

Public Law 101-67
101st Congress

An Act

July 31, 1989
[H.R. 1485]Apex Project,
Nevada Land
Transfer and
Authorization
Act of 1989.

To direct the sale of certain lands in Clark County, Nevada, to meet national defense and other needs; to authorize the sale of certain other lands in Clark County, Nevada; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Apex Project, Nevada Land Transfer and Authorization Act of 1989".

SEC. 2. FINDINGS AND DEFINITIONS.

(a) FINDINGS.—Congress finds the following—

(1) The only two domestic producers of ammonium perchlorate ("AP"), a principal component of solid rocket fuel essential to the Nation's defense and space programs, are Pacific Engineering and Production Company, Incorporated ("Pepcon") and Kerr-McGee Chemical Corporation ("Kerr-McGee"), which established production facilities near the city of Henderson in Clark County, Nevada ("the county"). On May 4, 1988, an explosion destroyed the Pepcon plant, thereby substantially reducing the Nation's capacity to produce solid rocket fuel.

(2) A commission subsequently appointed by the Governor of Nevada to examine the adequacy of existing policies and regulations pertaining to the manufacture and storage of certain industrial materials has recommended new policies which imply the desirability of relocating both some of Kerr-McGee's AP production and storage facilities and also other industries to a less densely populated part of Clark County, but within reasonable distance of the present work force.

(3) The Department of Defense and the National Aeronautics and Space Administration have identified an urgent need to replace the domestic ammonium perchlorate production capacity lost in the Pepcon accident and to firm up existing production capabilities in order to meet current shortages and long-term requirements.

(4) The county has identified as the preferred site for the relocation of Kerr-McGee's AP facilities approximately thirty-seven hundred acres of land ("Kerr-McGee Site"), which is part of approximately twenty-one thousand acres of Federal lands, identified by the county as the "Apex Site", managed by the Bureau of Land Management ("BLM"). The county has advised the BLM it would like to purchase some or all of the lands comprising the Apex Site for development as a heavy-industry use zone, to locate potentially hazardous facilities. Orderly and appropriate development of such an industrial zone, in a manner consistent with public safety, protection of environmental and other values, and relevant State and Federal poli-

cies and programs (including the national defense) would be preferable to development of the lands comprising the Apex Site in an unplanned manner.

(5) The Federal lands comprising the Apex Site are presently classified for retention and multiple use by the applicable BLM land use plan. At the time the current land use plan was developed, disposal of large parcels of land immediately outside the Las Vegas Valley was not identified as a possibility. However, the expeditious transfer of the Kerr-McGee Site to Clark County for resale to Kerr-McGee, and transfer of necessary associated rights-of-way to the county, will serve an important national need which cannot be served as well on non-Federal land in Clark County and which outweighs other existing and potential public uses of the lands which would be served by maintaining them in Federal ownership.

(6) Kerr-McGee has prepared an environmental assessment on the proposed transfer of the Kerr-McGee Site and supporting utility and transportation rights-of-way, dated April 1989, entitled "Apex Nevada Land Transfer Proposal and Proposed Kerr-McGee Ammonium Perchlorate Facility", which identifies certain environmental impacts likely to result from the transfer of the site and supporting rights-of-way to the county which would be mitigated with various control measures. Any transfer by the United States of lands within the Apex Site should be conditioned upon provision of all measures appropriate to prevent or mitigate adverse environmental impacts.

(7) Lands within the Apex Site provide habitat for the desert tortoise. The BLM, recognizing that the desert tortoise habitat found in Nevada, and elsewhere, is being significantly affected, especially within the Mojave Desert, by the rapid development associated with industrial growth and by other human activities, has prepared a rangewide plan for desert tortoise habitat management on the public lands. The goal of this plan is to ensure that viable desert tortoise populations will continue to exist through cooperative resource management aimed at protecting the species and its habitat. The BLM's implementation of this plan should be accelerated.

(8) Lands within the Apex Site are close to Nellis Air Force Base and to public lands withdrawn for use by the Air Force as part of the Nellis Air Force Range complex. Nellis Air Force Base is the most active military airfield in the United States (with many of the aircraft using the base carrying live ordnance) and, together with the Nellis Air Force Range, constitutes a unique facility that plays a vital role in maintaining the combat capability of the Air Force's tactical units. Maintaining the capability of Nellis Air Force Base to fulfill its mission must be a central part of any decisions concerning future use or disposition of the lands within the Apex Site.

