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SENATE

{ REPORT
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PERSHING COUNTY ECONOMIC DEVELOPMENT AND CONSERVATION ACT

DECEMBER 4, 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 S. 414]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 414) to promote conservation, improve public land management, and provide for sensible development in Pershing County, Nevada, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 414 is to promote conservation, improve public land management, and provide for sensible development in Pershing County, Nevada.

BACKGROUND AND NEED

When work began on the transcontinental railroad in 1863, the Federal government granted railroad companies with ownership of every other square mile of land across the West, while retaining ownership of the squares of land in between. The land grants allowed railroad companies to pay for construction of the transcontinental railroad by selling their sections. The resulting checkerboard land ownership pattern still stretches across the northern portion of the State of Nevada in a broad band along the I-80 west corridor within Pershing County (County).

In Pershing County more than 75 percent (nearly 2.9 million acres) of the land is owned by the United States and administered

by the Bureau of Land Management (BLM). BLM manages the public land for multiples uses, including mineral development, livestock grazing, recreation, and conservation. The checkerboard ownership pattern that persists today presents significant land management challenges for the County and BLM. For more than a decade, Pershing County has sought to resolve the status of checkerboard lands, wilderness study areas, and other public land management challenges.

LEGISLATIVE HISTORY

S. 414 was introduced on February 16, 2017, by Senators Heller and Cortez Masto. The Subcommittee on Public Lands, Forests, and Mining, held a hearing on S. 414 on February 7, 2018.

Similar legislation, H.R. 1107, was introduced in the House of Representatives by Representative Amodei on February 16, 2017, and referred Natural Resources Committee. The Natural Resources Committee reported H.R. 1107 on September 28, 2017 (H. Rept. 115–336), and the legislation was agreed to, as amended, by voice vote, in the House of Representatives, on January 16, 2018. The Subcommittee on Public Lands, Forests, and Mining held a hearing on H.R. 1107 on February 7, 2018.

In the 114th Congress, similar legislation, S. 3102, was introduced on June 28, 2016, by Senators Heller and Reid. The Energy and Natural Resources Committee held a hearing on S. 3102 on September 22, 2016.

Similar legislation, H.R. 5752, was introduced by Representatives Amodei, Hardy, Heck, and Titus on July 13, 2016, and referred to the Natural Resources Committee.

The Senate Committee on Energy and Natural Resources met in open business session on October 2, 2018, and ordered S. 414 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 414. Senator Cantwell asked to be recorded as voting no.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of contents

Section 1 provides the short title and a table of contents.

Section 2. Definitions

Section 2 provides key definitions.

TITLE I—CHECKERBOARD LAND RESOLUTION

Section 101. Findings

Section 101 declares that Congress finds that since the passage of the Pacific Railway Act, a checkerboard land pattern of public and private land exists in Pershing County that is expensive to manage and frustrating for both private landowners and the Federal Government. This section further finds that appraisal values of the parcels will be similar, and that consolidation of the parcels

will help the County's tax base and simplify Federal land management.

Section 102. Definitions

Section 102 provides key definitions for title I.

Section 103. Sale or exchange of eligible land

Subsection (a) directs the Secretary of the Interior (Secretary), in cooperation with the County, to sell or exchange eligible land.

Subsection (b) requires the Secretary and County to jointly select the eligible land.

Subsection (c) requires the County to certify to the Secretary that qualified bidders will comply with local planning and zoning laws.

Subsection (d)(1) requires the sale of exchange or eligible land to be consistent with the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1713, 1716(a)(1)) and conducted through either a competitive sale, for at least fair market value, or an exchange for private land.

Subsection (d)(2) requires the Secretary to conduct a mass appraisal of the eligible land to determine whether the likely value of any parcel exceeds \$500 per acre and make the results public. Such mass appraisal is to occur within one year of the Act's enactment and every five years thereafter.

Subsection (d)(3) directs the Secretary to exclude any parcel that is likely valued at more than \$500 per acre from the acre-for-acre exchange. This subsection also authorizes the Secretary to finalize acre-for-acre exchanges for parcels that exceed the valuation threshold under certain circumstances.

Subsection (d)(4) requires the Secretary, within one year of the Act's enactment, to identify Management Priority Areas, that include greater sage-grouse habitat; are part of a wildlife corridor or critical habitat; have outdoor recreation value, public access for hunting, fishing, and other recreational purposes; have significant cultural, historical, ecological, or scenic value; or has value for improving Federal land management. This subsection further clarifies that Federal management of those lands cannot be changed based solely on that designation.

Subsection (e) withdraws eligible land from entry and appropriation under public land and mining laws; location, entry, and patent under mining laws; and mineral and geothermal leasing laws. This subsection also lifts the withdrawal upon sale or exchange of a parcel of eligible land or, for a parcel that is not sold or exchanged, two years after the parcel was offered for sale or exchange pursuant to this title.

