

Committee on Resources

Subcommittee on National Parks and Public Lands

Witness Statement

STATEMENT OF JACQUELINE LOWEY, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE REOURCES SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS CONCERNING

H.R. 20, A BILL TO AUTHORIZE THE SECRETARY TO CONSTRUCT AND OPERATE A VISITOR CENTER FOR THE UPPER DELAWARE SCENIC AND RECREATIONAL RIVER ON LAND OWNED BY THE STATE OF NEW YORK.

JULY 13, 1999

Mr. Chairman, thank you for the opportunity to appear before the subcommittee to present the views of the Department of the Interior on H.R. 20, the "Upper Delaware Scenic and Recreational River Mongaup Visitor Center Act of 1999." This bill would authorize the construction and operation of a National Park Service visitor information center on lands owned by the State of New York located along New York State Route 97, within the southern boundary of the Upper Delaware Scenic and Recreational River.

The Department supports enactment of this legislation. On April 30 of this year the Administration transmitted to Congress a similar proposal and recommended its enactment.

The Upper Delaware Scenic and Recreational River was authorized as a National Wild and Scenic River and unit of the National Park System in 1978. Unlike most units of the National Park System, federal land acquisition was strictly limited by the unit's enabling legislation. As a result, the Upper Delaware Scenic and Recreational River is administered through a carefully balanced partnership among federal, state and local governments. Management of the valley's land-based resources is dependent on local and state land use controls. The National Park Service was assigned the primary responsibility of managing the recreational use on the river, along with some nationally significant historic properties: Roebling's Delaware Aqueduct and the home of western novelist Zane Grey.

The Upper Delaware attracts thousands of visitors from the New York City/New Jersey metropolitan area each year to enjoy river recreational activities like canoeing, rafting, tubing and fishing, as well as sightseeing. Consequently, a major industry of recreation service providers, i.e. canoe liveries and fishing guides, has evolved. The Upper Delaware's natural resources and scenic values have drawn tourists for generations, and today numerous youth camps, including the largest Boy Scout reservation in the Eastern United States, still thrive within or near the park.

A river management plan was prepared for the Upper Delaware Scenic and Recreational River in November 1986. The plan specifically calls for the National Park Service to build and operate a visitor facility in the Mongaup area. This is a significant obligation, given the limited acquisition authority, coupled with the partnership commitment by the federal government on the Upper Delaware, as defined in the approved Final River Management Plan.

Currently no public facility exists to provide visitors an orientation as they enter this unit of the National Park System. Despite interim program measures, most first-time, as well as many repeat visitors to the Upper Delaware are not aware of its federal designation and significance, or understand the limitations regarding public access and facilities within its boundary. The purpose of the proposed visitor center would be to orient visitors to public facilities and programs, commercially operated services within the river corridor, information on river safety, and laws concerning private property. Basic visitor services like restrooms, telephones and area maps would be provided, as well as information on accommodations, campgrounds, canoe rentals, and other locally provided services. The center would serve as the park's primary visitor contact facility from which educational programs would be offered on the region's natural and cultural history.

The strategic location for the Mongaup Visitor Center could attract the majority of the Upper Delaware's approximately 300,000 annual visitors, as well as countless sightseers who drive along scenic Route 97. The center would provide a timely opportunity to emphasize critical information regarding the unique partnership approach employed on the Upper Delaware, where the majority of the land within the legislated boundary is privately owned. Visitors would be provided information on private landowner concerns, the locations of public facilities, and the safety rules for recreating on the river, before they travel further into the river corridor thus benefiting visitors and valley residents alike.

The proposed site is located on a 55-acre tract of undeveloped land within a region that reputedly hosts the largest wintering population of American Bald Eagles in the northeastern United States. By a special act of the New York State legislature in 1993, New York's Department of Environmental Conservation was authorized to enter into a 99-year lease with the National Park Service "...upon approval and appropriation of funds for the visitor interpretive center by the Congress of the United States." The visitor center would not exceed the 10,000 square feet or two-story height specified by New York State, and would include exhibits designed to educate the public about the biology of the American Bald Eagle. This would be a year-round facility, with extended hours during the peak summer months of June, July and August.

