

1 **SEC. \_\_. CLARIFICATION OF AUTHORITY OF DEPARTMENT OF DEFENSE TO**  
2 **CONDUCT CERTAIN MILITARY ACTIVITIES AT NEVADA TEST AND**  
3 **TRAINING RANGE.**

4 (a) SPECIFICATION OF AUTHORIZED MILITARY ACTIVITIES.—Paragraph (1) of section  
5 3011(b) of the Military Lands Withdrawal Act of 1999 (title XXX of Public Law 106–65; 113  
6 Stat. 886) is amended—

7 (1) in the matter preceding subparagraph (A), by inserting “, subject to the  
8 conditions set forth in subsection (a) of section 3014” after “Secretary of the Air Force”;

9 (2) by striking “and” at the end of subparagraph (C);

10 (3) by redesignating subparagraph (D) as subparagraph (G); and

11 (4) by inserting after subparagraph (C) the following new subparagraphs:

12 “(D) for emergency response;

13 “(E) for the establishment and use of existing or new electronic tracking  
14 and communications sites, including the construction of up to 15 equipment pads,  
15 no larger than 150-by-150 feet in size, along existing roads to allow placement  
16 and operation of threat emitters;

17 “(F) for the use and maintenance of roads in existence as of January 1,  
18 2024, to allow access to threat emitters and repeaters for installation,  
19 maintenance, and periodic relocation; and”.

20 (b) INTERAGENCY COMMITTEE—Subparagraph (G) of paragraph (5) of such section  
21 3011(b), as added by paragraph (1) of section 2844(b) of the William M. (Mac) Thornberry  
22 National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 134 Stat. 4351),  
23 is amended as follows:

1 (1) ADDITIONAL PURPOSE.—Clause (i) is amended—

2 (A) by striking “to facilitate” and all that follows through “and minimize  
3 potential conflict” and inserting “to—

4 “(I) facilitate coordination;

5 “(II) manage public access needs and requirements;

6 “(III) minimize potential conflict”;

7 (B) by striking the period at the end and inserting “; and”; and

8 (C) by adding at the end the following new subclause:

9 “(IV) discuss, as needed, the activities authorized in  
10 paragraph (1), and to provide input to the United States Fish and  
11 Wildlife Service and the Department of the Air Force when  
12 assessing whether these activities may be conducted on the joint  
13 operating areas within the Desert National Wildlife Refuge that are  
14 under the primary jurisdiction of the Secretary of the Interior in a  
15 manner that is consistent with the National Wildlife Refuge  
16 System Administration Act (16 U.S.C. 668dd et seq.) and other  
17 applicable law.”.

18 (2) SPECIFICATION OF MEMBERSHIP.—Clause (ii) is amended—

19 (A) by inserting “, including a designee of the Director of the United  
20 States Fish and Wildlife Service” before the period at the end of subclause (I); and

21 (B) by inserting “, including a designee of the Assistant Secretary of the  
22 Air Force for Energy, Installations, and Environment” before the period at the end  
23 of subclause (II).

1 (c) ADDITIONAL PURPOSE OF INTERGOVERNMENTAL EXECUTIVE COMMITTEE.—

2 Subparagraph (H) of paragraph (5) of such section 3011(b), as added by paragraph (2) of section  
3 2844(b) of such Act, is amended in clause (ii)—

4 (1) by striking “and” at the end of subclause (I);

5 (2) by striking the period at the end of subclause (II) and inserting “; and”; and

6 (3) by adding at the end the following new subclause:

7 “(III) discussing and making recommendations to the  
8 interagency committee established under subparagraph (G) with  
9 respect to any proposal by the Secretary of the Air Force to  
10 undertake any of the activities authorized in paragraph (1) on the  
11 joint operating areas within the Desert National Wildlife Refuge.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

The Nevada Test and Training Range (NTTR) is the Air Force’s most vital test and training asset. To be effective, Airmen must train like they fight. The proposal facilitates the management of the Desert National Wildlife Refuge (Refuge) and seeks to ensure the sustainability of the NTTR.

