

**STATEMENT OF U.S. DEPARTMENT OF THE INTERIOR
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AND MINERALS MANAGEMENT and
DONALD BARRY, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND
PARKS**

**HEARING BEFORE
SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE**

APRIL 13, 1999

Thank you for the opportunity to testify about the role of the Department of the Interior in the renewal of the six major range withdrawals established by the Military Lands Withdrawal Act of 1986 (Public Law 99-606.) I am Sylvia Baca, Acting Assistant Secretary for Land and Minerals Management at the Department of the Interior. With me at the table is Don Barry, Assistant Secretary for Fish and Wildlife and Parks.

Let me state at the outset that we recognize and support the needs of the Department of Defense and the respective military services for the continued use of these withdrawn lands to meet vital military training and readiness objectives. We are committed to working cooperatively and collaboratively to produce consensus based legislation which supports those needs while simultaneously addressing our stewardship responsibilities.

You will hear testimony today from the Defense Department and the military services about their application to use public lands for military purposes. In our testimony, Assistant Secretary Barry and I hope to give you a fuller understanding of the nature and character of the public lands

withdrawn under P.L.99-606. I will address the public land withdrawal responsibilities of the Bureau of Land Management (BLM) and describe some of the natural and cultural resources on the withdrawn public lands managed by the BLM. Withdrawals related to National Wildlife Refuge lands raise a distinct set of issues which Assistant Secretary Don Barry will address.

P.L.99-606 withdrew from public use, until November 2001, approximately 7.2 million acres of public lands for the military to use for training and weapons testing. P.L.99-606 concerns the following six ranges located in four states, and requires congressional action to renew or extend the withdrawals beyond November 2001:

- Alaska, 869,851 acres for the Army's Ft. Wainwright and Fort Greely;
- Arizona, 2.6 million acres for the Barry M. Goldwater Air Force Range;
- New Mexico, 608,385 acres for the Army's McGregor Range; and
- Nevada, 3,038,698 acres for Nellis Air Force Range and 21,577 acres for the Bravo-20 Bombing Range at Naval Air Station Fallon.

Although the P.L.99-606 withdrawals will not expire for another 2-1/2 years, the Interior Department and the Defense agencies have committed to submit consensus-based legislation to renew these withdrawals before the end of the first session of the 106th Congress.

Despite the best efforts of the Interior Department and the Defense agencies to reach consensus and resolve policy issues, some withdrawal renewals are likely to generate controversy.

For example, the Otero Mesa/Foothills Mountains portion of the McGregor Range is currently used by hunters, recreationists, and livestock operators under the terms of the BLM's Resource Management Plan and the Memorandum of Understanding with Fort Bliss. The Interior agencies are working closely with the installation to address public concerns about the impact of the McGregor Range renewal on current multiple users.

Interior Department's Public Land Withdrawal Responsibilities

In the present context, the phrase "withdrawal of public lands" means the withdrawal of those lands from the application of the public land laws to permit the reservation of the lands for a specific Federal government purpose, in this case, national defense. Although the lands continue to be owned by the United States, and in the absence of the withdrawal would be managed for multiple uses by the Department of the Interior, lands withdrawn by P.L. 99-606 are not available for settlement, sale, lease, mineral location or entry under the public land laws. Military use is predominant, although the lands may be available for grazing, recreation, and other activities. The terms and conditions under which non-military parties may use the land during the period of the withdrawal are usually addressed in a Memorandum of Understanding between the installation commander and the BLM state office.

Four key laws guide the present withdrawal process:

- Engle Act of 1958: requires Congressional authorization for withdrawals of public land in excess of 5,000 or more acres for military purposes;

- National Environmental Policy Act of 1969 (NEPA): requires an analysis of the environmental impacts of a proposed major federal action and provides for public participation in this analysis;
- Federal Land Policy and Management Act of 1976 (FLPMA): establishes requirements and procedures for future withdrawals of public lands and for extension of existing withdrawals. The withdrawal actions are authorized under section 204 [43USC1714].
- Endangered Species Act of 1973 (ESA): requires federal agencies (including the military) to consult with the Fish and Wildlife Service (FWS) prior to implementing proposed actions that could adversely affect threatened or endangered species;

In addition, P.L.99-606 (sec. 5) requires the military services to prepare a draft environmental impact statement consistent with the National Environmental Policy Act and submit an application to the Interior Department to extend or renew the withdrawals (sec. 8).