In the 21 years since Congress established the Upper Delaware Scenic and Recreational River, the National Park Service has carried out an interim program of visitor services without a visitor center, or other primary point of contact for the visiting public. This bill would enable the National Park Service to fulfill its obligation to construct and operate the Mongaup Visitor Center and ensure the level and quality of service expected from an established unit of the National Park System. Without a central facility as proposed in H.R. 20, the ability of the National Park Service to carry out its role and responsibility, as outlined in the approved River Management Plan, with regard to resource protection and public education, cannot be fully realized.

This completes my prepared statement. I will be happy to answer any questions that you or the other subcommittee members may have regarding H.R. 20.

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STATEMENT OF MS. JACQUELINE LOWEY, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS, COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES, CONCERNING H.R. 748, A BILL TO AMEND THE ACT THAT ESTABLISHED THE KEWEENAW NATIONAL HISTORICAL PARK TO REQUIRE THE SECRETARY OF THE INTERIOR TO CONSIDER NOMINEES OF VARIOUS LOCAL INTERESTS IN APPOINTING MEMBERS OF THE KEWEENAW NATIONAL HISTORICAL PARKS ADVISORY COMMISSION.

July 13, 1999

Mr. Chairman, it is a pleasure to appear before the Subcommittee today to present the Department's views on H.R. 748, a bill to amend the Act that established the Keweenaw National Historical Park to require the Secretary of the Interior to consider nominees of various local interests in appointing members of the Keweenaw National Historical Parks Advisory Commission.

This legislation is similar to a proposal sent to Congress by the Administration on March 4, 1999. However, H.R. 748 also includes a provision, subsection (b), not included in the Administration's proposal, which would require the Secretary to provide a written explanation as to why a state or local nominee is not appointed. This provision is an unnecessary restriction on the Secretary's authority to make appointments under the Appointment Clause of the U.S. Constitution. The Department, therefore, would support H.R. 748, if section 1(b) is deleted.

Keweenaw National Historical Park was established on October 27, 1992, to assure the preservation of the oldest and largest lava flow known on earth located on the Keweenaw Peninsula in Michigan. This volcanic activity produced the only place in the world where large-scale economically recoverable, 97- percent, pure native copper is found.

The Keweenaw Peninsula is believed to be the only known site in the country where prehistoric aboriginal mining of copper occurred. Artifacts made from this copper by ancient Indians were traded as far south as present day Alabama. Copper mining on the Keweenaw Peninsula pioneered deep shaft, hard rock mining, milling, and smelting techniques and advancements in related mining technologies used throughout the world.

Given the important historical significance of the site to the county and the local community, the originating legislation called for the establishment of the Keweenaw National Historical Park Advisory Commission. Although the Commission was labelled "advisory", the originating legislation granted significant federal powers to the Commission. As a result, the existing statute raises constitutional concerns by directing the Secretary of the Interior to appoint as commissioners those people nominated by state and local officials. The U.S. Department of Justice has expressed its opinion that this procedure does not satisfy the requirements imposed by the Appointments Clause (U.S. Constitution, Article II, Section 2, clause 2) for appointments of federal officers. Accordingly, former President George Bush signed the existing law on the express understanding that the commission would serve only in an advisory capacity and would not exercise executive authority. H.R. 748 would eliminate the need for this limiting construction of the commission's duties and will facilitate the appointment of the Keweenaw National Historical Park Advisory Commission.

However, as I have indicated, the Department does oppose the provision, in subsection (b), that if the Secretary does not choose to appoint to the commission somebody proposed by a state or local government, he must submit an explanation to the Congress and no later than 30 days before the effective date of the appointment. We believe this would be an inappropriate constraint on the Secretary's appointment authority. There are many instances where a law requires the Secretary to consider state or local nominees before making appointments, without the additional constraint that would be provided by subsection (b), and the process has worked well. We believe we should follow

those models here.

