 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, the Committee notes that no changes in existing law are made by the Act H.R. 486, as ordered reported.

