

**Statement of
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**Before the
U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Public Lands and Environmental Regulation**

**Legislative Hearing on
H.R. 1169, Naval Air Station Fallon Housing and Safety Development Act
H.R. 1299, White Sands Missile Range Security Enhancement Act**

April 26, 2013

Introduction

Thank you for the opportunity to present testimony on H.R. 1169, the Naval Air Station Fallon Housing and Safety Development Act, and H.R. 1299, the White Sands Missile Range Security Enhancement Act. The Administration supports the continued use of the lands identified in H.R. 1169 by the Department of the Navy (Navy) and the future use of the lands at issue in H.R. 1299 by the Department of the Army (Army). However, these bills, as introduced, would permanently transfer administrative jurisdiction over the subject lands. The Administration could support H.R. 1169 and H.R. 1299 if they were amended to withdraw and reserve the lands for military use consistent with the terms and conditions of past legislative withdrawals, and to codify the withdrawal and reservation in a new chapter of title 10, United States Code. The Administration also has concerns with the provisions in H.R. 1299 related to livestock grazing. We look forward to working with the Subcommittee and the sponsors on these modifications.

H.R. 1652, the Limestone Hills Training Area Withdrawal Act; H.R. 1673, the Naval Air Weapons Station China Lake Security Enhancement Act; H.R. 1676, the Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act; and H.R. 1691, the Chocolate Mountain Aerial Gunnery Range Security Enhancement Act were introduced three days ago. As a result, the Department of the Interior (DOI) has not had time to analyze these bills or consult with the Department of Defense (DOD) to determine their full impacts. The Administration is submitting a comprehensive legislative proposal for inclusion in the FY 2014 National Defense Authorization Act (NDAA) that includes a section addressing the withdrawals covered in H.R. 1652, H.R. 1673, H.R. 1676, and H.R. 1691. A copy of the section pertaining to the withdrawals was shared with the Subcommittee staff this week. Accordingly, the Administration urges the House to pass this NDAA withdrawal proposal to support military use of the lands at Limestone Hills Training Area, Chocolate Mountain Aerial Gunnery Range (CMAGR), Naval Air Weapons Station (NAWS) China Lake, and Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms.

DOI appreciates the importance of military installations for the security of the Nation and supports the multiple missions of our Armed Forces. We are proud to be able to offer public lands to support military readiness, training, and testing, and are proud to be able to assist the military in meeting their mission needs. Throughout the country we have established productive partnerships and other working arrangements with the military and we intend to continue these many mutually beneficial arrangements. We are especially appreciative of the military's excellent stewardship of the natural resources they manage, both withdrawn public lands and acquired land. For this reason, it is important that we preserve the option of the lands reverting to the public domain if the military determines that it no longer needs the lands. These arrangements have worked out well for all concerned and should continue.

While the Administration supports military use of public lands at all six locations covered by these bills, it cannot support the approach proposed in five of the bills. Those bills would permanently transfer administrative jurisdiction over public lands for defense-related purposes. Instead, the Administration believes that the traditional, periodic review that is a part of the legislative withdrawal process is vital to promoting the highest quality stewardship and management of the public lands. This process provides opportunities for DOD and the military branches to evaluate their continued use of the lands and obtain the participation and assistance of DOI in sound management, for DOI to ensure that the lands are being managed in ways that could allow their eventual return to the public domain for broader public use, and for the Congress and the public to provide input and oversight.

Background

Public lands are managed by DOI through the Bureau of Land Management (BLM). Public land withdrawals are formal lands actions that set aside, withhold, or reserve public land by statute or administrative order for public purposes. A withdrawal creates a title encumbrance on the land. Withdrawals are established for a wide variety of purposes, e.g., power site reserves, military reservations, administrative sites, recreation sites, national parks, reclamation projects, and wilderness areas. Withdrawals are most often used to preserve sensitive environmental values and major Federal investments in facilities or other improvements, to support national security, and to provide for public health and safety. Withdrawals of public lands for military use require joint actions by DOI and DOD. DOD has a number of installations, training areas, and ranges that are located partially or wholly on temporarily or permanently withdrawn public lands. Many of these withdrawals provide installations that are critical to the nation's ability to provide for the readiness of the Armed Forces. Approximately 16 million acres of public lands are withdrawn for military purposes.

