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WARD VALLEY LAND TRANSFER ACT

MARCH 28, 1996.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1596]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1596) to direct a property conveyance in the State of California, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1596 is to convey to the State of California 1,000 acres of land specified in the bill for the Ward Valley Low-Level Radioactive Waste facility upon (1) the tendering of $500,100 to the Secretary of the Treasury; and (2) the tendering of a written agreement by the State of California to the U.S. Nuclear Regulatory Commission to carry out environmental monitoring and protection measures based on recommendations of the National Academy of Sciences in a May 1995 report.

BACKGROUND AND NEED

Low-level radioactive wastes—most commonly of items such as gloves, protective clothing, power plant filter wastes, glass, rags, piping and other metal components exposed to radioactivity—are generated by a variety of sources, including:

Medical procedures involving radiation or radioactive material, numbering in excess of 100 million medical procedures annually;

The testing and development of new drugs;

The operation and decommissioning of nuclear power plants;

The production of consumer products such as smoke detectors, contact lens solution, cosmetics and hair products; and

Basic scientific research in industry, universities and other institutions.

In 1980, Congress adopted the Low-Level Radioactive Waste (LLRW) Policy Act which assigned responsibility for low-level radioactive waste disposal to the States and encourage the formation of interstate "compacts" to efficiently manage the wastes on a regional basis. At that time, the Nation's LLRW was commercially handled in only three States (Washington, South Carolina and Nevada) which objected to the inequity of this situation. Since then, nine compacts have been formed to establish regional disposal facilities. California joined with Arizona, North Dakota and South Dakota to form the Southwestern Compact for low-level waste disposal. In accordance with the LLRW Policy Act, Congress consented to the Southwestern Compact in November 1988.

In September 1993, after an eight year process, the State of California Department of Health Services issued a license to a private licensee to develop a LLRW facility at Ward Valley, a remote area in the Mojave Desert 22 miles west of Needles, California. The Ward Valley facility is, in fact, the first facility to be licensed under the LLRW Policy Act.

California's licensing process included a competitive process to select a license designee, a Statewide screening for potential sites, joint cooperative efforts with Federal agencies in the development of an Environmental Impact Statement (EIS) required by the National Environmental Policy Act (NEPA) and biological opinions required by the Endangered Species Act. The first EIS was issued in April 1991, followed by a supplemental EIS in December 1992. The first biological opinion, issued on November 21, 1990, concluded that the project as mitigated would not jeopardize the desert tortoise, a listed "threatened" species. The second biological opinion, necessitated by subsequent identification of the critical habitat for the species, concluded on August 31, 1995 that the Ward Valley project ". . . is not likely to jeopardize the continued existence of the desert tortoise or result in the destruction or adverse modification of critical habitat."

Although Interior Secretary Manuel Lujan had approved the transfer of 1,000 acres of BLM lands required for the Ward Valley site upon payment of the established fair market value of $500/acre, Interior Secretary Bruce Babbitt rescinded the approved transfer. Secretary Babbitt subsequently requested an additional administrative hearing process, the scope and duration of which were the subject of negotiations between California and the State for several months. California and the Department of the Interior eventually agreed on the general nature of the hearings to be held; however, Secretary Babbitt then postponed the hearings, citing judicial challenges to the license pending in State court. All judicial challenges, including requests for an adjudicatory hearing, were later denied in favor of the project.

In March 1994, Secretary Babbitt referred seven technical and scientific issues raised by individuals employed by the U.S. Geological Survey and rejected by the State of California to the National Academy of Sciences (NAS) for further review. These issues included claims that radionuclides from the site could migrate to groundwater beneath the site and potentially the Colorado River;

that the project would adversely impact the desert tortoise; and that there were no plans to monitor groundwater and the unsaturated zone downgradient from the site. In May 1995, the NAS released its report, which was highly favorable to the Ward Valley site in its discussion and recommendations related to the seven technical and scientific issues NAS was directed to review. Most notably, the NAS report concluded, based on multiple lines of scientific evidence, that groundwater contamination from the site was "highly unlikely." The report further concluded that no health threat was posed to Colorado River drinking water. However, the report also made several recommendations with respect to the need for additional scientific baseline and monitoring measurements.