Mr. Chairman, thank you for the opportunity to share with the Subcommittee the Department's position on H.R. 748. This concludes my formal remarks. I will be pleased to answer any questions you or other members of the subcommittee may have.

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STATEMENT OF MS. JACQUELINE LOWEY, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS, COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES, CONCERNING H.R. 1695, THE IVANPAH VALLEY AIRPORT PUBLIC LANDS TRANSFER ACT.

July 13, 1999

Mr. Chairman, I am pleased to be here today before the subcommittee to present the department's views on H.R. 1695, a bill to provide for the conveyance of certain federal public lands in the Ivanpah Valley, Nevada, to Clark County, Nevada, for the development of an airport facility, and for other purposes.

The Department cannot support this bill as currently written as it provides for a mandatory conveyance of public lands circumventing existing statutory requirements for land use planning and sale of public lands. This change creates a poor precedent and restricts our ability to adequately evaluate the effects of this transfer on the affected public lands and the natural and cultural resources located therein. Further, it prevents any meaningful evaluation of alternative sites for the airport facility. These are exactly the kind of issues that are appropriately examined in a thorough environmental analysis and through the planning process. Unfortunately, the legislation appears to waive that analysis. The department believes that the preparation of an environmental impact statement (EIS) is mandatory before any land conveyances occur. An EIS would not only document the impact of any airport, but would examine alternative sites to determine if a more suitable location for the airport and its accompanying infrastructure can be found. The EIS process would also allow for public input into the decision on siting of the airport. Unfortunately, the public involvement called for in the Federal Land Policy and Management Act (FLPMA) is eliminated in this legislation.

H.R. 1695 would direct the Secretary of the Interior to convey parcels of land to Clark County, Nevada, for the purpose of establishing an airport facility and related infrastructure. The proposed lands are along Interstate 15 between Jean and Primm, Nevada, and are approximately ten miles north of the Mojave National Preserve's boundary. Due to prevailing winds from the south, the airport proposal provides only for a north-south runway, which would mean that departing planes would typically fly over the northern portion of the preserve.

The Mojave National Preserve was created in October 1994, under the California Desert Protection Act. The act was established to protect one of the most diverse desert environments in the world. Creosote bushes, pinyon pines, juniper woodlands, sand dunes, volcanic cinder cones, Joshua tree forests, vast vistas and mile-high mountains can all be found within the Mojave Desert. Visitors to the Mojave National Preserve come to enjoy the wild splendors of the rugged, isolated solitude of the desert, and to sightsee, hike, and camp among the fascinating flora and fauna.

Thus, the National Park Service is deeply concerned with the potential effects the proposed airport would have on the Mojave National Preserve's resources and visitor experience, especially in several wilderness areas. The proposed airport is envisioned to be a cargo airport with major warehousing facilities. Large, low- flying jet aircraft would be a significant intrusion on a visitor's solitude and enjoyment of the quiet desert environment that is currently available. Few aircraft now fly over the preserve and commercial aircraft are normally at cruising altitudes and barely visible. While there are occasional military flights through the preserve, they do not have the enormous impact on park resources and visitors that regular overflights of departing or approaching jets would have.

There are real concerns that jets departing at regular intervals would adversely impact the nearby desert bighorn sheep in the wilderness of Clark Mountain. The desert bighorn sheep is one of the most distinctive and easily recognized desert animals and is generally found in isolated areas of the desert ranges. There is research that shows that repeated jet noise at regular intervals can increase stress in animals and potentially have long-term effects on their reproduction

and ability to detect and escape predators.

Another desert animal that could be impacted by the noise generated by a proposed airport is the threatened desert tortoise. This long-lived reptile was listed as a threatened species by the U.S. Fish and Wildlife Service in 1992, and continues to face threats to its survival. Ivanpah Valley is designated critical habitat for the desert tortoise, whose populations have declined dramatically over the last twenty years. Increased urban development has fragmented and reduced suitable habitat. Studies and recovery efforts are ongoing to help protect and preserve this threatened species.