Subsection (a) of this proposal amends the Military Lands Withdrawal Act of 1999 (MLWA) to clarify the universe of military activities authorized to be conducted at the NTTR, subject to the other provisions of this subtitle and other relevant statutes which govern the administration of Federal lands. This language does not alter United States Fish and Wildlife Service (USFWS) jurisdiction in the joint operating areas and continues to require that any activities on USFWS primary jurisdiction lands in the joint operating areas are subject to the National Wildlife Refuge System Administration Act. The list of authorized activities now expressly includes emergency response, the establishment up to 15 small pads for radar emitters, and the use and maintenance of existing roads.

Subsection (b) clarifies that one of the purposes of the Interagency Committee (IC) is to discuss the authorized military activities, as needed, and to provide input to USFWS on whether the military activities listed in the MLWA are consistent with the Refuge Act and may be

conducted on lands in the joint operating areas that are under the primary jurisdiction of the Department of the Interior. Additionally, the section specifies that a headquarters-level participant from the USFWS and the Department of the Air Force (DAF) are to be represented on the IC.

Subsection (c) clarifies that one of the purposes of the Intergovernmental Executive Committee is to discuss and make recommendations to the IC regarding any Air Force proposal to conduct authorized military activities in that portion of the Refuge that overlaps the NTTR and is under the primary jurisdiction of the USFWS.

**Resource Information:** This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2024 President’s Budget.

**Changes to Existing Law:** This proposal would amend the Military Lands Withdrawal Act of 1999 (title XXX of Public Law 106–65; 113 Stat. 885) as follows:

## **TITLE XXX—MILITARY LAND WITHDRAWALS**

### **SEC. 3001. SHORT TITLE.**

This title may be cited as the “Military Lands Withdrawal Act of 1999”.

### **Subtitle A—Withdrawals Generally**

### **SEC. 3011. WITHDRAWALS.**

(a) \*\*\*

\* \* \* \* \*

(b) NELLIS AIR FORCE RANGE, NEVADA.—

(1) DEPARTMENT OF AIR FORCE.—Subject to valid existing rights and except as otherwise provided in this subtitle, the public lands described in paragraph (4) are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws. Such lands are reserved for use by the Secretary of the Air Force, subject to the conditions set forth in subsection (a) of section 3014—

(A) as an armament and high hazard testing area;

(B) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support;

(C) for equipment and tactics development and testing; ~~and~~

(D) for emergency response;

(E) for the establishment and use of existing or new electronic tracking and communications sites, including the construction of up to 15 equipment pads, no larger than 150-by-150 feet in size, along existing roads to allow placement and operation of threat emitters;

(F) for the use and maintenance of roads in existence as of January 1, 2024, to allow access to threat emitters and repeaters for installation, maintenance, and periodic relocation; and

(~~D~~G) for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) DEPARTMENT OF ENERGY.—

(A) REVOCATION.—Public Land Order Number 1662, published in the Federal Register on June 26, 1958, is hereby revoked in its entirety.

(B) WITHDRAWAL.—Subject to valid existing rights, all lands within the boundary of the area labeled “Pahute Mesa” as generally depicted on the map referred to in paragraph (4) are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing and geothermal leasing laws.

(C) RESERVATION.—The lands withdrawn under subparagraph (B) are reserved for use by the Secretary of Energy as an integral part of the Nevada Test Site. Other provisions of this subtitle do not apply to the land withdrawn and reserved under this paragraph, except as provided in section 3017.

