SANTA ANA RIVER WASH PLAN LAND EXCHANGE ACT

AUGUST 15, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 497]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (H.R. 497) to direct the Secretary of the Interior to convey certain Federal lands in San Bernardino County, California, to the San Bernardino Valley Water Conservation District, and to accept in return certain non-Federal lands, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 497 is to direct the Secretary of the Interior (Secretary) to enter into a land exchange with the San Bernardino Valley Water Conservation District (District), to convey certain Federal lands in San Bernardino County, California, in exchange for certain non-Federal lands owned by the District.

BACKGROUND AND NEED

The District, along with San Bernardino County, the Cities of Redlands and Highlnds, state and Federal Fish and Wildlife Service agencies, the Bureau of Land Management (BLM), environmental groups, and other stakeholders, have been working since 1993 to develop the Upper Santa Ana Wash Land Management and Habitat Conservation Plan (Plan) along the Santa Ana River floodplain just below Seven Oaks Dam in California. The Plan covers roughly 4,600 acres of both public and private land. Once fully implemented, the Plan will provide for habitat protection, ground-
water recharge, construction of public trails, and continued mining of aggregate.

H.R. 497 would direct the exchange of about 310 acres of pristine land owned by the District for roughly 327 acres of BLM lands nearby to facilitate the Plan’s implementation. The lands to be conveyed by the District to BLM are important habitat for a number of species listed under the Endangered Species Act (16 U.S.C. 1531 et seq.), including the San Bernardino Merriam’s kangaroo rat, Santa Ana River woolly star flower, Coastal California gnatcatcher, and the Slender-horned spineflower. The BLM land to be exchanged with the District will allow for the construction of additional settling ponds to realize approximately 1,200 acre feet annually for groundwater recharge.

**LEGISLATIVE HISTORY**

Representative Cook introduced H.R. 497 in the House of Representatives on January 12, 2017. The Committee on Natural Resources’ Subcommittee on Federal Lands held a hearing on H.R. 497 on March 5, 2017, and favorably reported it, as amended, on June 2, 2017. H.R. 497, as amended, was passed by the House of Representatives on June 27, 2017, by a vote of 424 to 0.

Senator Feinstein introduced companion legislation, S. 357, on February 13, 2017. The Subcommittee on Public Lands, Forests and Mining conducted a hearing on S. 357 on July 26, 2017.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered H.R. 497 favorably reported.

**COMMITTEE RECOMMENDATION**

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2018, by a majority voice vote of a quorum present recommends that the Senate pass H.R. 497.

**SECTION-BY-SECTION ANALYSIS**

*Section 1. Short title*

Section 1 provides the short title.

*Section 2. Definitions*

Section 2 contains definitions.

*Section 3. Exchange of land; equalization of value*

Subsection (a) directs the Secretary, upon an offer made by the District to exchange lands with the United States, to convey to the District all right, title and interest of the United States in and to the 327 acres of Federal land, as well as any such portion of the 90 acres of the Federal exchange parcel, as may be needed to equalize the values of the land exchanged. The Secretary is further directed to accept from the District all right, title, and interest of the District in and to the 310 acres of non-Federal land, and any portion of the 59 acres of the non-Federal exchange parcel, as may be required to equalize the values of the land exchanged. This subsection further states that such land exchange is subject to valid existing rights, is conditioned upon any needed equalization pay-
ment, and is to be conveyed within two years of the Act’s enactment.

Subsection (b) authorizes equalization payments for the land exchange and specifies that such payments must first be made by in-kind transfers of the Federal or non-Federal exchange parcels by the Secretary or the District. The fair market value of the applicable exchange parcel is to be credited against any required equalization payment. If the credit does not offset the entire amount of the required equalization payment and the District is in arrears, the District may make an equalization payment to the United States, notwithstanding the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 1716 et seq.) or the exchange shall not proceed. If the credit does not offset the entire amount of the required equalization payment and the Secretary is in arrears, the Secretary is directed to order the exchange without any additional equalization payment by the United States.