The scientific community is only beginning to investigate and understand how animal species like the tortoise, bighorn, and insects communicate. They have already observed that jet noise can disrupt communication of spadefoot toads, creating opportunities for increased predation.

Another potentially significant impact to the Mojave National Preserve from the proposed airport is the deterioration of the natural quiet and the current night sky darkness that visitors enjoy at the park. Light pollution is becoming a recognized problem to many rural and rustic areas, such as the Mojave Desert. Currently, opportunities to enjoy natural quiet and the natural darkness of the nighttime are being slowly impacted by development at Primm and Laughlin. A nearby airport with runway lights, tower lights, and other lighting requirements would adversely change the dark night landscape and quiet character of the Mojave National Preserve.

BLM has expressed concerns that there may be potential hydrologic complications due to the proposed location of an airport on a dry lakebed. This lakebed floods periodically and displaced waters could affect other development in the area. Off-site issues that need to be examined include the potential effects from ancillary facilities needed to support the construction and operations of the airport, as well as the impact on natural resources in the area, including the endangered species, and cultural resources.

We note that, in its latest assessment of the Nation's projected airport needs, called the National Plan of Integrated Airport Systems (NPIAS), the FAA has identified a need in the future for a new airport to serve the Las Vegas area. Nonetheless, this issue, as well as others that we note today, are appropriately examined in a thorough environmental analysis and through the planning process already in place for new airport site selection. Unfortunately, the legislation appears to waive that analysis.

In addition to the concerns of the National Park Service, the Bureau of Land Management (BLM) has four major concerns with the proposed legislation that we ask the committee to consider:

- Resource conflicts;
- Compliance with NEPA, FLPMA, and other environmental laws, including the Endangered Species Act and the Historic Preservation Act;
- Agency costs associated with the transfer; and,
- Fair market value determination.

As the BLM testified before this subcommittee last year, the passage of this bill will create conflicts with current uses and resources of these lands. These lands have not been identified for disposal through existing land use plans because of those uses and resources. As mentioned previously, the threatened desert tortoise is indigenous to the area. The area also supports a number of recreational pursuits including off-highway vehicle use, and it encompasses a Special Recreation Management Area within the boundary of the proposed land transfer. Two mining claims encumber the land and the area is the location of two state of Nevada mineral materials permits issued by BLM for road maintenance gravel.

There are a number of costs associated with implementation of the bill, including land and resource surveys, appraisals, and land transfer patent expenses. Because the transfer benefits Clark County, the bill should specify either that Clark County should absorb these costs or that the funds described in section 2(d)(2) could be used for all administrative costs associated with the transfer.

The legislation specifies (section 2(d)(3)) that fair market value should be paid by Clark County for the federal land, but that the value determined based on the land "in its unimproved state and shall not reflect any enhancement in value to the parcel based upon the existence or planned construction of infrastructure..." This, in fact, does not represent the fair market value of the lands and raises potentially serious concerns. We would urge the subcommittee to address this, either by deleting the provision or by requiring that should these lands later be sold, leased or otherwise conveyed by Clark County, the difference between what the County paid and the price it later receives should be remitted to the federal account specified in section 2(d)(2). This is consistent with language in section 4(g)(4) of Public Law 105-263, the Southern Nevada Public Land Management Act of 1998. The American people need to know that their assets are being protected and that any financial gain benefits the public.

Section 203 of the FLPMA requires that the government, when contemplating the sale of public land, consider whether the sale would "serve an important public objectives, ... which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objective and values..." This legislation waives that very important analysis. We think that this is a mistake.

Because of the large number of concerns raised by the National Park Service and the Bureau of Land Management, the department believes it is critical that a decision on siting of this airport be made only after compliance with all requirements of the Federal Land Policy and Management Act and the National Environmental Policy Act. Additionally, the BLM would like the opportunity to address and potentially resolve more minor concerns with the bill, and is prepared to work with your staff to do so.

Mr. Chairman, thank you for the opportunity to share with the subcommittee the department's position on H.R. 1695. This concludes my formal remarks. I will be pleased to answer any question you or other members of the subcommittee may have.

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