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SENATE

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### LAS CIENEGAS ENHANCEMENT AND SAGUARO NATIONAL PARK BOUNDARY ADJUSTMENT ACT

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APRIL 10, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1341]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1341) to provide for the exchange of certain Bureau of Land Management land in Pima County, Arizona, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Las Cienegas Enhancement and Saguaro National Park Boundary Adjustment Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term “Conservation Area” means the Las Cienegas National Conservation Area.

(2) COUNTY.—The term “County” means Pima County, Arizona.

(3) FEDERAL LAND.—The term “Federal land” means the parcel of land consisting of approximately 1,196 acres, as generally depicted on the map entitled “Las Cienegas Enhancement Act—Federal Land” and dated April 17, 2007.

(4) NON-FEDERAL LAND.—The term “non-Federal land” means—

(A) the Empirita-Simonson parcel of land consisting of approximately 2,568 acres, as generally depicted on the map entitled “Las Cienegas Enhancement Act—Non-Federal Land” and dated April 17, 2007; and

(B) the Bloom parcel of land consisting of approximately 160 acres, as generally depicted on the map entitled “Saguaro National Park, Bloom Tract” and dated April 17, 2007.

(5) PARK.—The term “Park” means Saguaro National Park.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) WELL SITE.—The term “well site” means a well site that consists of approximately 98 acres of land, as generally depicted on the map entitled “Las Cienegas Enhancement Act—Non-Federal Land” and dated April 17, 2007.

**SEC. 3. LAND EXCHANGE.**

(a) IN GENERAL.—If the owner of the non-Federal land offers to convey to the Secretary title to the non-Federal land that is acceptable to the Secretary, the Secretary shall—

- (1) accept the offer; and
- (2) simultaneously convey to the owner of the non-Federal land all right, title, and interest of the United States in and to the Federal land.

(b) VALUATION, APPRAISALS, AND EQUALIZATION.—

- (1) IN GENERAL.—The value of the Federal land and the non-Federal land—
  - (A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or
  - (B) if not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) IN GENERAL.—The Federal land and the non-Federal land shall be appraised by an independent, qualified appraiser that is agreed to by the Secretary and the owner of the non-Federal land.

(B) REQUIREMENTS.—An appraisal under subparagraph (A) shall—

- (i) be conducted in accordance with—
  - (I) the Uniform Appraisal Standards for Federal Land Acquisition; and
  - (II) the Uniform Standards of Professional Appraisal Practice; and
- (ii) not later than 180 days after the date of enactment of this Act, be submitted to the Secretary and the owner of the non-Federal land for approval.

(3) EQUALIZATION.—

(A) IN GENERAL.—If the value of the Federal land and the non-Federal land is not equal, the value may be equalized by—

- (i) the Secretary making a cash equalization payment to the owner of the non-Federal land;
- (ii) the owner of the non-Federal land making a cash equalization payment to the Secretary; or
- (iii) reducing the acreage of the Federal land or the non-Federal land to be exchanged, as appropriate.

(B) CASH EQUALIZATION PAYMENTS.—

(i) DISPOSITION.—Any cash equalization payments received by the Secretary under subparagraph (A)(ii) shall be deposited in the Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)).

(ii) USE.—Amounts deposited under clause (i) shall be available to the Secretary, without further appropriation and until expended, for the acquisition of land and interests in land in southern Arizona.

(c) CONDITIONS OF CONVEYANCE.—

(1) IN GENERAL.—As a condition of the conveyance of the Federal land, the owner of the non-Federal land shall—

(A) pay the costs of carrying out the exchange of the Federal land and the non-Federal land under this section, including any direct costs relating to any environmental reviews and any required mitigation of the Federal land;

(B) enter into an agreement with the County to convey to the County the well site; and

(C) relinquish to the County any water rights to the well site held by the owner of the non-Federal land.

(2) VALID EXISTING RIGHTS.—The exchange of Federal land and non-Federal land shall be subject to any easements, rights-of-way, and other valid encumbrances in existence on the date of enactment of this Act.