Upon the release of the favorable NAS report, California Governor Pete Wilson agreed to implement its technical recommendations, and Secretary Babbitt announced his intention to convey the land, provided that the State of California enter into a binding agreement to conduct the tests and to provide the Department of the Interior with a continuing oversight role. After extensive discussions between California and the Department of the Interior failed to produce an agreement, Governor Pete Wilson requested that Congress intervene to transfer the land legislatively. California's main objection centered on Interior's insistence on an oversight role despite its lack of expertise or responsibility regarding radiation safety protection.

The matter was further complicated by the discovery of radioactive tritium and carbon-14 above background levels by the U.S. Geological Survey (USGS) in unsaturated soils below a closed LLRW burial site near Beatty, Nevada. The Nevada site had been operated by U.S. Ecology, the licensee selected by California to operate the Ward Valley site. Opponents of the Ward Valley site argued that the findings at Beatty compelled further studies at Ward Valley. On February 15, 1996, Deputy Secretary of the Interior, John Garamendi, citing the Beatty information, announced that additional tritium testing and another supplemental EIS would be required prior to a land transfer decision. The Director of the U.S. Geological Survey, however, in a February 14 memorandum issued prior to Deputy Secretary Garamendi's announcement, stated:

> The review team believes that the observed tritium distribution at Beatty is probably the result of the burial of liquid wastes and the fact that some disposal trenches at Beatty were open for years until filled, allowing accumulation and infiltration of precipitation . . . The license that the State of California has issued for the Ward Valley facility does not permit disposal of radioactive waste in liquid form and requires that only the minimum amount of open trench necessary for the safe and efficient operation shall be excavated at any one time. Because of the differences in waste burial practices at the Beatty site compared to those intended for the Ward Valley site, and the previously mentioned uncertainties about the transport mechanisms at Beatty, extrapolations of the results from Beatty to Ward Valley are too tenuous to have much scientific value. (Emphasis added)

The U.S.G.S. memorandum also stressed the need for implementation of the measures recommended by the Academy, included long term, continuous monitoring as distinguished from the shorter term, pre-conveyance tritium tests ordered by Deputy Secretary Garamendi U.S.G.S. Director Eaton subsequently commented that the tritium tests would be inconclusive, suggesting that the conduct of the tests would engender demands for further delay.

Amid this background of delay and stalemate, low level radioactive waste continues to accumulate at more than 800 sites across California, including universities, hospitals, biotechnology companies and other industries in densely populated areas. Adverse implications for public health and safety, medical treatment, scientific research and other important activities have contributed to widespread agreement that additional scientific studies, including tritium studies, can and should be undertaken as part of the more comprehensive program already required by the State's license. California and 17 of 19 NAS Committee members agree that additional studies do not need to precede the land transfer. Indeed, the majority of the NAS Committee, according to its Chairman, anticipated that additional baseline studies could be accomplished after land conveyance during the facility's construction and that longer term studies should be accomplished as part of the long-term monitoring conducted in conjunction with the operation of the site. The Department of the Interior, however, despite the conclusions of the NAS and the USGS, continues to insist upon months of study and the preparation of a supplemental EIS prior to the land conveyance. In a letter to Chairman Murkowski dated March 12, 1996, Interior Secretary Bruce Babbitt estimated that the completion of these steps would "take about a year."

Concerned about the potential human health, safety and environmental effects of the continued dispersal of radioactive waste at 800 sites around California, Senator Murkowski and Senator Johnston reacted to the Department of the Interior's announcement of further delay with the introduction of S. 1596.

In addition to the potentially adverse human health, safety and environmental effects in California resulting from the further delay of Ward Valley, the national policy implications of further delay must also be considered. The formation of interstate compacts and the licensing of LLRW sites have not occurred in the timely fashion. Congress anticipated with the passage of the LLRW Policy Act of 1980 or its 1985 amendments which envisioned that new disposal sites would be operational by 1993. California is the first State to license a site under the LLRW Policy Act. California's licensing decision has withstood all judicial challenges in State courts. Indeed, legal action challenging the license and the related environmental impact report prepared jointly with the Federal Government has been finally resolved in State court. Nevertheless, California has been unable to commence operations due to the ability of Department of the Interior officials to impose continual delays and thus override the fundamental policy at the foundation of the LLRW Policy Act—namely, that low level waste management is a State responsibility. Many argue that actions by Federal officials to repeatedly delay Ward Valley (particular by Interior Department officials without expertise in the regulation of Nuclear

materials), seriously threaten the viability of the LLRW Policy Act. Indeed, Governor Pete Wilson, in a February 16, 1996 letter to the Chairman, wrote:

> In the Low-Level Radioactive Waste (LLRW) Policy Act, Congress gave to the States and to voluntary compacts entered into by the States the responsibility for safe disposal for LLRW generated within their borders . . . Despite California's best efforts to move forward with establishment of its disposal facility while faced with Secretary Babbitt's demands, it has become abundantly clear that he has no intention of transferring the Ward Valley land . . . If the White House and the Department of the Interior continue to contend that the Federal Government is the only steward of LLRW that the public should trust, then the LLRW Policy Act has been rendered unworkable and must be replaced by a new law that gives this responsibility to the very Federal officials who now refuse to leave it to the States. (Emphasis added)

Should the LLRW Policy Act be found to be unworkable, the country would confront the very situation that existed in 1979 when Congressional action was required to avert a national crisis. In short, users of radioactive materials and consumers of the goods and services they provide could be adversely affected in every State. Unlike 1979, however, there would be little alternative but to assign responsibility to the Federal Government, and approach offering little hope of timely solutions. Moreover, some of the same States now shouldering the national burden for commercial LLRW disposal (i.e. Washington and South Carolina) are also locations for existing disposal facilities for DOE defense LLRW. Thus, it is clear that continued delays at Ward Valley are likely to have significant impacts outside of California and the other Southwestern Compact States.

To lessen the risks associated with the dispersal of LLRW at more than 800 primarily urban sites across California and the possibility of accidental releases resulting from fire, flood and earthquakes, the Committee feels that the immediate conveyance of the necessary BLM land and the opening of the Ward Valley LLRW facility is in the public interest. Moreover, the Committee is concerned about the continuing viability of the LLRW Policy Act given the stated intent of Federal officials to impede the efforts of a State acting in good faith and in compliance with the law, to open its LLRW facility.

LEGISLATIVE HISTORY

Senators Murkowski and Johnston introduced S. 1596 on March 7, 1996. With the exception of an added requirement that California provide a written agreement to carry out additional environmental monitoring and protection measures, the text of S. 1596 closely followed the language previously reported by the Committee in the Omnibus Budget Reconciliation bill subsequently adopted by Congress and vetoed by the President.

A similar measure, S. 2151, was introduced by Senator Johnston in the 103d Congress. A hearing was held on S. 2151 before the full Committee on July 19, 1994.

S. 1596 was considered and ordered reported during a Committee business meeting on March 13, 1996.

Senator Pressler was added as an additional cosponsor on March 14, 1996.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on March 13, 1996, by majority vote of a quorum present recommends that the Senate pass S. 1596 without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

The intent of the section is self explanatory.

Section 2—Conveyance of property

This section provides for the immediate conveyance, by operation of law, of all right, title and interest of the United States in the property depicted on a map designated USGS 7.5 minute quadrangle, west of Flattop Mtn, CA 1984, entitled "Location Map for Ward Valley Site", located in San Bernardino Meridian, Township 9 North, Range 19 East, and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, to the Department of Health Services of the State of California effective upon (1) the tendering to the Secretary of the Treasury of $500,100 on behalf of the State of California, and (2) the tendering to the Chairman of the United States Nuclear Regulatory Commission (NRC) of a written commitment by the State to carry out environmental monitoring and protection measures based on recommendations of the National Academy of Sciences subject to Federal oversight by the Commission pursuant to 42 U.S.C. 2021, as amended. Contrary to a statement in the Secretary of the Interior's letter of March 12, 1996 that this language could be construed to make the State's commitment to perform the recommended testing unenforceable by limiting the NRC to an oversight role, it is the Committee's view and intent that this language not affect NRC regulation of the site under existing law.

It is the Committee's intention that no further Federal actions need occur to execute the conveyance of the land. Moreover, the section stipulates that the Department of the Interior must, upon request of the State of California, provide evidence of title transfer.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 27, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1596, the Ward Valley Land Transfer Act.

Enactment of S. 1596 would affect direct spending; therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1596.

2. Bill title: Ward Valley Land Transfer Act.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on March 13, 1996.

4. Bill purpose: The bill would convey to the state of California about 1,000 acres of land in San Bernadino County, California, effective upon the tendering of $500,100 to the Treasury and a written commitment by the state to carry out environmental monitoring and protection measures on the property after conveyance.