Subsection (f)(1) requires the Secretary to offer eligible parcels for sale at least once a year until the limitation is reached or the County requests a postponement. This subsection also limits the total acreage of eligible land sold to 150,000 acres.

Subsection (f)(2) requires the Secretary to offer eligible parcels for exchange, within one year of the identification of the Management Priority Areas and at least once a year until the limitation is reached or the County requests a postponement.

Subsection (f)(3) requires the Secretary, at the County's request, to postpone or exclude from a sale or exchange all or a portion of the eligible land.

Section 104. Disposition of proceeds

Subsection (a) requires the proceeds from a land sale under section 103 or 201 to be disbursed as follows: five percent to the State for education purposes; 10 percent to the County; and the remaining 85 percent to the “Pershing County Special Account” in the U.S. Treasury to be used by the Secretary, in consultation with the County, for specified land management activities.

Subsection (b) requires the special account established under subsection (a)(3) to be invested and earn interest.

Subsection (c) requires the Secretary to submit a report to the County and Committees of jurisdiction every five years on the operation and use of the special account.

TITLE II—LAND CONVEYANCES AND TRANSFERS

Section 201. Conveyances of covered land

Subsection (a) provides key definitions for this section.

Subsection (b)(1) requires the Secretary, within 180 days of enactment of this legislation, to offer for sale at the fair market value, the remaining right, title, and interest in and to covered land to qualified entities.

Subsection (b)(2) requires the Secretary, within one year of acceptance of an offer to purchase a parcel of land, to convey the land to the qualified entity.

Subsection (b)(3) merges any prior interest in the locatable minerals and the right to use the surface held by a qualified entity with all right, title, and interest conveyed by the United States to ensure that the qualified entity receives fee simple title to the purchased covered land.

Subsection (b)(4) requires the Secretary to determine the fair market value of the land in accordance with applicable law and appraisal standards.

Subsection (b)(5) requires the qualified entity to pay all conveyance-related costs as a condition of the conveyance.

Subsection (b)(6) requires the map to be on file and publicly available with the BLM.

Subsection (b)(7) authorizes the Secretary, in consultation with the County, to make minor corrections to the map or description of covered land.

Subsection (c) requires any proceeds collected under this section to be disposed of pursuant to section 104.

Subsection (d) terminates the Secretary’s authority to convey covered land 10 years after the Act’s enactment.

Section 202. Conveyances of land for use as a public cemetery

Section 202 requires the Secretary to convey, without consideration, approximately 10 acres of Federal land depicted on the map as “Unionville Cemetery” to the County to be used as a public cemetery.

TITLE III—WILDERNESS AREAS

Section 301. Additions to the National Wilderness Preservation System

Subsection (a) designates 12,339 acres of BLM land as the Cain Mountain Wilderness; 24,900 acres of BLM land as the Bluewing Wilderness; 22,822 acres of BLM land as the Selenite Peak Wilderness; 11,855 acres of BLM land as the Mount Limbo Wilderness; 13,875 acres of BLM land as the North Sahwave Wilderness; 35,339 acres of BLM land as the Grandfathers' Wilderness; and 14,942 acres of BLM land as the Fencemaker Wilderness. All land acreage is approximate and depicted on specified maps.

Subsection (b) requires the boundary of any portion of a wilderness area to be 100 feet from the centerline of a road, if bordered by a road.

Subsection (c) requires the Secretary to produce a map of each new wilderness area and make it publicly available in the appropriate BLM office. This subsection also authorizes the Secretary to make technical corrections to the map or legal description. This subsection further withdraws the designated wilderness areas from all forms of entry, appropriation, and disposal under public land laws; location, entry, and patent under mining laws; and mineral and geothermal leasing or mineral materials laws.

Section 302. Administration

Subsection (a) requires the Secretaries to manage the new wilderness areas in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.).

Subsection (b) allows any grazing in the wilderness areas that exists prior to the Act's enactment, to continue, subject to certain regulations, policies, and practices.

Subsection (c) makes clear that any land within the boundaries of the new wilderness areas, if acquired by the Federal government after the Act's enactment, will be added to the wilderness area.

Subsection (d) states that Congress does not intend for a wilderness area designation to create protective perimeters or buffer zones around the wilderness area. The subsection also specifies that nonwilderness activities or uses that can be seen or heard from within the wilderness area are not precluded.

Subsection (e) makes clear that nothing in this legislation restricts or precludes military activities in the airspace over the wilderness areas.

Subsection (f) authorizes the Secretary to take appropriate action to control fire, insects, and disease in the wilderness areas.

Subsection (g) authorizes the Secretary to install and maintain hydrologic, meteorological, and climatological data collection devices in the wilderness areas.

Subsection (h)(1) finds that wilderness areas are generally not suitable for the use of development of new water resource facilities.