(d) LEGAL DESCRIPTIONS.—The Secretary and the owner of the non-Federal land may mutually agree to—

- (1) correct minor errors in the legal descriptions of the Federal land and the non-Federal land; or
- (2) make minor adjustments to the boundaries of the Federal land and the non-Federal land.

(e) DEADLINE FOR COMPLETION OF EXCHANGE.—It is the intent of Congress that the land exchange under this section shall be completed not later than 1 year after the date of enactment of this Act.

**SEC. 4. ADMINISTRATION.****(a) ADMINISTRATION OF LAND ACQUIRED BY THE UNITED STATES.—**

(1) **EMPIRITA-SIMONSON PARCEL.**—On acquisition by the Secretary, the parcel of non-Federal land described in section 2(4)(A) shall—

- (A) become part of the Conservation Area; and
- (B) be administered by the Secretary in accordance with Public Law 106–538 (16 U.S.C. 460~~ooo~~ et seq.).

(2) **BLOOM PARCEL.**—On acquisition by the Secretary, the parcel of non-Federal land described in section 2(4)(B) shall—

- (A) become part of the Park; and
- (B) be administered by the Secretary in accordance with the Saguaro National Park Establishment Act of 1994 (16 U.S.C. 410zz et seq.).

(b) **NATIONAL CONSERVATION AREA BOUNDARY ADJUSTMENT.**—The boundary of the Conservation Area is modified to exclude the 40-acre tract of Bureau of Land Management that is leased to the town of Elgin, Arizona, for a sanitary landfill.

(c) **ROAD ACCESS.**—Not later than 18 months after the date on which the non-Federal land is acquired by the Secretary, the Secretary shall, in accordance with section 507 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1767), provide to the Secretary of Agriculture a right-of-way through the non-Federal land for motorized public road access to the boundary of the Coronado National Forest.

**PURPOSE**

The purpose of S. 1341 is to authorize a land exchange in southern Arizona under which the Department would trade approximately 1,200 acres of land administered by the Bureau of Land Management out of Federal ownership in exchange for approximately 2,392 acres of private property, which would be included within the Las Cienegas National Conservation Area, and approximately 160 acres, which would be included within Saguaro National Park.

**BACKGROUND AND NEED**

Established in December 2000, the Las Cienegas (Spanish for marsh or swamp) National Conservation Area includes more than 45,000 acres of rolling grasslands and woodlands in Pima and Santa Cruz counties in southern Arizona, approximately 50 miles southeast of Tucson. The conservation area, which is administered by the Bureau of Land Management, includes rolling grasslands, oak-studded hills, and lush riparian corridors. Cienega Creek, with its perennial flow and lush riparian corridor, forms the lifeblood of the NCA and supports a diverse plant and animal community, including 33 species which are Federally listed as threatened or endangered, identified as species of special concern by the State of Arizona, or designated as sensitive species by the BLM.

S. 1341 would provide for a land exchange between a private development company, Las Cienegas Conservation, LLC, and the Bureau of Land Management. The BLM would convey approximately 1,200 acres of land which has been preliminarily identified for disposal through the BLM's land use planning process. In exchange, the BLM would receive approximately 2,392 acres known as the Empirita-Simonson parcel for inclusion in the conservation area and the National Park Service would receive approximately 160 acres for addition to the West Unit of Saguaro National Park, located just outside Tucson.

**LEGISLATIVE HISTORY**

S. 1341 was introduced by Senators Kyl and McCain on May 9, 2007. During the 109th Congress, the House of Representatives

passed an identical measure, H.R. 5016, by a voice vote on September 27, 2006. The bill was not considered in the Senate.