(b) **DEFINITIONS.**—As used in this Act, the following terms shall have the following meanings—

- (1) The term "Secretary" means the Secretary of the Interior.
- (2) The term "lands" means lands and interests therein.
- (3) The term "county" or "Clark County" means Clark County, Nevada.
- (4) The term "Kerr-McGee" means the Kerr-McGee Chemical Corporation.

(5) The term "BLM's Desert Tortoise Plan" means the plan entitled "Desert Tortoise Habitat Management on the Public Lands: A Rangewide Plan", approved November 14, 1988.

(6) All other terms shall have the same meaning as such terms have when used in the Federal Land Policy and Management Act of 1976.

SEC. 3. KERR-McGEE SITE TRANSFER.

(a) **DIRECTED SALE.**—Subject to all valid existing rights, the Secretary is directed to convey the public lands comprising approximately thirty-seven hundred acres designated as "Area 1" and "Area 2" within the "Kerr-McGee Site" on the map entitled "Apex Heavy-Industry Use Zone" dated May 1989, to Clark County, Nevada, solely for sale to Kerr-McGee, in return for payment of the lands' appraised fair market value, as determined by the Secretary in accordance with established appraisal practices. However, the lands within Area 1 shall not be conveyed unless and until the Secretary has received a written commitment from Clark County and Kerr-McGee that whichever is offered the opportunity to purchase the lands within Area 2 will do so at such lands' appraised fair market value when the lands are offered pursuant to subsection (c) of this section.

Utilities.
Transportation.

(b) **RIGHTS-OF-WAY.**—Subject to all valid existing rights, the Secretary is directed to grant utility and transportation rights-of-way to Clark County for the connection of existing electric power, water, natural gas, telephone, railroad and highway facilities to the Kerr-McGee Site, all as generally depicted on the map entitled "Rights-of-Way and Proposed Access and Utility Locations" dated May 1989. Each right-of-way shall not exceed two hundred feet in width and shall not preclude the Secretary from permitting other uses of the affected lands compatible with the uses for which such rights-of-way are granted. Clark County may permit other parties to use the lands covered by such rights-of-way for some or all of the purposes specified in this subsection.

(c) **TIMING, ETC.**—(1) Subject to subsections (a) and (b) of this section, the Secretary shall offer to sell to Clark County the lands within the Kerr-McGee Site depicted as Area 1 and shall offer to grant the rights-of-way described in subsection (b) of this section to Clark County within thirty days of the date of enactment of this Act, but the Secretary's duty to transfer such lands and rights-of-way shall not lapse if they are not offered to the county within the prescribed time. Such sale shall be for fair market value, as determined by the Secretary in accordance with established procedures of the BLM. If Clark County fails to purchase such lands within sixty days of receiving the Secretary's offer, the lands and rights-of-way shall be offered to Kerr-McGee for sale and grant on the same basis, and subject to Kerr-McGee's entering into an agreement with the Secretary similar to the agreement described in section 6(a). If within sixty days after such offer, Kerr-McGee fails to purchase such lands, the lands shall become subject to the authorization provided for in section 4 of this Act, and the total acreage authorized for disposition under this section shall be increased accordingly.

(2) If the lands within Area 1 are purchased pursuant to paragraph (1) of this subsection, upon completion of a survey of the boundaries of Area 2, the Secretary shall offer to sell to the purchaser of Area 1 the lands within Area 2 at their appraised fair

market value, as determined by the Secretary in accordance with established procedures of the BLM.

(3) Each right-of-way granted pursuant to this section shall be subject to rental payments and other conditions provided for in applicable law, including the Federal Land Policy and Management Act of 1976 and this Act. The amounts received by the United States from sales of lands covered by this section shall be distributed pursuant to laws generally applicable to sales of public lands.

SEC. 4. AUTHORIZATION FOR ADDITIONAL TRANSFERS.

