

Calendar No. 604

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-318

SLOAN HILLS WITHDRAWAL ACT

SEPTEMBER 27, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 3313]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3313) to withdraw certain land located in Clark County, Nevada, from location, entry, and patent under the mining laws and disposition under all laws pertaining to mineral and geothermal leasing or mineral materials, 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:

On page 2, line 6, strike “May 5, 2010” and insert “June 24, 2010”.

PURPOSE

The purpose of S. 3313 is to withdraw approximately 640 acres in Clark County, Nevada, from the mining, mineral and geothermal leasing, and mineral materials laws.

BACKGROUND AND NEED

In 2006 and 2007, two companies, Service Rock Products of California and CEMEX (formally Rinker Materials) of Mexico, submitted applications to the Bureau of Land Management (BLM) to construct and operate an aggregate mine on 640 acres of federal land near Henderson, Nevada. The approval of the applications would result in two open pit dolomite and limestone quarries to extract construction aggregate material for the Southern Nevada area. Approximately 100 million tons of mineral material would be mined from the site over the next 20 to 30 years. The proposed project, titled “Sloan Hills Competitive Mineral Material Sales,” in-

cludes several facilities and related buildings, storage space, and employee parking.

The project has become controversial as many nearby residents oppose the gravel quarry proposal because of concerns over dirt and dust pollution and its potential impact on air quality, as well as the noise from blasting, rock-crushing operations, and truck activities. The proposed mine is located about three miles from several Henderson neighborhoods, and about five miles from the Sloan Canyon National Conservation Area and North McCullough Wilderness. The BLM is currently analyzing the potential environmental impacts of the construction, operation, and maintenance of the site. Legislation is necessary to stop the development of the proposed gravel quarry by withdrawing the proposal's 640 acres of federal land from mining purposes and associated uses.

LEGISLATIVE HISTORY

S. 3313 was introduced by Senator Reid on May 5, 2010. Senator Ensign is a cosponsor. The Subcommittee on Public Lands and Forests held a hearing on the bill on June 16, 2010. At its business meeting on July 21, 2010, the Committee on Energy and Natural Resources ordered S. 3313 favorably reported with an amendment.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 3313, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 3313, the Committee adopted an amendment to update the map reference for the withdrawal area.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the "Sloan Hills Withdrawal Act."

Section 2 withdraws the area depicted as "Federal land" on the referenced map from the mining, mineral and geothermal leasing, and mineral materials laws.

COST AND BUDGETARY CONSIDERATIONS

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

S. 3313—Sloan Hills Withdrawal Act

Summary: S. 3313 would withdraw about 800 acres of federal land in southern Nevada from disposal, mining, and mineral-leasing activities. Based on information from the Bureau of Land Management (BLM) and the mining industry, CBO estimates that implementing the legislation would increase direct spending by \$11 million over the 2011–2020 period; therefore, pay-as-you-go procedures apply.¹ Enacting the legislation would not affect revenues.

¹Different time periods apply in the Senate for its pay-as-you-go rule. CBO estimates that enacting S. 3313 would increase direct spending by \$1 million over the 2011–2014 period and by \$9 million over the 2011–2019 period.

S. 3313 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 3313 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	0	0	*	1	1	1	2	2	2	2	2	11
Estimated Outlays	0	0	*	1	1	1	2	2	2	2	2	11

Note.—* = less than \$500,000.

Basis of Estimate: S. 3313 would withdraw certain lands near Henderson, Nevada, from disposal, mining, and mineral-leasing activities. Currently, BLM is analyzing the environmental impacts of two proposed mineral sales on the affected lands. Upon conclusion of that analysis, the agency will determine whether to sell the rights to extract those materials to private mining companies.

Under current law, if BLM approved those sales, CBO expects that mineral production would begin around 2013 and that the federal government would begin receiving annual payments from mining companies for those mineral materials at that time. Under the bill, if firms could not extract minerals from the lands near Henderson, CBO expects that the mining industry would seek mineral materials on other BLM lands; however, based on information from BLM and the mining industry, we expect that production of those materials (and the corresponding payments to the federal government) would begin several years after 2013. In addition, based on information from those entities, CBO estimates that BLM would receive lower payments for minerals extracted from alternative sites than for those extracted from the lands that would be affected under the bill because of differences in the quality of the materials and the cost of transporting those materials.

Because production of mineral materials on BLM lands could be delayed and proceeds from the sale of those materials could be lower under S. 3313, CBO estimates that implementing the legislation would increase direct spending by about \$11 million over the 2011–2020 period. That estimate includes an adjustment for the possibility that mineral sales may not occur at the site near Henderson under current law. It also includes an adjustment for the possibility that mineral sales may not occur at alternative BLM-managed sites under the bill. For this estimate, CBO assumes that the legislation will be enacted in calendar year 2010.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 3313 would delay and reduce offsetting receipts from the sale of mineral materials on federal land. The changes in the deficit that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 3313, THE SLOAN HILLS WITHDRAWAL ACT,
AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON JULY 21, 2010

	By fiscal year, in millions of dollars—													2010– 2015	2010– 2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020				
	NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	0	0	0	1	1	1	2	2	2	2	2	2	11	

Intergovernmental and private-sector impact: S. 3313 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, 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. 3313.