The Subcommittee on National Parks held a hearing on S. 1341 on September 27, 2007. (S. Hrg. 110–266.) At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered S. 1341 favorably reported, with an amendment in the nature of a substitute.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 1341, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 1341, the Committee adopted an amendment in the nature of a substitute. The amendment removed references to the specifically-identified owner of the non-Federal land, and instead substituted general references to the owner of those lands. The amendment also removed a provision that would have allowed cash equalization payments in excess of the 25 percent limitation in the Federal Land Policy and Management Act of 1976 and made other minor changes so that the exchange is consistent with standard land exchange authorizations. The amendment is explained in detail in the section-by-section analysis, below.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains the short title, the “Las Cienegas Enhancement and Saguaro National Park Boundary Adjustment Act.”

*Section 2* defines key terms used in the bill.

*Section 3(a)* provides that if the owner of the non-Federal land identified on the referenced map agrees to convey title to the land to the Secretary of the Interior (Secretary), the Secretary shall accept the offer and simultaneously convey all right, title, and interest of the United States to the Federal land identified on the map.

Subsection (b) provides that the exchange shall be for equal value and that appraisals of the land be conducted in accordance with the Uniform Appraisal Standards. Either party may make a cash equalization payment, if necessary. Any payments are to be deposited into the Federal Land Disposal Account to be used, without further appropriation, for acquisition of lands and interests therein in southern Arizona.

Subsection (c) lists the conditions of conveyance. As a condition of the conveyance of the Federal land, the owner of the non-Federal land agrees to pay the costs of carrying out the land exchange, including any direct costs related to necessary environmental reviews or any required mitigation of the Federal land. The owner of the non-Federal land must also agree to convey to Pima County, Arizona, a well site as identified on the referenced map and relinquish to the county any water rights to such site.

Subsection (d) provides that the Secretary or the owner of the non-Federal land may mutually agree to correct minor errors in the legal descriptions and the boundaries of the lands to be exchanged.

Subsection (e) states that it is the intent of Congress that the exchange be completed no later than one year after the date of enactment of this Act.

*Section 4 (a)* states that the land identified on the map as the “Empirita—Simonson Parcel” shall become part of Las Cienegas National Conservation Area, to be administered by the Bureau of Land Management (BLM). The lands identified on the map as the “Bloom parcel” are to be added to Saguaro National Park, to be administered by the National Park Service.

Subsection (b) modifies the boundary of Las Cienegas National Conservation Area to exclude a 40-acre tract that is leased by the BLM to the town of Elgin, Arizona, for use as a sanitary landfill.

Subsection (c) directs the Secretary of the Interior, in accordance with section 507 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1767) to provide a right-of-way to the Secretary of Agriculture through the non-Federal land acquired by the Secretary for motorized public road access to the boundary of the Coronado National Forest.

#### COST AND BUDGETARY CONSIDERATIONS

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

##### *S. 1341—Las Cienegas Enhancement and Saguaro National Park Boundary Adjustment Act*

S. 1341 would provide for an exchange of federal and private land near the Las Cienegas National Conservation Area and the Saguaro National Park in Arizona. CBO estimates that implementing the bill would have no significant effect on the federal budget. Implementing the bill could increase offsetting receipts and associated direct spending, but we expect that those changes would offset each other over the next three years. Enacting S. 1341 would not affect revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments.

Under S. 1341, the Bureau of Land Management (BLM) would convey about 1,200 acres of federal land to a private landowner in exchange for about 2,600 acres near the conservation area and 160 acres near the national park. The bill would provide that the value of the properties to be exchanged could be equalized through either a cash payment or by reducing the acreage to be transferred. Any payment received by the federal government would be deposited into BLM’s land disposal account and would be available, without further appropriation, to acquire land in southern Arizona.

Formal appraisals of the properties have not been undertaken, but, based on information provided by BLM and the National Park Service, CBO estimates that the budgetary effects of the bill would be minimal. The federal government could receive a cash equalization payment (if the federal land is found to be more valuable than the private land), but we estimate that any such payment would be less than \$500,000. BLM would spend this amount, without further appropriation, over the next few years to acquire other land in Arizona.