(a) **SALE AUTHORIZED.**—Notwithstanding any BLM land use plan calling for retention of the Apex Site and notwithstanding the reporting requirements and competitive bidding requirements of section 203 of the Federal Land Policy and Management Act of 1976, the Secretary is authorized, subject to any other requirements of law, including the conditions of this section, to sell to Clark County some or all of the lands within the Apex Site, depicted on the map referred to in section 3(a), that lie outside the boundaries of the Kerr-McGee Site (as depicted on such map) for fair market value as determined by the Secretary in accordance with established appraisal procedures.

(b) **REQUIREMENTS AND CONDITIONS.**—If, no later than one year after the date of enactment of this Act, the county demonstrates to the satisfaction of the Secretary that the county has designated the lands comprising the Apex Site as a heavy-use industrial zone, pursuant to applicable laws of the State of Nevada, and has adopted a plan for the development of some or all of such lands accordingly, the Secretary shall offer to enter into a land sales agreement with Clark County for the transfer of some or all of such lands to the county by one or more direct sales pursuant to this section over a period not to exceed ten years. Such agreement shall provide for purchasers of parcels of the lands within the Apex Site, with any specific parcels to be sold to be determined by the Secretary, in response to proposals by the county and after consultation with the Secretary of the Air Force concerning any potential impact of any such sale on activities associated with Nellis Air Force Base. The purchase price for each parcel shall be its appraised fair market value at the time of the sale, but any agreement between the county and the Secretary under this section shall provide that if the county sells any such parcel or portion thereof, the county shall pay to the United States an amount equal to 50 per centum of the amount by which the amount received by the county exceeds 110 per centum of the sum equal to the total amounts expended by the county for acquisition of such parcel or portion thereof, for improvements to such parcel or portion thereof, and for preparation of such parcel or portion thereof for sale.

Contracts.

(c) **RIGHTS-OF-WAY.**—Pursuant to applicable law, the Secretary may grant Clark County such rights-of-way on public lands as may be necessary to support the development as a heavy-use industrial zone of some or all of the lands identified in subsection (a).

(d) **PROCEDURES.**—Except as specified in subsection (a) nothing in this section shall relieve the Secretary from compliance with all laws applicable either to the transfer of some or all of the lands identified in subsection (a) or to the granting of any rights-of-way, including, but not limited to, the National Environmental Policy Act of 1969. Unless otherwise specified in this Act, sales of lands pursuant to this section shall be made and patents or other docu-

Patents and
trademarks.

Minerals and
mining.
Energy.

ments of conveyance shall be issued as if such sales were made pursuant to the Federal Land Policy and Management Act of 1976.

(e) **WITHDRAWAL, ETC.**—(1) Subject to all valid existing rights, the lands within the Apex Site (depicted on the map referred to in section 3(a)) are hereby withdrawn from all forms of entry and appropriation under the public land laws, including the mining law, and from operation of the mineral leasing and geothermal leasing laws, but shall remain available for disposition under the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.) and for sale under this Act or other applicable law. This withdrawal shall continue in effect until a parcel of land affected by such withdrawal is sold, if such sale includes the right, title and interest of the United States in the minerals in such parcel. If the county or another party to whom such parcel is offered, elects not to seek to purchase the minerals in any such parcel, such parcel shall remain withdrawn from entry, location, or patent under the mining laws but after receipt by the Secretary of notification that the county or other offeree does not seek to purchase such minerals, such parcel shall be open to operation of the mineral leasing and geothermal leasing laws. The withdrawal made by this subsection shall continue for twelve years after the date of enactment of this Act or until otherwise provided by an Act of Congress enacted after the date of enactment of this Act.

(2) Before offering any parcel for sale pursuant to an agreement with the county under this section, the Secretary (in addition to other requirements of law) shall consider whether development of such parcel as part of a heavy-use industrial zone, including any appropriation mitigation measures, would be inconsistent with BLM's Desert Tortoise Plan.

Claims.

(f) **COGENERATION PROJECT.**—Notwithstanding any withdrawal of the Apex Site (depicted on the map referred to in section 3(a)), and subject to the provisions of applicable law, the Secretary may grant to holders of valid existing mill-site claims on such lands such rights-of-way as may be necessary for the construction, operation, and maintenance of facilities required in the cogeneration of electricity at the site of existing mill-site operations on such claims, unless and until the land subject to such claims is transferred out of Federal ownership. No such grant shall be made unless and until all environmental studies required in connection with such construction, operation, and maintenance have been completed and any necessary mitigation measures have been agreed to.