There was no limit on the amount of public land that could be withdrawn administratively at a single location for military use until 1958 when the Engle Act (P.L. 85-337) became law. The Engle Act requires an Act of Congress to authorize military land withdrawals aggregating 5,000 acres or more for any one defense project or facility. Similarly, there was no limit on the time period of administrative withdrawals until 1976 when the Federal Land Policy and Management Act (FLPMA) (P.L. 94-579) became law. FLPMA allows the Secretary of the Interior to administratively make withdrawals aggregating 5,000 acres or more for purposes other than military use, for a period of not more than 20 years. Legislative military withdrawals have

traditionally included similar time limits, with some requiring renewal every 15, 20 or 25 years, depending on the terms of the prior legislation.

DOD FY 2014 NDAA Withdrawal Proposal

As noted above, the Administration has submitted a legislative proposal through which four land withdrawals would be enacted as part of the FY 2014 NDAA. This proposal was jointly prepared by DOD and DOI and represents extensive discussions and consensus building to achieve common goals. Presently, the two existing withdrawals for NAWS China Lake, California, and CMAGR, California, enacted in the California Military Lands Withdrawal and Overflights Act of 1994 (1994 California Act) (P.L. 103-433), will expire on October 31, 2014. Additionally, the Army needs to convert its use of public lands at the Montana Army National Guard, Limestone Hills Training Area, from a BLM issued right-of-way to a legislative withdrawal. Finally, the Marine Corps seeks a new withdrawal of public lands at MCAGCC Twentynine Palms, California, to expand its training areas to support increased requirements.

Unlike prior legislative withdrawals which were uncodified, stand-alone provisions of law, we propose that the withdrawals be made in a new chapter of title 10, United States Code. This would allow commonality among the withdrawal provisions, place them in a location that is easy to find and refer to, and, if used for future withdrawals, reduce the need to reconsider and revise “boilerplate” provisions with each proposal. And not least important, this codification would allow necessary or desirable changes to withdrawal provisions without having to wait, as has been the current practice, up to a quarter of a century for the next withdrawal to take place. In a time of constant change in the Nation’s needs, this new flexibility would greatly aid the ability of DOD, DOI, and the Congress to soundly manage these lands. An important objective of the consolidated approach is to make the withdrawal process substantially more efficient for both the Executive and Legislative branches.

The DOD proposal includes many general provisions applicable to all four of the withdrawals. Among these are provisions for the development of maps and legal descriptions; access restrictions; changes in use; authorizations for non-defense-related uses; management of range and brush fire prevention and suppression; on-going decontamination; water rights; hunting, fishing, and trapping; limitation on extensions and renewals; application for renewal; limitation on subsequent availability of lands for appropriation; relinquishment; interchanges and transfers of Federal lands; delegability of certain responsibilities by the Secretary of the Interior; and immunity of the United States. Most of these general provisions are similar if not identical to previously applied provisions in existing withdrawal statutes.

The interchanges and transfers provision is included to address boundary management issues involving both withdrawn public lands and acquired real property. For example, there is a need for boundary adjustment on the northern side of CMAGR to address uncertainties and resource management conflicts associated with the BLM-managed Bradshaw Trail. The Bradshaw Trail is popular with off-highway vehicle users, and is, in part, maintained by the local government, in coordination with BLM. However, the trailhead and some of the trail’s length currently crosses acquired real property administered by the Navy and the Marine Corps. In the case of the expansion of MCAGCC Twentynine Palms, the Navy will likely seek to purchase various

inholdings within the existing public lands. It could be beneficial to both departments if these inholdings could be converted, by exchange or transfer, to BLM public lands. In any case, the exchange provision is limited to acre-for-acre in order to avoid expanding the footprint of DOD lands. The transfer provision is limited to the Engle Act 5,000 acre limit (total) for any one installation over the 25-year life of the withdrawal. These provisions are designed to allow for small administrative adjustments to promote sound land management without impinging upon the role of Congress in managing Federal lands.