According to BLM, the property to be conveyed by the federal government currently generates no significant offsetting receipts (a credit against direct spending) and is not expected to do so over the next 10 years. Therefore, conveying that property would result in no loss of offsetting receipts over that period.

One-time administrative costs related to the exchange, such as appraisal and mapping expenses, would be paid by the private landowner. Finally, we estimate that any change in discretionary costs to manage the conservation area and the national park after the exchange would be negligible.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy 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. 1341. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1341, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1341, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the National Park Service at the September 27, 2007 subcommittee hearing on S. 1341 follows:

#### STATEMENT OF DANIEL N. WENK, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 1341, the Las Cienegas Enhancement and Saguaro National Park Boundary Adjustment Act.

S. 1341 provides for the conveyance of Federal land managed by the Bureau of Land Management (BLM) in southern Arizona to a private developer in exchange for environmentally significant lands to be included within the Saguaro National Park and the Las Cienegas National Conservation Area (NCA). During the 109th Congress, the BLM testified before the House Resources Committee on legislation that provided for the exchange of the Las Cienegas NCA parcel but that did not include the Saguaro National Park parcel, and, at that time, suggested a number of modifications to that legislation.

The Department appreciates that S. 1341 incorporates the vast majority of our recommendations. We support S. 1341 and would like to provide a few additional amend-

ments to ensure that the bill is in keeping with our land exchange practices.

S. 1341 authorizes an exchange of land between the Department of the Interior and Las Cienegas LLC. The federal land to be conveyed totals approximately 1,200 acres and is referred to in the bill as the “Sahuarita parcel of land.” This property is BLM-managed land south of Tucson near Corona de Tucson. The land is low-lying Sonoran desert and has been preliminarily identified for disposal by the BLM through its land use planning process.

The bill would bring two parcels of land into Federal ownership. The first is approximately 2,392 acres of land referred to in the bill as the “Empirita-Simonson parcel of land.” This property lies north of the Las Cienegas NCA managed by the BLM in southern Arizona. The lands are currently private property but mostly lie within the “Sonoita Valley Acquisition Planning District” established by Public Law 106-538, which designated the Las Cienegas NCA. The Act directed the Department of the Interior to acquire lands from willing sellers within the planning district for inclusion within the NCA to further protect the important resource values for which the NCA was designated. In addition, these lands would provide important access to the Whetstone Mountains which are managed by the Forest Service. Upon acquisition, the bill provides that the parcel would be administered as part of the Las Cienegas NCA.

The second parcel of land consists of 160 acres and is referred to as the Bloom property. This tract is undeveloped and is immediately adjacent to the boundary of the West District of Saguaro National Park. Park planning documents dating back to 1993 have identified this property for acquisition, if available. This tract contains important wildlife corridors and high resource values that would complement the resources already present in the park. The area surrounding the park has seen significant population increases during the last decade and protecting remaining undeveloped areas is a priority for both the park and local communities. Upon acquisition, the bill provides that the parcel would be administered as part of Saguaro National Park.

We recommend three modifications to the bill. First, we would recommend striking section 3(b)(3)(B), which allows a waiver of section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) with regard to limiting equalization payments to 25 percent of the value of the Federal land. The inclusion in the bill of section 3(b)(3)(A)(iii), which allows for the reduction of acreages to bring the exchange within the 25 percent ceiling, eliminates the need for section 3(b)(3)(B) and is consistent with BLM policy on equalization of payments. Second, we urge that the timeframes for completing the land exchanges in section 4(e) be extended from one year to 18 months to allow adequate time to complete all of the actions necessary for a land exchange. Third, we would sug-

gest a technical correction to the acreage total for the Empirita-Simonson parcel of land.

We support section 4(b) of the bill to remove the Elgin Landfill from the boundaries of the Las Cienegas NCA; its inclusion within the boundaries of the NCA was an error in need of correction and this provision will address that problem.

Thank you for the opportunity to testify on S. 1341, I will be happy to answer any questions.

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. 1341, as ordered reported.