(3) DEPARTMENT OF INTERIOR.—Notwithstanding the Desert National Wildlife Refuge withdrawal and reservation made by Executive Order No. 7373, dated May 20, 1936, as amended by Public Land Order Number 4079, dated August 26, 1966, and Public Land Order Number 7070, dated August 4, 1994, the lands depicted as impact areas on the map referred to in paragraph (4) are, upon completion of the transfers authorized in paragraph (5)(F)(ii), transferred to the primary jurisdiction of the Secretary of the Air Force, who shall manage the lands in accordance with the memorandum of understanding referred to in paragraph (5)(E). The Secretary of the Interior shall retain secondary jurisdiction over the lands for wildlife conservation purposes.

(4) LAND DESCRIPTION.—The public lands and interests in lands withdrawn and reserved by paragraphs (1) and (2) comprise approximately 2,919,890 acres of land in Clark, Lincoln, and Nye Counties, Nevada, as generally depicted on the map entitled “Nevada Test and Training Range, Proposed Withdrawal Extension”, dated April 22, 1999, and filed in accordance with section 3012.

(5) DESERT NATIONAL WILDLIFE REFUGE.—

(A) \*\*\*

\* \* \* \* \*

(G) INTERAGENCY COMMITTEE.—

(i) IN GENERAL.—The Secretary of the Interior and the Secretary of the Air Force shall jointly establish an interagency committee (referred to in this subparagraph as the ‘interagency committee’) to—

(I) facilitate coordination;

(II) manage public access needs and requirements; ~~and~~

(III) minimize potential conflict between the Department of the Interior and the Department of the Air Force with respect to joint operating areas within the Desert National Wildlife Refuge; and

(IV) discuss, as needed, the activities authorized in paragraph (1), and to provide input to the United States Fish and Wildlife Service and the Department of the Air Force when assessing whether these activities may be conducted on the joint operating areas within the Desert National Wildlife Refuge that are under the primary jurisdiction of the Secretary of the Interior in a manner that is consistent with the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd et seq.) and other applicable law.

(ii) MEMBERSHIP.—The interagency committee shall include only the following members:

(I) Representatives from the United States Fish and Wildlife Service, including a designee of the Director of the United States Fish and Wildlife Service.

(II) Representatives from the Department of the Air Force, including a designee of the Assistant Secretary of the Air Force for Energy, Installations, and Environment.

(III) The Project Leader of the Desert National Wildlife Refuge Complex.

(IV) The Commander of the Nevada Test and Training Range, Nellis Air Force Base.

(iii) REPORT TO CONGRESS.—The interagency committee shall biannually submit to the Committees on Armed Services, Environment and Public Works, and Energy and Natural Resources of the Senate and the Committees on Armed Services and Natural Resources of the House of Representatives, and make available publicly online, a report on the activities of the interagency committee.

(H) INTERGOVERNMENTAL EXECUTIVE COMMITTEE.—

(i) ESTABLISHMENT.—The Secretary of the Interior and the Secretary of the Air Force shall jointly establish, by memorandum of understanding, an intergovernmental executive committee (referred to in this subparagraph as the ‘executive committee’) in accordance with this subparagraph.

(ii) PURPOSE.—The executive committee shall be established for the purposes of—

(I) exchanging views, information, and advice relating to the management of the natural and cultural resources of the lands withdrawn and reserved by this section; ~~and~~

(II) discussing and making recommendations to the interagency committee established under subparagraph (G) with respect to public access needs and requirements; and

(III) discussing and making recommendations to the interagency committee established under subparagraph (G) with respect to any proposal by the Secretary of the Air Force to

undertake any of the activities authorized in paragraph (1) on the joint operating areas within the Desert National Wildlife Refuge.

(iii) COMPOSITION.—The executive committee shall comprise the following members:

(I) FEDERAL AGENCIES.—The Secretary of the Interior and the Secretary of the Air Force shall each appoint 1 representative from an interested Federal agency.

(II) STATE GOVERNMENT.—The Secretary of the Interior and the Secretary of the Air Force shall jointly invite 1 representative of the Nevada Department of Wildlife.

(III) LOCAL GOVERNMENTS.—The Secretary of the Interior and the Secretary of the Air Force shall jointly invite 1 county commissioner of each of Clark, Nye, and Lincoln Counties, Nevada.