Subsection (c) specifies that the value of the land to be exchanged is to be determined by appraisals that are conducted in accordance with nationally recognized standards.

Subsection (d) specifies the title format for the land exchange.

Subsection (e) directs the Secretary to finalize the applicable map and legal descriptions of the land to be exchanged. This subsection further authorizes the Secretary to correct minor errors and states that the map and legal descriptions shall be on file in appropriate BLM offices and made available for public inspection.

Subsection (f) states that the District shall pay for any conveyance-related costs as a condition of the conveyance.

Section 4. Applicable law

Section 4 waives the applicability of the Act of February 20, 1909 (35 Stat. 641) for purposes of the land exchange authorized by this Act. This subsection further applies FLPMA to the exchange, except as otherwise provided in this Act.

Section 5. Cancellation of Secretarial Order 241

Section 5 terminates Secretarial Order 241, dated November 11, 1929, regarding withdrawing certain Federal lands for an unconstructed transmission line.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 497 would require the Bureau of Land Management (BLM) to convey 327 acres of federal land to the San Bernardino Valley Water Conservation District in California in exchange for 310 acres of land owned by the district. Under the legislation, BLM would be required to complete the exchange if the district requests, under the condition that the parcels to be exchanged are of equal value. If the parcels are not of equal value, the number of acres conveyed by the party with the lower valued land would be increased. Any lands received by BLM in the exchange would be managed for conservation purposes.

CBO estimates that enacting H.R. 497 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any net effect on direct spending would be negligible.
The federal lands that would be exchanged under the legislation generate receipts totaling $7,000 a year from several rights-of-way. If those lands were conveyed, the agency could request that the holders of those rights purchase permanent easements prior to the conveyance. The proceeds from the sale of those easements would partially or fully offset the lost receipts from the rights-of-way. Enacting the legislation would not affect revenues.

CBO also estimates that enacting H.R. 497 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 497 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The land exchange authorized in the legislation would benefit the San Bernardino Valley Water Conservation District. Any costs incurred by the district associated with the land exchange would be voluntary.

On May 22, 2017, CBO transmitted a cost estimate for H.R. 497, the Santa Ana River Wash Plan Land Exchange Act, as ordered reported by the House Committee on Natural Resources on April 27, 2017. The two versions of the legislation are similar, and CBO’s estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was reviewed by H. Samuel Papenfuss, 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. 497. 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. 497, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 497, 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 Department of the Interior at the July 26, 2017, hearing on S. 357, the companion legislation to H.R. 497, follows:

STATEMENT OF JOHN RUHS, ACTING DEPUTY DIRECTOR FOR OPERATIONS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the Department of the Interior on S. 357, the Santa Ana River Wash Plan Land Exchange Act. S. 357 would direct
the exchange of approximately 327 acres of public lands managed by the Bureau of Land Management (BLM) for approximately 310 acres of land managed by the San Bernardino Valley Water Conservation District (WCD) in San Bernardino County, California.

The Department supports the bill but would like to work with the sponsor and the Subcommittee on a few modifications. We appreciate Senator Feinstein’s support of this land exchange, which will help consolidate ownership of lands, allow for infrastructure improvements, further mineral development, and contribute to habitat protection and conservation efforts in the Upper Santa Ana River Wash.

BACKGROUND

For over twenty years, the BLM has been an active participant in coordinated land use planning and conservation efforts in the Upper Santa Ana River Wash (Wash Planning Area). This area is approximately one mile below the Seven Oaks Dam, near the City of Redlands, California, and involves a mix of both public and private land ownership.

The Wash Planning Area is regionally important for flood control, groundwater recharge, recreation, and habitat for threatened and endangered species. The area is also an important source for aggregate for concrete products and roadway construction materials. Under a Public Law from 1909 ("Act of February 20, 1909"), Congress set aside certain lands within this area for water recharge and excluded mining on BLM-managed lands. The diverse resource values within the region served as an impetus for the formation of a task force in 1993 to help coordinate land uses irrespective of land ownership boundaries. City and county officials, industry representatives, WCD officials, and the BLM were key members of the task force.