Limestone Hills Training Area, Montana

The Limestone Hills Training Area consists of 18,644 acres of public lands in Broadwater County, Montana that have been used for military training since the 1950s. In 1984, the BLM issued the Army a right-of-way formally permitting use of the training area for military purposes. The current right-of-way expires on March 26, 2014. The Montana Army National Guard is the primary DOD user of the training area, which is also used by reserve and active components from all branches of the military services for live fire, mounted and dismounted maneuver training, and aviation training.

The DOD proposed legislative withdrawal of the Limestone Hills Training area is necessary because the BLM has determined that it no longer has the authority to permit the use of the lands for military maneuvers under a right-of-way instrument. Under the DOD proposal, general management of the training area would be assigned to the Army, but the BLM would retain management of grazing and mineral resources for the lands withdrawn and reserved.

Naval Air Weapons Station (NAWS) China Lake, California

NAWS China Lake consists of over 1.1 million acres of land in Inyo, Kern, and San Bernardino Counties, California, of which 92 percent are withdrawn public lands. Under a Memorandum of Understanding between the Navy and DOI, the Commanding Officer of NAWS China Lake is responsible for managing the withdrawn land. The installation is home to approximately 4,300 DOD personnel and its primary tenant is the Naval Air Warfare Center Weapons Division. The current legislative withdrawal, which will expire on October 31, 2014, is for a 20-year term.

The Administration proposal for a 25-year renewal is modeled on the current successful management scheme instituted as part of the 1994 California Act, which allows the DOD and DOI to combine their unique capabilities and assets for the benefit of the resources and the public, by cooperatively managing natural and cultural resources, recreational resources, grazing, wild horses and burros, and geothermal resources. For example, the Navy manages the wild horses and burros on-the-ground at NAWS China Lake and the BLM manages the gathering, holding and adoption of the animals. In addition, the BLM and NAWS China Lake have a unique agreement to collaboratively produce geothermal energy at the installation, producing over 150 megawatts of power.

Chocolate Mountain Aerial Gunnery Range (CMAGR), California

The CMAGR was established in 1941. The range consists of about 459,000 acres in Imperial and Riverside Counties, California, of which approximately 227,000 acres are withdrawn public lands under the co-management of the Marine Corps and the BLM. The remainder are lands under the administrative jurisdiction of the Department of the Navy. The two sets of lands form a checkerboard pattern of administrative jurisdiction. Its primary uses are aviation weapons training, including precision guided munitions, and Naval Special Warfare training ranges. The current 20-year withdrawal is set to expire on October 31, 2014.

The DOD proposed withdrawal provides for a 25-year renewal and would allow the BLM and Navy to institute the same type of cooperative management that has been successful at China Lake. The Chocolate Mountain range is home to a number of species such as desert tortoise and big horn sheep, and contains a wide range of archeological resources.

Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, California

MCAGCC Twentynine Palms currently consists of 596,000 acres of land in San Bernardino County, California. In 1959, approximately 443,000 of those total acres were administratively withdrawn and reserved for the use of the Navy under Public Land Order (PLO) 1860. In its legislative proposal, DOD seeks to expand this installation with the withdrawal of approximately 154,000 acres of public lands adjacent to the Combat Center. The added training lands would create a training area of sufficient size with characteristics suitable for the Marine Corps to conduct Marine Expeditionary Brigade (MEB) level training. MEB training requires sustained, combined-arms, live-fire and maneuver training of three Marine battalions with all of their associated equipment moving simultaneously toward a single objective over a 72-hour period.

The Administration proposal meets the important training needs of the Marines, and also includes a unique management structure to mitigate for the loss of public access to lands popularly used for off-highway vehicle (OHV) recreation. The DOD proposed withdrawal provides for continued, year-round public access to the western third of the Johnson Valley OHV area. In addition, a shared use area of about 36,000 acres of the withdrawn lands would be available to OHV use for ten months out of the year, when there is no active military training.