Subsection (h)(2) specifies the section's purpose.

Subsection (h)(3) states that nothing in this Act creates an express or implied reservation of a water rights by the United States in a wilderness area; affects any State water rights in existence as of the date of the Act's enactment; establishes a precedent for future wilderness designations; affects the interpretation or designa-

tion made under any other Act; or affects an interstate compact of other water apportionment decree between the State and other States.

Subsection (h)(4) directs the Secretary to proceed pursuant to Nevada water law to obtain and hold any water rights.

Subsection (h)(5) defines the term “Water Resource Facility” and prohibits the Secretary from developing a new water resource facility within the wilderness areas.

Subsection (i) authorizes the placement of temporary telecommunications facilities in the Selenite Peak Wilderness.

Section 303. Wildlife management

Subsection (a) makes clear that the authority of the State to manage fish and wildlife in the wilderness areas is neither affected nor diminished.

Subsection (b) authorizes the Secretary to conduct any necessary management activities to maintain or restore fish and wildlife populations and their habitat.

Subsection (c) authorizes the State of Nevada to continue using aircraft to manage sage-grouse and other wildlife in the wilderness areas.

Subsection (d) directs the Secretary to authorize structures and facilities for wildlife water development projects, including wildlife guzzlers, under certain conditions.

Subsection (e) authorizes the Secretary, if necessary for public safety, administration, or compliance with certain laws, to prohibit hunting, trapping, and fishing in the wilderness areas. The Secretary is required to consult with the appropriate State agency before taking such action, except in emergency situations.

Subsection (f) authorizes the State to conduct wildlife management activities in the wilderness areas in accordance with the 2003 “Memorandum of Understanding between the Bureau of Land Management and the Nevada Department of Wildlife Supplement No. 9” and all applicable laws and regulations.

Section 304. Release of wilderness study areas

Section 304 releases from section 603(c) of FLPMA approximately 48,600 acres of public land in the China Mountain, Mt. Limbo, Selenite Mountains, Tobin Range, and Augusta Mountains wilderness study areas that have been adequately studied and not designated as wilderness. This section further requires the land to be managed in accordance with section 202 of FLPMA.

Section 305. Native American cultural and religious areas

Subsection (a) makes clear that nothing in this title alters or diminishes treaty rights of any Indian Tribe.

Subsection (b) makes clear that the traditional collection of pine nuts in a wilderness area for personal, noncommercial use, can continue.

COST AND BUDGETARY CONSIDERATIONS

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

S. 414 would establish a process to sell or exchange up to 400,000 acres of federal land administered by the Bureau of Land

Management (BLM) in Pershing County, Nevada, and also would designate 136,000 acres of other federal lands as wilderness.

The bill would require BLM to conduct a mass appraisal of the affected lands. Using information from the Department of the Interior's Office of Valuation Services, CBO estimates that conducting the appraisal would cost roughly \$1 million; such spending would be subject to the availability of appropriated funds.

Title I would direct BLM to work with Pershing County to jointly select parcels from roughly 300,000 acres of federal land that would be conveyed to the county through sale or exchange. Because BLM has already identified those lands for disposal, CBO expects that any lands conveyed in this region eventually will be conveyed under current law. Under the bill, the agency would only be required to sell lands valued at more than \$500 an acre. CBO expects that lands valued at less than \$500 an acre would be exchanged. The bill would authorize the agency to spend any proceeds from the sale of land, which would increase direct spending; however, using information from BLM regarding the amount of similar lands sold state-wide in Nevada over the last five years (between 1,000 and 3,000 acres) and the value of those lands (between \$100 and \$300 an acre), CBO estimates that any proceeds generated by the sale of the affected lands and the associated direct spending would be insignificant over the 2019–2028 period.

Title II would require BLM to offer mining claims covering roughly 100,000 acres in Pershing County for sale at fair market value. However, CBO expects that few individuals or firms would elect to purchase those lands because under current law they would have the option to patent their mining claims after December 7, 2018. Mineral patents allow individuals and firms to acquire title to hardrock minerals and the associated surface rights under a federal mining claim at below-market rates. Each year since 1994, the Congress has included provisions in annual appropriations acts that prohibit BLM from accepting or processing applications for mineral patents. Because patents are prohibited only in the year the appropriations acts are enacted, or the timeframe in which continuing resolutions are in effect, BLM will be authorized to issue mineral patents after December 7, 2018; the Congress would have to extend that prohibition in subsequent legislation. CBO expects that individuals or firms seeking to acquire title to federal mining claims generally would opt for a patent rather than purchase the claims using the process established under the bill. Thus, CBO estimates that enacting that provision would have no significant budgetary effect.