After 15 years of collaboration and engagement with stakeholders representing water, mining, flood control, wildlife, and municipal interests, the task force finalized a Regional Plan to coordinate the uses of the Wash Planning Area. Based on this Regional Plan, the users of the Wash Planning Area are developing a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service. Taken together, these management strategies serve to guide land uses and activities while also improving the wildlife habitat in the Upper Santa Ana River Wash.

Public Land Exchanges

Under the Federal Land Policy Management Act of 1976 (FLPMA), the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. FLPMA provides the BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Among other purposes, land exchanges allow the BLM to acquire environmentally-sensitive lands while transferring
public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. The BLM conducts land exchanges pursuant to Section 206 of FLPMA, which provides the agency with the authority to undertake such exchanges, or when given specific direction by Congress. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful. The Department notes that the process of identifying lands as potentially available for exchange does not include the clearance of impediments to disposal or exchange, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this clearance must occur before the exchange can be completed.

S. 357

S. 357 would require within two years of the bill’s enactment the exchange of approximately 327 acres of BLM-managed public lands for approximately 310 acres of WCD-administered private lands in San Bernardino County, California. The purpose of the exchange would be to transfer public lands to the WCD for economic development and to acquire environmentally sensitive private lands for consolidated management of public lands.

The land exchange would be subject to valid existing rights, appraisals would be conducted, and it would be completed pursuant to FLPMA Section 206. The WCD would be responsible for all costs associated with the exchange. If the value of the public lands proposed for exchange exceeds the value of the private lands, up to 59 additional acres of private lands may be added to the proposed exchange to equalize values. If the additional private lands are insufficient to equalize values, the WCD must make a cash equalization payment in accordance with the land exchange provisions of FLPMA or terminate the exchange. If the value of the private lands proposed for exchange exceeds the value of the public lands, up to an additional 90 acres of public lands may be added to the proposed exchange to equalize values. In the event that the additional public lands are insufficient to equalize values, the Secretary is not required to make a cash equalization payment to the WCD.

The bill would also exempt any public lands proposed for exchange to the WCD from the “Act of February 20, 1909.” The private lands proposed for exchange to the BLM, however, would continue to be subject to the continued use, maintenance, operation, construction, relocation, or expansion of groundwater recharge facilities to the extent that such activities are not in conflict with the HCP. Finally, the bill revokes Secretarial Order 241 from November 11, 1929, which withdrew a portion of the public land for a transmission line that ultimately was not constructed.
ANALYSIS

The Department supports the completion of land exchanges that consolidate ownership of scattered tracts of lands, thereby streamlining land management tasks and enhancing resources protection and providing opportunities for resource development. In this particular exchange, the BLM would acquire quality habitat for the Federally-listed Santa Ana River woolly-star, slender-horned spineflower, coastal California gnatcatcher, and the San Bernardino kangaroo rat, while facilitating mineral and infrastructure development for local communities across the region.

We have a few concerns with the bill’s provisions, however, and we would like the opportunity to work with the sponsor and Subcommittee to incorporate in the bill standard appraisal and equalization of values language, which has been used in many other successful legislated land exchanges. The Department is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed by DOI’s Office of Valuation Services. The Department notes that the public lands proposed for exchange have not yet been fully analyzed under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), or the FLPMA public interest determination. These review requirements provide for public engagement, opportunities to consider environmental and cultural impacts, and help ensure that unknown or unforeseen issues are not overlooked. Finally, we understand that the Department of Justice would like to work with the Subcommittee to address a constitutional concern with some of the text in the bill.

CONCLUSION

Thank you for the opportunity to provide testimony on S. 357, the Santa Ana River Wash Plan Land Exchange Act. The Department supports the bill, but would like to work with the sponsor and the Subcommittee on a few modifications. I would be happy 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 bill as ordered reported.