H.R. 1169, Naval Air Station (NAS) Fallon Housing and Safety Development Act

NAS Fallon is a Navy air-to-air and air-to-ground training facility consisting of 234,124 acres of land in Churchill County, Nevada. Of this total area, 204,953 acres are public lands withdrawn and reserved for use by the Secretary of the Navy under the FY 2000 NDAA (P.L. 106-65) through November 5, 2021. In addition, 3,527 acres are public lands administratively withdrawn and reserved under three PLOs for an unspecified period of time. PLO 275 withdrew and reserved 160 acres in 1945; PLO 788 withdrew and reserved 2,400 acres in 1952; and PLO 2635 withdrew and reserved approximately 967 acres in 1962. Finally, in 1991, PLO 6834 withdrew 400 acres of public land for use by the Navy as a housing area and safety arc for an explosive ordnance handling facility. The withdrawal under PLO 6834 was issued for a period of 20 years

under the authority of FLPMA, and expired on March 20, 2011. The BLM Stillwater Field Office subsequently issued a right-of-way to the Navy, also under the authority of FLPMA.

H.R. 1169, the Naval Air Station Fallon Housing and Safety Development Act, would require the Secretary of the Interior to transfer jurisdiction, custody, and control over the 400 acres of public lands previously withdrawn under PLO 6834 to the Secretary of the Navy. The lands would be transferred without consideration, not later than 180 days after the date of enactment.

The Administration supports the goal of allowing the use of these lands by the Navy under a withdrawal and reservation. However, H.R. 1169, as introduced, would permanently transfer administrative jurisdiction over the subject lands. The Administration could support the bill if it were amended to withdraw and reserve the lands for use by the Secretary of the Navy consistent with the terms and conditions applied to other public lands withdrawn and reserved at NAS Fallon under the FY 2000 NDAA, and to codify the withdrawal and reservation in a new chapter of title 10, United States Code. We look forward to working with the Subcommittee and the sponsor on these modifications.

H.R. 1299, White Sands Missile Range (WSMR) Security Enhancement Act

WSMR is a test range of approximately 2.2 million acres in parts of five counties in southern New Mexico, making it one of the largest military installations in the United States. WSMR and the 600,000-acre McGregor Range Complex at Fort Bliss to the south, form a contiguous swath of territory for military testing. The majority of the lands that comprise both WSMR and Fort Bliss, almost 2.4 million acres, are public lands administratively withdrawn and reserved for the use of the Army in 1952 under PLO 833.

H.R. 1299, the White Sands Missile Range Security Enhancement Act, would require the Secretary of the Interior to transfer administrative jurisdiction over approximately 5,100 acres of public lands adjacent to WSMR to the Secretary of the Army. The lands would be transferred without reimbursement, except for costs incurred by the Secretary of the Interior to prepare the legal description, not later than September 30, 2014. The bill would also require the Secretary of the Interior to transfer grazing privileges associated with the lands to other public lands acceptable to the permit or lease holder and with the same value to the holder.

The Administration supports the goal of allowing the use of the lands by the Army under a withdrawal and reservation. However, H.R. 1299, as introduced, would permanently transfer administrative jurisdiction over the subject lands. The Administration would like to work with the Subcommittee and the sponsor on an amendment to withdraw and reserve the lands for use by the Secretary of the Army consistent with the terms and conditions of past legislative withdrawals (e.g., the FY 2000 NDAA), and to codify the withdrawal and reservation in a new chapter of title 10, United States Code.

The Administration also has concerns with the bill because there are no vacant grazing allotments on public lands in the BLM Las Cruces District that could be offered to the current permittee as substitute. Therefore, the BLM may have difficulty complying with the grazing provision unless it cancelled another existing permittee's grazing use. The Administration could

support H.R. 1299 if it were amended to withdraw and reserve the lands, as described above, and to address these concerns regarding grazing. Additionally, the lands proposed for transfer under the bill receive significant public use, mainly in the form of hunting.

The Administration's FY 2014 NDAA proposal contains a provision that would achieve a comprehensive boundary solution at Fort Bliss and includes rescinding the withdrawal and reservation of approximately 2,050 acres of public lands withdrawn and reserved for the use of the Army under PLO 833. These lands are part of an area known as Filmore Canyon, and are adjacent to the Organ Mountains ACEC. We would welcome the Subcommittee's consideration of that proposal.

Conclusion

Thank you for inviting our testimony on H.R. 1169 and H.R. 1299. The Department of the Interior, which has always been part of the Nation's national defense team, is committed to supporting military missions and training needs, while protecting natural resources and other traditional uses of the public lands. I would be happy to answer your questions.