

**Statement of
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Department of the Interior
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands and Forests
H.R. 1442 and S. 865, Mount Olivet Cemetery Reversionary Interest
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Thank you for inviting the Department of the Interior to testify on S. 865 and H.R. 1442, which provide for the disposal of the Federal government's interest in certain acreage of the Mount Olivet Cemetery in Salt Lake City, Utah. The Bureau of Land Management (BLM) supports H.R. 1442 as passed by the House of Representatives.

Background

The Mount Olivet Cemetery, in Salt Lake City, Utah, is owned and managed by the Mount Olivet Cemetery Association (the Cemetery Association). Located on the east side of Salt Lake City, the cemetery consists of approximately 80 acres of land, 20 acres of which is currently used for burials.

The Federal government, acting through the Secretary of War, first "set apart" 20 acres of what was then a military reservation "to be used as a public cemetery... which shall be forever devoted for the purpose of the burial of the dead" (Act of May 16, 1874). Subsequently, in 1909, the Congress provided for the conveyance of an adjacent 50 acres to the Mount Olivet Cemetery Association (under the Act of January 23, 1909). The 1909 Act provided that conveyance was contingent upon the Association first conveying to the United States a specified parcel of land, of approximately 150 acres, outside of Salt Lake City. However, the legislation also included a reverter clause, requiring that the land conveyed under the 1909 act could be used only as a cemetery:

"Said land to be by the said Mount Olivet Cemetery Association permanently used as a cemetery for the burial of the dead: Provided, That when it shall cease to be used for such purpose it shall revert to the United States."

The purpose of this reversionary clause is not established in the legislation. Whether it was due to an unequal exchange of lands, or for some other reason, is not stated, nor has the BLM been able to make any determination through the review of historical records.

In 1992, Congress took further action regarding Mount Olivet Cemetery with the enactment of legislation (Public Law 102-347), which allows the Cemetery Association to lease tracts of the lands conveyed in 1909 for up to 70 years, to the extent that such leases would not prevent future use as a cemetery. Public Law 102-347 speaks only to the possibility of 70-year leases, and the BLM has interpreted the 1909 reverter clause still to be in effect. Therefore, upon application by the Cemetery Association, in December of 1993, the BLM issued a "Certificate of Approval" for the lease of 15 acres to the adjacent East High School for a football field, and in January of 1996,

an additional certificate was issued for the lease of lands for a nursing and retirement facility which was never built.

In recent years, the Cemetery Association has sought to sell, rather than lease, some of the acres conveyed under the 1909 Act to Rowland Hall/St. Mark's School. Because the proposal is for a sale, rather than a lease of up to 70 years, the BLM does not have the authority to approve such a conveyance by the Cemetery Association. Specific authority for the BLM to dispose of the reversionary interest, established in 1909, to the Cemetery Association, as well any additional direction respecting valuation of this reversionary interest through appraisal, would facilitate resolution of this adjustment in land tenure.

S. 865 and H.R. 1442

The House of Representatives passed H.R. 1442 on July 16, 2009; our testimony addresses the House-passed bill.

H.R. 1442 is a reasonable solution to the desire of the Mount Olivet Cemetery Association to be able not only to lease, but also to sell, the cemetery lands. Under H.R. 1442, the Secretary of the Interior (acting through the Department's Appraisal Service Directorate) will undertake an appraisal of the reverter clause attached to the 1909 lands. Upon receiving that appraisal, the Cemetery Association may purchase the reverter, thus owning all right, title, and interest in the land. All costs associated with this conveyance, including the appraisal, would be the responsibility of the Association.

A number of amendments were made to H.R. 1442 to address concerns raised by the Department in testimony before the House Natural Resources Committee on May 14, 2009. We support the House legislation, as amended, and encourage the Committee to amend the Senate bill accordingly.