Status of legislative proposal to renew P.L.99-606 withdrawals

The process for renewal of the P.L.99-606 withdrawals (as depicted in the attached graphic) started in 1994 when the military services at each installation began the work required to produce a draft Environmental Impact Statement on each renewal. After public review and comment, each military installation will submit a final legislative environmental impact statement, an associated withdrawal application, and recommendations for legislation to the BLM State Director for the state in which the installation is located.

At present, final legislative environmental impact statements are available for the following installations: Bravo 20 (NV), Nellis (NV) and Goldwater (AZ). The BLM has not received final Environmental Impact Statements for Fort Greely/Wainwright (AK) and McGregor Range (NM).

Pursuant to the Engle Act and FLPMA, the BLM cannot proceed with its statutorily mandated review process for a particular installation before receiving a final Environmental Impact Statement from the service in charge of that installation. I am confident that we are proceeding on schedule to transmit to Congress a mutually agreeable legislative renewal package before the close of this session, in time to insure that the renewals can be approved before their expiration.

After review of the withdrawal application packages, the respective BLM State Directors will forward findings and recommendations to the BLM Director in Washington who, in turn, will forward findings and recommendations to my office. When both my office and the office of the Assistant Secretary for Fish and Wildlife and Parks have approved the completed withdrawal application, including the findings and recommendations of the BLM Director, we will propose legislation for the Secretary of the Interior and the Secretary of Defense to send to Congress. At every step in this process, the Interior Department agencies and the military services are working closely and collaboratively to identify issues at the earliest possible opportunity and to resolve them, if possible, at the level of the installation-field office.

Joint Interior-Defense process for consensus on policy issues

Both the Department of the Interior and the Department of Defense knew at the outset that renewal of the P.L.99-606 withdrawals would be a lengthy and complex undertaking. The package includes six installations, located in four different states, involving four branches of the military services, and, within the Interior Department, the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Affairs. Each branch of the military service and

each executive branch agency has a distinct mission, with interests that are frequently complementary, but on occasion, contradictory.

The issues associated with renewal of the P.L.99-606 withdrawals spring from the core missions of our two Departments. From a military perspective, continued use of the public lands withdrawn by P.L.99-606 is essential to training and readiness. As the steward of our nation's public lands, the Interior Department is obligated to protect natural resources on the public lands, such as wildlife habitat, and to manage the public lands for multiple users, including, for example, grazing permittees and recreational users. Both Departments recognize the multiple interests of the American public in how its withdrawn public lands are used.

To guide our Departments in reaching consensus on issues associated with the withdrawal renewals, we agreed on a collaborative approach to resolve policy concerns and site-specific issues which are not resolved at the local level. This approach has proven beneficial, for example, in the discussions between Interior Assistant Secretary Don Barry and Acting Secretary of the Air Force Whit Peters to resolve issues associated with the Barry M. Goldwater Air Force Range withdrawal and the Cabeza Prieta National Wildlife Refuge.

Our Departments have taken additional steps to promote better understanding of our respective missions and responsibilities. Sherri Goodman, Deputy Under Secretary of Defense for Environmental Security, and Ken Smith, Deputy Chief of Staff to Secretary Babbitt, jointly chaired a meeting of Deputy Assistant Secretaries and Assistant Secretaries on January 22, 1999,

at Andrews Air Force Base. To ensure that our respective Departments stay on track, these individuals held a second meeting on March 17, 1999, to assess the progress being made in resolving issues of concern and moving forward toward the objective of completing consensus-based legislation that addresses the mutual needs and interests of both Departments.

WILDLIFE REFUGES AND MILITARY WITHDRAWALS

Withdrawals of lands involving units of the National Wildlife Refuge System raise a unique set of management issues. As Assistant Secretary for Fish, Wildlife and Parks, I will delineate those unique legal and management responsibilities, and offer some constructive new thoughts about past military land withdrawals involving wildlife refuges.

Two National Wildlife Refuges were included within the P.L. 99-606 withdrawals. Portions of Desert National Wildlife Refuge in Nevada are included within the Nellis Air Force Range, and portions of Cabeza Prieta National Wildlife Refuge in Arizona are included within the Barry M. Goldwater Air Force Range. However, these are not withdrawals in the classic sense involving BLM public lands. In contrast to the withdrawn lands under the jurisdiction of the Bureau of Land Management, P.L. 99-606 provides that the lands within the two refuges remain under the management of the Fish and Wildlife Service, and that nothing in that law shall be construed as amending the National Wildlife Refuge System Administration Act or other laws governing management of the Refuge System.

Military activities at the two refuges are governed by Memoranda of Agreement between the Fish

and Wildlife Service and the military services, also as provided in P.L. 99-606. The agreements cover such issues as where and when low-level flights will occur, so as to minimize impacts to wildlife breeding areas and endangered species, size of security and buffer zones, assistance by the military in refuge management, and other related matters. The on-the-ground working relationship under the agreements between the Service and the military is excellent.