SEC. 5. RESERVATION OF RIGHT-OF-WAY CORRIDORS.

The transfer of lands pursuant to section 4 of this Act shall be subject to the reservation to the United States of the right-of-way corridors depicted on a map entitled "Right-of-Way Corridors Across the Apex Heavy Industrial Zone" dated May 1989. These corridors shall be administered by the Secretary, who may grant rights-of-way over, upon, under and through the corridors consistent with applicable law. In the administration of such corridors, the Secretary shall, so far as feasible, locate rights-of-way so as to have the least possible impact on any industrial uses. Nothing in this Act shall be construed as restricting the authority of the Secretary, under the Federal Land Policy and Management Act of 1976 or other applicable law, to reserve or grant any other rights-of-way with respect to such lands, in addition to the rights-of-way described on such map.

SEC. 6. ENVIRONMENTAL CONSIDERATIONS.

(a) **KERR-MCGEE SITE.**—The Secretary shall not make the conveyance directed by section 3 until Kerr-McGee and Clark County have entered into a written agreement with the Secretary whereby Kerr-McGee and the county commit to undertake the measures specified in the document identified in section 2(a)(6) in order to mitigate adverse effects on wildlife and other resources and values resulting from the use of such lands for industrial purposes. At the request of the Secretary, the Attorney General of the United States may bring an appropriate legal action to enforce such agreement.

Wildlife.

(b) **BLM REPORTS.**—(1) No later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report as to the funds and personnel required to fully implement BLM's Desert Tortoise Plan.

(2) As soon as possible after the date of enactment of this Act, the Secretary, acting through the Director of the Bureau of Land Management, shall arrange for a class-three soil survey of public lands in Clark County, to assist in the implementation in such county of BLM's Desert Tortoise Plan and other aspects of the management of the public lands in such county.

(3) As soon as possible after the date of enactment of this Act, the Secretary shall invite public proposals for the designation, pursuant to the Federal Land Policy and Management Act of 1976, of areas of critical environmental concern whose designation would further the implementation of BLM's Desert Tortoise Plan or otherwise assist in the protection of resources and values of public lands in Nevada. The Secretary shall provide a reasonable period for receipt of such proposals, shall evaluate all proposals received, and shall take such action thereon as the Secretary considers appropriate.

(4) As soon as possible after the date of enactment of this Act, the Secretary shall consider the desirability of restricting or eliminating uses of public lands in the Paiute Valley which may conflict with implementation of BLM's Desert Tortoise Plan with respect to those lands. No later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report concerning the results of the Secretary's actions pursuant to this paragraph.

(c) **OTHER REPORTS.**—(1) At the time that the President submits a budget request for fiscal year 1991, and annually thereafter for fifteen years, the Secretary shall submit to the Congress a statement of the total amounts received by the United States as the result of sales of public lands described in this Act, and an account of the distribution of such receipts.

(2) No later than ninety days after the date of enactment of this Act, the Secretary shall evaluate the desirability of acquisition of the lands specified in appendix A to the report of the Committee on Interior and Insular Affairs of the United States House of Representatives to accompany H.R. 1485 of the One Hundred First Congress (House Report 101-79). Such evaluation shall be based solely on the resources and values of such lands and the extent to which national policies and programs for management of such resources and values would be furthered by such acquisition.

Promptly after the completion of such evaluation, the Secretary shall report the results thereof to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, and the Representatives and Senators from the State of Nevada.

SEC. 7. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary shall file maps and legal descriptions of the lands identified in sections 3, 4, and 5 with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal descriptions. The maps and legal descriptions shall be on file and available to public inspection in the offices of the Director of the BLM.

Public
information.

Approved July 31, 1989.

LEGISLATIVE HISTORY—H.R. 1485:

HOUSE REPORTS: No. 101-79, Pt. 1 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 101-65 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 135 (1989):

June 20, considered and passed House.

July 14, considered and passed Senate, amended.

July 19, House concurred in Senate amendments.