(IV) TRIBAL GOVERNMENTS.—The Secretary of the Interior and the Secretary of the Air Force shall jointly invite 1 representative of each Indian tribe in the vicinity of the portions of the joint use area of the Desert National Wildlife Refuge where the Secretary of the Interior exercises primary jurisdiction.

(V) PUBLIC.—The Secretary of the Interior and the Secretary of the Air Force shall jointly invite not more than 3 private individuals who the Secretary of the Interior and the Secretary of the Air Force jointly determine would further the goals and objectives of the executive committee.

(VI) ADDITIONAL MEMBERS.—The Secretary of the Interior and the Secretary of the Air Force may designate such additional members as the Secretary of the Interior and the Secretary of the Air Force jointly determine to be appropriate.

(iv) OPERATION.—\*\*\*

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1 **SEC. \_\_\_. PAYMENT OF EXPENSES TO HELP RESPOND TO CIVILIAN HARM.**

2 (a) IN GENERAL.—Chapter 163 of title 10, United States Code, is amended by adding at  
3 the end the following new section:

4 **“§ 2741. Payment of expenses to help respond to civilian harm**

5 “(a) PAYMENTS.—(1) The Secretary of Defense may carry out short-term projects and  
6 make payments for expenses, in such amounts and through such means and consistent with the  
7 regional assessments developed in accordance with subsection (c)(2), that the Secretary  
8 determines to be necessary for the purpose of expressing condolences or helping alleviate or  
9 otherwise responding to civilian harm that has occurred in an area affected by an operation of the  
10 armed forces, a coalition that includes the United States, or a military operation supporting the  
11 United States or such a coalition.

12 “(2) A determination by the Secretary under this subsection shall be binding on all  
13 accounting officers of the United States.

14 “(b) CONDITIONS.—The Secretary may only make a payment under subsection (a) if—

15 “(1) the payment is not authorized under any other provision of law;

16 “(2) the payment is not with respect to harm to a civilian who was involved in  
17 planning or executing an attack or other hostile action that gave rise to the use of force by  
18 the United States, a coalition that includes the United States, or an armed organization  
19 supporting the United States or such coalition, that resulted in such civilian harm; and

20 “(3) the recipient of the payment or any civilian on whose behalf the payment is  
21 made is not otherwise ineligible for payment under any other provision of law.



1           “(c) AMOUNT OF PAYMENT.—(1) The Secretary of Defense shall determine the amount of  
2 each payment of expenses under this section based on a regional assessment developed under  
3 this subsection.

4           “(2) The Secretary of Defense shall develop regional assessments on at least an annual  
5 basis, including anticipated total costs of payments under this section for the region, with the  
6 concurrence of the Secretary of State.

7           “(d) NO ADMISSION.—A payment under subsection (a) shall not be construed or  
8 considered as an admission or acknowledgement of any violation of the law of war or any legal  
9 obligation to provide compensation for any harm to civilians.

10           “(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out  
11 this section and shall transmit a copy of such regulations to the congressional defense  
12 committees.

13           “(f) FUNDING.—(1) The Secretary may use not more than \$10,000,000 in any fiscal year  
14 for payments under this section.

15           “(2) Amounts used to make payments in a fiscal year under this section shall be derived  
16 from amounts authorized to be made available for that fiscal year for Operation and  
17 Maintenance, Defense-wide.”.

18           (b) CLARIFICATION OF LIMITATION ON EX GRATIA PAYMENTS.—Section 1213(i) of the  
19 National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2731  
20 note) is repealed.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would create a new authority for paying expenses to help respond to civilian harm. Section 1213 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 authorizes funds to be made available for *ex gratia* payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition. This new authority would complement this existing authority and allow for other expenses to help alleviate or otherwise respond to harm to civilians, for example, including expense for medical care, repairs to damaged structures and infrastructure, ordnance removal, and locally held commemorative events or symbols. This new authority would allow the Department to pay expenses, whether the expenses were incurred by the Department of Defense or others and regardless of whether the expenses are paid directly by the Department of Defense or are reimbursed to a payer who has already paid the expense.

