

**Statement of
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Deputy Director, Operations
Bureau of Land Management, Department of the Interior
House Natural Resources Committee
Subcommittee on Federal Lands
H.R. 1815, Eastern Nevada Land Implementation Improvement Act
November 4, 2015**

Thank you for the opportunity to present the views of the Department of the Interior on H.R. 1815, the Eastern Nevada Land Implementation Improvement Act. H.R. 1815 authorizes funding for the development and implementation of multi-jurisdictional hazardous fuels reduction projects and wildfire prevention planning (particularly for pinyon and juniper dominated landscapes) and other habitat enhancement projects through the Lincoln County Land Act of 2000 (LCLA) and the Lincoln County Conservation, Recreation, and Development Act of 2004 (LCCRDA). H.R. 1815 also adjusts the boundaries of several wilderness areas on land managed by the U.S. Forest Service (USFS) and authorizes funding for the development and implementation of a fish and wildlife species conservation plan for the Virgin River in Clark County, Nevada, through the Southern Nevada Public Land Management Act of 1998 (SNPLMA).

The Bureau of Land Management (BLM) appreciates the positive impacts LCLA and LCCRDA have had on land management in Lincoln County. The BLM supports many of the goals of H.R. 1815, and we look forward to working with the bill's sponsor and the Subcommittee on the concerns discussed below and on the continued implementation of LCLA and LCCRDA. The BLM defers to the USFS on provisions exclusively affecting land managed by the USFS.

Background

The Lincoln County Land Act of 2000 (LCLA, P.L. 106-298) provides for the disposal of 13,500 acres of public land in Lincoln County, Nevada, with the proceeds paid to the State of Nevada (5%), Lincoln County (10%) and a special account in the U.S. Treasury (85%). Under the LCLA, the Secretary of the Interior can expend revenue held in the special account on archaeological resources activities; development of a Multi-Species Habitat Conservation Plan (MSHCP) in the County; acquisition of environmentally sensitive lands; and reimbursement of costs associated with land sales preparation and processing public land use authorizations as well as rights-of-way stemming from the development of the conveyed lands.

The Lincoln County Conservation, Recreation, and Development Act of 2004 (LCCRDA, P.L. 108-424) provides for the disposal of up to 90,000 acres of public land in Lincoln County, Nevada, with the proceeds paid to the State of Nevada (5%), Lincoln County (10%) and a special account in the U.S. Treasury (85%). Under the LCCRDA, the Secretary of the Interior can expend revenue from the special account on archeological resources activities; reimbursement of costs associated with preparing land sales; development and implementation of the Lincoln County MSHCP; processing and implementing the Silver State Off-Highway Vehicle (OHV) Trail management plan; and costs related to enforcement of designated wilderness areas.

The land sales authorized by the LCLA were completed in 2005 and grossed over \$47 million. About \$30 million currently remains in the LCLA Federal special account. The initial land sale under the LCCRDA took place in 2014, and direct land sales and fair market payments for right-of-way relinquishment under this Act have grossed over \$7 million to date. The current LCCRDA Federal special account balance is approximately \$6.5 million. To guide the expenditures over the next 10 years and ensure the long-term stability of the program, the BLM, in consultation with the County, developed the “Lincoln County Business Plan” in January 2013, which identifies the priorities for the LCLA and LCCRDA Federal special accounts. To date, the BLM has used the funds to acquire sensitive lands for conservation, to complete development of the MSHCP, and to finalize management plans for wilderness areas and the Silver State OHV trail. The BLM has also undertaken archeological inventories on over 50,000 acres with the funding. Additional land sales under the LCCRDA have been identified for 2016 and 2017, in coordination with the County. These Acts have been instrumental in providing valuable resources for both Lincoln County and the BLM.

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Facilitation of Pinyon-Juniper Related Projects (Section 2)

H.R. 1815 amends the Lincoln County Land Act of 2000 (LCLA) and the Lincoln County Conservation, Recreation, and Development Act of 2004 (LCCRDA) to allow funding from the Federal special accounts for those Acts to be used for hazardous fuels reduction projects and wildfire prevention planning (particularly in pinyon and juniper dominated landscapes) and other habitat enhancement projects. H.R. 1815 will allow LCLA funding to be used for implementation of the Lincoln County MSHCP. The bill would waive cost-recovery fees for processing of Lincoln County local or regional government right-of-way applications and allow the County to use proceeds of the Acts for the Lincoln County Regional Development Authority. Under the bill, the Secretary would be required to establish cooperative agreements for law enforcement and planning activities for wilderness, cultural resources management, and land disposal and related land-use authorizations under the Acts, as well as for the Silver State OHV Trail designated by the LCCRDA. Finally, the bill amends the land withdrawal in the LCCRDA for a utility corridor.