However, there are certain aspects of the situation which lack clarity from a legal and management perspective, and we have been pursuing certain proposals with the Defense Department to resolve these matters with the military. We are working to secure a new, mutually agreed upon approach under which both the military and the refuges would be in a better position than they are today. We would seek to have this new approach reflected in the P.L. 99-606 withdrawal re-authorization legislation enacted by Congress.

Some of the key goals in this effort include the following:

- Recognition that the varying military training and readiness needs between Desert and Cabeza Prieta National Wildlife Refuges may warrant different treatment of the two refuges under withdrawal legislation;
- Ensuring the continuation of the military's ability to utilize portions of the Desert and Cabeza Prieta National Wildlife Refuges as security and buffer areas for the ranges, and as instrumentation sites;
- Protecting the wilderness values of the Cabeza Prieta refuge while providing operational

flexibility for military aviation training and readiness needs; and

- Securing an exchange with the Air Force of primary and secondary jurisdiction over 112,000 acres at Desert National Wildlife Refuge which is actively used as a bombing range.

In recent years there has been a tremendous effort both within the Administration and the Congress to clarify the status and role of the National Wildlife Refuge System, which culminated in Executive Order 12996, issued on March 25, 1996, and the National Wildlife Refuge System Improvement Act of 1997, P.L. 105-57, enacted on October 9, 1997. One of the primary objectives of both the Executive Order and P.L. 105-57 has been to clarify the role and responsibility of the Secretary of the Interior regarding management of the National Wildlife Refuge System.

P.L. 99-606 includes portions of the Desert and Cabeza Prieta refuges within the withdrawals for Nellis and Goldwater ranges by map reference in section 1. However, section 4 states that no provision contained in P.L. 99-606 is intended to amend the National Wildlife Refuge System Administration Act and other refuge-related laws. From our perspective, this leaves ultimate management responsibility and authority for certain activities on the refuges ambiguous, and therefore vulnerable to legal challenge.

We are currently discussing with the military alternate ways to clarify and guarantee the

continuation of adequate security and buffer zones at the two refuges with an entirely new approach being considered for Cabeza Prieta. We view these issues as being fairly straight forward and simple to deal with because we do not believe that the creation of security or buffer zones causes any compatibility problems under refuge law and regulations. We also believe that the siting and maintenance of instrumentation is, and can continue to be, compatible with refuge law at both Desert and Cabeza Prieta refuges.

There is a related issue at Cabeza Prieta where a portion of the refuge underlying the Goldwater Range was designated wilderness by the Arizona Wilderness Act of 1990, P.L. 101-628. Man-made structures are not generally allowed within wilderness areas. However, the Arizona Wilderness Act made an exception for ~~current~~ levels of military instrumentation on the ground at the refuge, but there is no provision for future changes. We are exploring with the Defense Department how this might best be addressed.

A final issue involving the Desert National Wildlife Refuge concerns the active use of approximately 112,000 acres of the refuge as a bombing range. Since its enactment in 1966, the National Wildlife Refuge System Administration Act provides that the Secretary of the Interior may not permit the use of refuge lands for activities which are not ~~compatible~~ with the purposes for which the refuge was established. This ~~compatibility~~ test applies to all refuge lands where the U.S. Fish and Wildlife Service exercises primary jurisdiction. This requirement was restated in Executive Order 12996 and in the National Wildlife Refuge System Improvement Act of 1997. These refuge authorities and directives have placed the U.S. Fish and Wildlife Service in the

extremely difficult and awkward position of having to address whether the authorization and retention of a large bombing range is compatible with the purposes for which the Desert Wildlife Refuge was originally established. Given the possibility of additional litigation on this matter, the Fish and Wildlife Service has been actively discussing with the Air Force the possible exchange of primary and secondary jurisdiction over these 112,000 acres of refuge land. We are optimistic that an acceptable arrangement can be reached.

There have been and continue to be frequent meetings at the Agency Director and Assistant Secretary level on these issues, and we are confident of a timely resolution that will not delay the transmittal to Congress of the legislative proposal to renew the withdrawals.

In conclusion, it is the belief of the Department of the Interior that agreements can be crafted which continue to allow the Department of Defense and the military services to meet their training and readiness needs at the Desert and Cabeza Prieta National Wildlife Refuges while at the same time allowing for the continued management of these refuges by the Fish and Wildlife Service under refuge management law.

We would be pleased to answer any questions you may have at this time.