5. Estimated cost to the Federal Government: Based on information provided by the state, CBO estimates that enacting the bill would result in proprietary receipts to the Treasury of $500,100 in fiscal year 1996, assuming enactment by August 1, 1996.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
ADDITIONAL OFFSETTING RECEIPTS					
Estimated budget authority	−1	0	0	0	0
Estimated outlays	−1	0	0	0	0

The budgetary impact of this bill falls within budget function 300.

6. Pay-as-you-go-considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of S. 1596 would reduce direct spending by increasing offsetting receipts in fiscal year 1996, as shown in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	−1	0	0
Change in receipts	(1)	(1)	(1)

[1] Not applicable.

7. Estimated impact on state, local, and tribal governments: S. 1596 contains no intergovernmental mandates as defined in Public

Law 104–4 and would impose no direct costs on state, local, or tribal governments. This transaction would be voluntary on the part of the state. According to state officials, this land would be used for a low-level radioactive waste facility, in accordance with existing federal law.

8. Estimated impact on the private sector: The bill would impose no new federal private sector mandates, as defined by Public Law 104–4.

9. Previous CBO estimate: On November 16, 1995, CBO provided an estimate for the conference report on H.R. 2491, the Balanced Budget Act of 1995. H.R. 2491 included a provision that was similar to S. 1596. Similar provisions were also included in the reconciliation recommendations of the House Committee on Resources and the Senate Committee on Energy and Natural Resources. In each case, CBO estimated that enactment would result in additional proprietary receipts of $500,100 in fiscal year 1996.

10. Estimate prepared by: Federal Cost Estimate: Gary Brown. State and Local Government Impact: Marjorie Miller. Private Sector Impact: Patrice Gordon.

11. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, 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. 1596. The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. Rather, the bill merely conveys a specific tract of land to the State of California.

The bill does not contain any provision for the collection of personal information. Accordingly, the bill will now have any impact on personal privacy. In addition, little if any additional paperwork should result from the enactment of S. 1596.

EXECUTIVE COMMUNICATIONS

The pertinent legislative communication received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to S. 1596 is set forth below:

THE SECRETARY OF THE INTERIOR,
Washington, DC, March 12, 1996.

Hon. FRANK MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR SENATOR MURKOWSKI: I am writing to convey the Administration's strong opposition to S. 1596. This bill would effectuate, by legislative fiat, the transfer of federal land at Ward Valley, California for use as a low-level radioactive waste (LLRW) facility.

S. 1596 amounts to "sufficiency" legislation, for it would override federal environmental laws that apply to the transfer (including the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA)), and would insulate

the transfer from judicial review. This is the wrong course for such a controversial project.

The Department of the Interior has in place a process for completing its decision on the State's request for transfer of the land. As you know, we have recently announced plans to complete a supplemental environmental impact statement (SEIS) to address certain issues relevant to the transfer. We are also taking steps to ensure that additional tritium testing is done at War Valley, as recommended by the National Academy of Sciences (NAS) panel in its report last year, because such testing might shed additional light on the suitability of Ward Valley site, which may be of particular value in light of recently available data relating to the Beatty, Nevada, waste disposal facility. We expect that, on completion of these steps, which will take about a year, we will be in a position to make a final decision on the transfer.

We note that, unlike the transfer legislation proposed last year, the current version asks the State to promise to "carry out environmental monitoring and protection measures based on recommendations of the [NAS panel]." Ever since the NAS report was completed, we have said that the transfer cannot be made without an enforceable commitment by the State to carry out the report's recommendations. While S. 1596's favorable reference to the Academy's recommendations is a useful step forward, it does not straightforwardly require those recommendations to be carried out; instead, it calls for the State's promise to carry out measures "based on" those recommendations. Moreover, it does not specifically mandate tritium testing, nor require that the test results be considered in weighing the suitability of the Ward Valley site. Finally, it is not clear whether the State's promise to take these ill-defined steps is enforceable, because the bill makes the State subject only to "oversight" by the Nuclear Regulatory Commission (NRC), which could be construed not to include enforcement authority.

For these reasons, the Administration strongly opposes S. 1596.

Sincerely,

BRUCE BABBITT.

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 the bill, S. 1596, as ordered reported.

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