The BLM shares the sponsor’s strong interest in developing and implementing hazardous fuels reduction projects and wildfire prevention planning and other habitat enhancement projects. In particular, the BLM supports the sponsor’s goal of treating rangelands that are seeing incredible rates of encroachment from pinyon and juniper trees. The BLM’s Ely District Resource Management Plan identifies treatment for more than 700,000 acres of pinyon and juniper woodlands – projects that could improve habitat for the Greater Sage-Grouse and other sagebrush dependent wildlife species, provide opportunities to establish native vegetation, and reduce the risks of resource damage from catastrophic wildfires. However, these projects should be planned and implemented with the input and advice of wildlife biologists with particular expertise in Greater Sage-Grouse conservation. In addition, given the importance of the pinyon pine to a number of the Native American tribes in the region, we would also encourage consultation with them in areas of cultural importance prior to implementing any land treatments to remove pinyon and juniper in this area.

The BLM also encourages Congress to consider whether the LCLA and LCCRDA Federal special accounts are the appropriate mechanisms to support these projects. The LCLA and LCCRDA have been instrumental in providing for community growth while protecting public land resources. For example, funding under LCLA and LCCRDA has supported the identification and recording of oral histories and place making practices of Numic-speaking peoples at sites in the Mormon Mountains; the archaeological inventory of 33,000 acres within the Mount Irish, Pahroc Rock Art, and Shooting Gallery Areas of Critical Environmental Concern (ACEC); and the survey and conditions assessment of 10 locations with Rock Art Habitation Sites.

The BLM acknowledges the careful consideration of the Congress, in close coordination with local governments and stakeholders, in establishing the current uses of the LCLA and LCCRDA funding. The BLM has worked closely with the County to prioritize implementation of the provisions of the Acts, and the Lincoln County Business Plan carefully lays out these funding priorities over the next 10 years. Longer-term funding also is envisioned for continued implementation of conservation projects, protection of archaeological resources, and support for future land sales to provide for the County's economic growth.

The BLM works closely with the County on projects related to these Acts and has existing authorities to utilize cooperative agreements under the Federal Land Policy and Management Act (FLPMA) similar to the provisions (Sec. 2[a]) in H.R. 1815 requiring cooperative agreements for law enforcement and planning. The BLM opposes these redundant authorities. The BLM also opposes the waiver of cost recovery and right-of-way processing fees provisions (Sec. 2[a]). Under FLPMA and the BLM's Regulations (43 CFR Subpart 2805), project proponents pay for costs associated with processing right-of-way applications; these waiver of fee provisions could set an unfavorable precedent and have unintended budgetary impacts. Finally, the BLM supports the provision (Sec. 2[c]) of the bill, amending the withdrawn lands, and we appreciate the sponsor's work to address concerns raised by the BLM on bills with similar goals to ensure that the entirety of the unused land is released from the corridor withdrawal.

Wilderness Boundary Adjustments (Section 3)

The BLM defers to the U.S. Forest Service on the bill's proposed adjustments to the boundaries of the Forest Service-managed Mt. Moriah, High Schells, and Arc Dome Wildernesses.

Implementation of Conservation Plan for Virgin River (Section 4)

H.R. 1815 (Section 4) would permit the U.S. Fish and Wildlife Service (FWS) to utilize identified funding managed under SNPLMA to implement, as well as develop, a conservation plan for fish and wildlife species associated with the Virgin River in Clark County, Nevada. The FWS has been working cooperatively with the BLM in the development of the habitat conservation plan for the Virgin River.

Conclusion

The BLM looks forward to working with the sponsor and the Subcommittee to further the various land management goals in Lincoln County. Thank you for the opportunity to testify on these important issues. I would be happy to answer any questions.

**Statement of
Steve Ellis
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Department of the Interior
H.R. 3342, Ownership of Certain Land in Louisiana
November 4, 2015**

The Department of the Interior appreciates the opportunity to present testimony on H.R. 3342, which seeks to address potential conflicts in land ownership around Lake Bistineau in Louisiana, including Peggys and Hog Islands. H.R. 3342 would void the existing Federal survey approved in 1969 for these lands, and nullify the legal effect of any future survey or resurvey as to the title and boundaries of the affected lands. The Department of the Interior supports the goal of resolving potential land ownership conflicts, but opposes the nullification of any past or future Federal surveys. We look forward to working with the Sponsor and Members of the Committee on this issue.

Federal Survey Authority

The Public Land Ordinance of 1785 provided original authority for public land surveys and the mechanism for the sale and transfer of public domain lands. The Bureau of Land Management (BLM) has the authority to examine the correctness of public surveys and to execute supplemental surveys of areas which were omitted from an original survey. The BLM also has the authority to correct surveys of public lands when appropriate. In the past there have been cases where considerable areas of land bordering surveyed bodies of water have been left out of the original survey.

Lake Bistineau Boundary

Lake Bistineau is located in Bienville, Bossier, and Webster Parishes in Louisiana. It is one of several “raft lakes” formed when the Red River became blocked by an accumulation of trees and other debris, called “the Great Raft,” prior to Louisiana statehood in 1812. The debris was removed in 1845, causing Lake Bistineau to drain. Shortly thereafter, a dam was built which recreated an artificial lake over much of the original lake bed. This lake is in place today.