Title III would designate 136,000 acres of federal land as wilderness. Designating federal land as wilderness could have an effect on the budget if the property generates receipts for the government and collection of those receipts would end under the wilderness designation. Because the bill would preserve existing grazing rights on the affected lands and CBO does not expect those lands to generate any other proceeds over the next 10 years, we estimate that enacting that provision would have no effect on the federal budget.

Because enacting S. 414 would affect direct spending, pay-as-you-go procedures apply; however, CBO estimates that the net effect on direct spending would not be significant. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 414 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 414 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On September 27, 2017, CBO transmitted a cost estimate for H.R. 1107, the Pershing County Economic Development and Conservation Act, as ordered reported by the House Committee on Natural Resources on June 27, 2017. The two pieces of legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Janani Shankaran. 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 S. 414. 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 S. 414, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 414, 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 February 7, 2018, hearing on S. 414 follows:

STATEMENT OF BRIAN STEED, DEPUTY DIRECTOR FOR POLICY & PROGRAMS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior (Department) to testify on S. 414, the Pershing County Economic Development and Conservation Act. This bill authorizes public land sales, exchanges, and conveyances in Pershing County, Nevada, and designates approximately 136,600 acres of public lands managed by the Bureau of Land Management (BLM) as seven new wilderness areas.

Pershing County, located in northwestern Nevada, is home to nearly 7,000 people and encompasses just over 6,000 square miles. BLM-managed public lands in this part of Nevada provide opportunities for economic development and jobs, hunting and other forms of outdoor recreation, mineral development, livestock grazing, and conservation.

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to retain management of most public lands, thereby reducing the acreage that had been available for disposal in earlier years. Under FLPMA, the BLM is directed to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The FLPMA also sets forth the BLM's multiple-use mission, directing that public lands be managed for a variety of uses, such as energy development, livestock grazing, conservation, mining, and recreation.

S. 414 directs Federal land sales, exchanges, and conveyances in Pershing County, Nevada. The legislation also designates approximately 136,600 acres of public lands as seven wilderness areas and releases approximately 48,600 acres of BLM-managed WSAs from further study.

Title I of S. 414 directs the sale, at fair market value, or exchange of up to approximately 334,000 acres of BLM-managed public lands as specified on the legislative map and that have been identified as potentially suitable for disposal as part of the land use planning process. Title I requires that all lands authorized for sale or exchange be appraised en masse within one year of enactment and every five years thereafter. Any of these lands with an appraised value of less than \$500 per acre may be exchanged on an acre-for-acre basis with private land in a Management Priority Area, as identified by the Secretary, within the area depicted on the legislative map. Land sales under Title I may not exceed 150,000 acres; exchanges are exempted from this limitation. The first land sale must be completed within one year of enactment, with at least one sale conducted every year thereafter, until the acreage limit for sales has been reached, or a sale postponement period requested by the county.

Title II of the bill directs the sale, at fair market value as determined by an appraisal, of up to approximately 102,000 acres of BLM-managed public lands identified on the legislative map to a "qualified entity," which is defined in the bill as the owner or authorized leaseholder of the mining claims, mill sites, or tunnel sites currently existing on any portion of the lands to be sold. The qualified entity would assume all costs of the sales, including survey and administrative costs.

Proceeds from the sales directed by Titles I and II of the bill would be disbursed to the State of Nevada, Pershing County, and a special account in the U.S. Treasury for a number of specific purposes, including reimbursing costs associated with preparing sales, habitat conservation and restoration, and securing public access to Federal lands, among others.

Title III of S. 414 designates seven wilderness areas totaling approximately 136,600 acres. Of these lands, approximately 55,100 acres are within existing wilderness study areas (WSAs) and approximately 81,500 acres have not previously been identified as suitable for wilderness by

the BLM. Title III also releases approximately 48,600 acres from WSA status, allowing these areas to be managed according to the existing BLM land use plans. The Department notes that the lands proposed for wilderness designation by S. 414 generally serve as habitat for a diversity of plant and animal life and provide important opportunities for hiking, hunting, rock climbing, camping, horse packing, and other forms of outdoor recreation in the Nevada desert.

Only Congress can determine whether to designate WSAs as wilderness or to release them for other multiple uses. The WSAs included in the proposed wilderness designations have been pending final resolution by Congress since 1991.

As a matter of policy, the Department supports the completion of land exchanges and transfers that further the public interest, consolidate ownership of scattered tracts of land to make them more manageable, and advance public policy objectives. The Department strongly supports restoring full collaboration and coordination with local communities and making the Department a better neighbor.

In his confirmation hearing, Secretary Zinke stated to the Committee that he does not support the wide-scale sale or transfer of Federal lands. The Department has substantive as well as minor technical modifications to recommend, and we look forward to working with the sponsor and the Committee to resolve these issues. The Department appreciates the work of Senator Heller on S. 414 and his efforts to promote multiple uses and foster economic development on BLM lands in Nevada.

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 S. 414 as ordered reported.

