

**Statement of
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Bureau of Land Management, U.S. Department of the Interior
House Resources Subcommittee on National Parks, Recreation, and Public Lands
On
H.R. 3954, the Rancho El Cajon Boundary Reconciliation Act**

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Thank you for the opportunity to present the views of the Department of the Interior on H.R. 3954, the "Rancho El Cajon Boundary Reconciliation Act." H.R. 3954 would authorize the Secretary of the Interior to pay compensation to a private landowner and to study whether similarly situated landowners would also be eligible for compensation for a defective land conveyance from the Federal government resulting from contract survey errors in the nineteenth century. The Department has a number of concerns with the bill, including the impact of the study and process in Section 2(c) on fulfilling the bill's objectives, and whether existing habitat conservation plan-related restrictions on lands proposed for compensation will make the bill difficult or unworkable.

This bill addresses lands in the urban interface area of San Diego County, California which were originally acquired by the United States in 1848 under the Treaty of Guadalupe Hidalgo. The lands were originally surveyed in the 1850's to 1880's, as the lands were conveyed out of Federal ownership. As became apparent in later years, the last survey, in 1881, was inaccurate; while the survey appeared accurate on paper, the on-the-ground result was that a strip of land 1100 feet wide and several miles long was actually part of lands conveyed in 1876. This is called a survey "overlap."

Based on the erroneous 1881 survey, the United States conveyed a portion of this area to various parties, including a 23 acre portion to the State of California in 1945. The State of California subsequently sold the 23 acres to a private party, who conveyed it, through several subsequent transactions, to the current landowner. In fact, the United States did not own the land, and therefore the original conveyance to the State of California was invalid.

H.R. 3954 would allow the Secretary, in her discretion, either to compensate the landowners through a cash payment, convey other public lands managed by the Bureau of Land Management (BLM) in San Diego County, CA, or a use a combination of these compensation methods.

The specific land addressed in the bill comprises approximately 23 acres, with an estimated value of between \$10,000 and \$20,000 per acre. The BLM has not conducted an appraisal of these lands; the estimate is based on a review of recent real estate sales prices in the area. H.R. 3954 also directs the Secretary to complete a study, within one year, to identify those landowners whose title to land may be void or otherwise clouded as a result of the erroneous survey. Upon completion of the study, the bill authorizes the Secretary to decide whether to compensate landowners, if defective title is found due to the erroneous survey.

H.R. 3954 states that compensation shall not exceed the current fair market value of the land. Under Section 2(b)(3) of the bill, the BLM is authorized to make payments to landowners using funds available for such purposes under the land equalization provisions in Section 206(b) of the Federal Land Policy and Management Act. While the bill is not specific, we assume that such payments would come from funds appropriated to the Land and Water Conservation Fund (LWCF) designated for land exchange equalization payments.

Under current law, the BLM may survey or re-survey lands that were conveyed from Federal ownership. The BLM is authorized to use appropriated funds to conduct the resurvey if there is a public interest in conducting the resurvey - in this situation, the BLM used appropriated funds to conduct the survey because the information was needed to evaluate a proposed land exchange in the area. The BLM is also

authorized to conduct a resurvey on private lands if the landowner reimburses the government. However, Congress has not provided the BLM any legal authority to resolve ownership conflicts among private landowners, or to compensate landowners for these types of survey errors. The BLM does not have the authority to convey land or give money to private parties in compensation for an error such as this. Typically, Federal land conveyances do not contain any warranties of title. That is, landowners generally receive the equivalent of a quit claim deed, which conveys only the rights in the property held by the owner of the property.

In the case of the land identified in section 2(c) of H.R. 3954, the BLM has not conducted a title search or examined the circumstances of the sale of the property to the current owner. Because the BLM does not have the ability to compensate the landowner, the BLM did not conduct this research.

The Department has concerns with several provisions of H.R. 3954 pertaining to the study and process to identify and address title problems that may have arisen from the faulty 1881 survey. In particular, the one-year time frame to complete the study is insufficient to conduct a thorough search of the necessary title records, based on the BLM's experience when conducting the resurvey in 1998. As the existence of a survey error was well known by real estate and survey professionals in the area, the BLM decided to conduct the resurvey to provide information for a proposed land exchange in the area. Most of the lands in the area of the faulty survey are privately-owned lands. Therefore, before entering the private lands to conduct the resurvey, the BLM contacted landowners to ask permission to enter. BLM obtained the name and address of the property owners of record from the county tax records in order to make these contacts; this research showed 77 property owners in the area the BLM planned to survey. While the BLM is not aware that any of these 77 property owners have title issues arising from the erroneous survey, BLM nevertheless would be required to research the title records for every property. This is a process that is separate and apart from the survey that has already been performed. Such research would require the BLM to review each sale and the related title records for these properties to determine if there was a defective conveyance due to the survey error, and most importantly, whether the landowners have subsequently remedied any title defect through the various avenues that are available to them under State law, such as initiation of a quiet title action. The scope of this task would require that BLM realty personnel defer work on current or planned land exchanges, rights-of-way processing, and other realty actions and would require a significant commitment of time and resources.

In addition, many of the BLM-managed public lands in San Diego County that would be potential lands for compensation are currently managed as part of an interconnected series of habitat conservation plans involving, among others, the BLM, the U.S. Fish and Wildlife Service, the State of California, San Diego County, the City of San Diego, and the San Diego Association of Governments. While BLM continues to authorize various multiple uses on these lands, the habitat conservation plans place conditions on the uses in order to help conserve habitat for listed species. Managing the public lands in this manner, enables more intensive development on private lands in other parts of San Diego County. It is likely that BLM would desire to keep many of these lands in public ownership, with appropriate restrictions on use to help conserve the habitat of listed species, rather than use the lands for compensation for the 1881 survey error. Given that H.R. 3954 requires that compensation, whether in the form of cash, exchange lands, or a combination of the two, be mutually agreed upon between the BLM and the landowner, the prospect of finding suitable compensation lands may be difficult, for the landowner described in section 2(c) or for any other landowner identified in the study.

In summary, while H.R. 3954 seeks to compensate one particular landowner, we believe the study called for in the bill is unrelated to this objective and will unnecessarily consume BLM's resources. We also believe the compensation proposal may be difficult or unworkable if there are no suitable lands for conveyance or if there are situations where the Department is unable to reach an agreement with the landowner on lands available for compensation. With respect to the specific lands described in Section 2(c), there may be specific State law remedies available. Congress may find that there is an equitable claim in this instance, in which case private relief legislation may be an appropriate vehicle to address such a claim. On this point, we take no position. However, should Congress move to address such a

claim, we believe that any compensation should be authorized as a direct payment and not taken from the Department's appropriated funds. I would be happy to answer any questions about the bill.