Boundaries along water bodies are called riparian boundaries, which typically extend to the actual water and change with the water level. However, in the case of Lake Bistineau, the boundary line does not move with the water, because many of the changes that occurred over time occurred unnaturally, such as the physical removal of raft material in 1845.

In 1838, the General Land Office (GLO) conducted the original subdivision survey of the township which includes a portion of the boundary of Lake Bistineau. This survey was officially approved in 1842. In 1967, the BLM received a Color-of-Title Application (process described in further detail below) for lands located outside of the original 1838 survey line in section 30. As a result, the BLM issued special instructions calling for the examination and survey of lands bordering Lake Bistineau. After this review, the BLM determined that a considerable area of land had been erroneously omitted from the original survey in 1838. These “omitted lands,” which accounted for nearly 230 acres, were identified, surveyed, and platted as public lands, pending completion of a public comment period and official approval of the changes. The BLM

estimates that mineral resource value for portions of the omitted lands exceeds \$10 million.

On February 26, 1969, the BLM provided an opportunity for public engagement by publishing a notice of the plat filing in the *Federal Register*. The BLM also sent notice letters to several local and State entities and to individuals, including the original claimant. The BLM did not receive any protests or comments during the public notification period. On March 31, 1969, the resurvey and extension to the 1838 survey line was officially filed.

Under the U.S. Constitution's Equal Footing Doctrine, states receive title to the submerged lands under navigable water bodies at statehood. The Supreme Court has ruled that navigable bodies of water are those that are "used in their natural and ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of travel and travel on water." Lake Bistineau is considered a navigable water body, and therefore the boundary between state lands and the upland owners is fixed at a specific elevation line determined by official federal surveys.

In 1901, the state of Louisiana conveyed the omitted lands to Bossier Levee District, and the levee district subsequently conveyed the lands to private individuals. Since the state did not own these lands when it issued the deed to the levee district, a title conflict between those who hold title through the State and the United States was created. In recent years, private land holders have raised concerns about this situation, which is further complicated by active oil and gas production in and around the area.

In 2013, the BLM responded to a request for information regarding the status of the lands in this area from several of the individuals holding a title derived from the 1901 deed from the State. The BLM responded with an informational letter containing a brief summary of general laws and information contained in the BLM records. Three land holders filed an appeal with the Interior Board of Land Appeals (IBLA) based on the letter. On September 9, 2014, the IBLA dismissed the appeal on the basis that the letter was not a formal decision but rather a summary of the information contained in the BLM records. The appellants filed for reconsideration, and the IBLA issued an order upholding the dismissal on February 4, 2015.

Public Land Disposal Authority

A variety of statutes provide the BLM the authorities necessary to address issues and disputes in land ownership. Under the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM is authorized to transfer or dispose of lands that have been identified as potentially suitable for disposal in an approved land use plan or through an amendment to an existing plan. Through these authorities, the BLM has been able to effectively manage and resolve many land use conflicts.

The Color-of-Title Act provides a unique mechanism to resolve certain private party claims on public land which may be applicable to issues in the Lake Bistineau area. Any individual, group, or corporation who presents evidence of having title, such as a deed derived from a non-Federal source, to public lands may file a color-of-title claim with the BLM. Accepted filings grant the applicant a patent conveying clear title to the lands upon payment of a fair and reasonable sale price which reflects the current market value of the lands, but may be discounted to account for improvements made on the land or previous property taxes paid. The obligation to establish a

valid color-of-title claim is upon the claimant and the BLM has worked with private land holders in the Lake Bistineau area to pursue color-of-title opportunities. The BLM is interested in further discussions with those who hold title through the State to identify ways to streamline the color-of-title process wherever possible to minimize time and cost.

H.R. 3342

H.R. 3342 would void the 1969 Federal survey of certain lands in and around Lake Bistineau. The bill would also nullify the legal effect of any future survey or resurvey related to the title and boundaries of the affected lands.

The Department shares the goal of providing legal certainty to those who hold title through the State in the approximately 230 acres covered by the bill. However, the Department strongly opposes the voiding or nullification of any past or future Federal surveys. We cannot support H.R. 3342 as currently written because the bill divests the BLM of its responsibilities as the surveyor of record in this area, potentially calling into question the validity of other Federal decisions that are based on pre-existing surveys, including color-of-title patents, mineral rights, and the associated prior rights established by these decisions.

The Department is also concerned that the bill could transfer Federal lands and mineral estate out of Federal ownership without adequate demonstration of private ownership or appropriate compensation to U.S. taxpayers. The Department and the BLM recognize the importance of identifying the status of the lands bordering Lake Bistineau, as well as Peggys and Hog Islands, and would like to have further discussions with the Sponsor and Committee on ways to facilitate the resolution of this title conflict.

Conclusion

Thank you for the opportunity to testify on H.R. 3342. I will be glad to answer any questions.