The \$10,000,000 limitation on the total amount of funds per fiscal year provided under this new authority will ensure the appropriate use of this authority, while also taking into account that expenses associated with medical care and equipment, repairs to structure and infrastructure, and other allowable uses of this authority may be expected to exceed payment amounts historically associated with condolence payments.

In a memorandum dated January 27, 2022, *Improving Civilian Harm Mitigation and Response*, the Secretary of Defense emphasized that the protection of civilians is a strategic and a moral imperative; stated that DoD will revisit the ways in which we acknowledge the harm to civilians that results from our operations; directed the creation of a Civilian Harm Mitigation and Response Action Plan (CHMR-AP); and specified that the CHMR-AP provide for the review of guidance and its associated implementation of how the Department responds to civilian harm, including, but not limited to condolence payments and the public acknowledgement of harm. This proposal aims to implement a major potential improvement identified during that review — specifically, to enact a broader new authority for payment of expenses to help respond to incidents of civilian harm that would supplement the section 1213 *ex gratia* authority.

Objective 8 of the CHMR-AP aims to establish a comprehensive framework through which DoD will ensure the availability of a diverse menu of options that can be used to respond to individuals and communities affected by military operations—including public and private acknowledgements of harm, condolence payments, medical care, repairs to damaged structures and infrastructure, ordnance removal, and locally held commemorative events or symbols. These options will allow commanders to craft tailored responses which are contextually and culturally appropriate. It is anticipated that military commanders would exercise this authority within their areas of responsibility pursuant to guidance from the Secretary and that the Secretary would not personally approve each payment.

Consistent with the emphasis in the National Defense Strategy and the National Security Strategy on the strategic importance of upholding our values, responding appropriately when civilian harm occurs will demonstrate that the United States leads with its values and stands ready to uphold those values, especially when it employs force in defense of its national interests. Moreover, enhancing DoD's ability to more effectively respond to instances of civilian harm will ensure U.S. military operations are perceived as legitimate, enhance the view of the United States as a responsible actor during the conduct of hostilities, and limit the ability of adversaries to exploit incidents of civilian harm to gain an advantage in the information domain.

Likewise, effective responses to civilian harm can mitigate against potential disinformation campaigns and other gray-zone tactics used by adversaries that pose risks to U.S. legitimacy.

The proposal would also remove the exclusive restriction from subsection (i) of section 1213. Subsection (i) states that section 1213 is to be the sole authority to provide ex gratia payments to persons for property damage, personal injury, or death incident the use of force by the United States Armed Forces. The amendment would allow the new authority to complement existing ex gratia authority, and clarify that, for example, an ex gratia payment for condolence need not preclude related efforts such as provision of medical care or rebuilding

**Resource Information:** The resources affected by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2024 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Total	10.0	10.0	10.0	10.0	10.0	Operation and Maintenance (0100D)	04	4GTN	0907388D8Z

**Changes to Existing Law:** This proposal would create add a new section 2741 to chapter 163 of title 10, United States Code, the full text of which is shown in the legislative language above. This proposal would also amend section 1213 of the NDAA for FY 2020 (10 U.S.C. 2731 note) as follows:

**SEC. 1213. AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS.**

(a) AUTHORITY.—During the period beginning on the date of the enactment of this Act and ending on December 31, 2033, not more than \$3,000,000 for each calendar year, to be derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the Operation and Maintenance, Defense-wide account, may be made available for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition.

\* \* \* \* \*

~~(i) RELATION TO OTHER AUTHORITIES. Notwithstanding any other provision of law, the authority provided by this section shall be construed as the sole authority available to make ex gratia payments for property damage, personal injury, or death that is incident to the use of force by the United States Armed Forces.~~