The Act 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. 3313, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 3313, as ordered 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 Bureau of Land Management at the subcommittee hearing on S. 3313 on June 16, 2010 follows:

STATEMENT OF CARL ROUNTREE, DIRECTOR, NATIONAL LANDSCAPE CONSERVATION SYSTEM, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 3313, the Sloan Hills Withdrawal Act. S. 3313 would withdraw approximately 640 acres of BLM-administered public land in Clark County, Nevada, from all forms of location, entry, and patent under the mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing or mineral material sales, subject to valid existing rights. The BLM is presently preparing an Environmental Impact Statement (EIS) for two proposed competitive min-

eral material sales which would result in two open pit limestone quarries in this area, as required by settlement agreements between the BLM and two mining companies. Since the BLM is still in the process of analyzing the proposed sales, we defer taking a position on this legislation. However, if this area is legislatively withdrawn, the BLM would recommend a boundary adjustment to include additional acreage to the withdrawal area.

BACKGROUND

The Sloan Hills area is located approximately 15 miles south of the City of Las Vegas, and consists of approximately 800 acres of BLM-administered public lands. The area is surrounded by public lands that are within the Southern Nevada Public Land Management Act (SNPLMA) boundary. The SNPLMA allows the BLM to sell land within this disposal boundary and use the sale proceeds to acquire lands elsewhere in Nevada that possess higher natural resource values. When Congress expanded the SNPLMA disposal boundary in 2002 (through PL 107-282), the Sloan Hills area was not included.

The Sloan Hills area has an extensive mineral development history. Separate, but overlapping mining claims were filed on the site almost thirty years ago, with little development occurring until the early 1990s. The two mining claimants in the area subleased their claims to CEMEX (formerly Rinker Materials West, LLC) and Service Rock Products Corp. (Service Rock). CEMEX subsequently filed a mining plan of operations. When the BLM receives a plan of operations for materials that may be common variety minerals and the mining claims were located on or after July 23, 1955, mining operations may not begin until the bureau completes a "common variety determination" to determine whether the materials are locatable under the Mining Law of 1872 (43 CFR 3809.101).

Since the two mining claims overlapped, the BLM completed a common variety determination in 2004 for both sets of claims. The BLM concluded that the claimed materials (limestone and dolomite) were not locatable under the Mining Law of 1872. As a result, the BLM contested the mining claims. The contests were eventually settled, resulting in the BLM agreeing to analyze two competitive mineral materials sales. The settlement agreements do not restrict the BLM's discretion in approving or denying the proposed sales and the sales must comply with all applicable statutes and regulations (43 CFR 3600).

In 2007, the BLM initiated an EIS to analyze the impacts of the two proposed competitive mineral materials sales. If approved, the projects would consist of two open pit limestone quarries that would operate for approximately 20 to 30 years, eventually merging into one open pit. The Draft EIS is planned for release in the summer of 2010, at which time the BLM will solicit public comments on whether it should authorize the proposed sales.

The Draft EIS will address potential impacts to: air quality, noise, water resources, and socio-economic conditions. The area surrounding Sloan Hills (located within the SNPLMA disposal boundary) is likely to be developed for housing, commercial, and/or industrial uses during the lifetime of the potential sales contracts. During the Draft EIS scoping process, a number of Henderson, Nevada residents expressed their concerns with the proposed sales.

S. 3313

S. 3313 would withdraw approximately 640 acres of BLM-administered public land in Clark County, Nevada, from all forms of location, entry, and patent under the mining laws, and of disposition under all laws pertaining to mineral and geothermal leasing or mineral material sale subject to valid existing rights.

A withdrawal from the mineral materials laws would prohibit the BLM from selling mineral materials in the Sloan Hills area, and would prohibit any future mineral use of the withdrawn lands, subject to valid existing rights.

The BLM understands the concerns of Senator Reid, the Nevada Congressional delegation, Clark County and the City of Henderson regarding the proposed mineral materials sales and potential operations and associated air quality and noise impacts that would occur in close proximity to many neighborhoods. These and other issues will be considered in the Draft EIS. If this area is legislatively withdrawn, the BLM would recommend expanding the boundary to the entire 800 acres of BLM-administered public lands remaining within the Sloan Hills area that are excluded from the SNPLMA disposal boundary.

CONCLUSION

Thank you for the opportunity to testify. In accordance with the terms of the settlement agreement, the BLM is in the process of analyzing the proposed sales. Consequently, the BLM defers taking a position on the legislation at this time. The Bureau will continue to actively engage the public through an open and transparent EIS process to analyze the potential environmental impacts of the proposed mineral materials sales unless Congress chooses to legislate this withdrawal.

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 S. 3313, as ordered reported.