

Calendar No. 240

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 105-126

BIG HORN COUNTY, WYOMING LAND TRANSFER

OCTOBER 30, 1997.—Ordered to be printed

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

REPORT

[To accompany S. 814]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 814) to direct the Secretary of the Interior to transfer to John R. and Margaret J. Lowe of Big Horn County, Wyoming, certain land so as to correct an error in the patent issued to their predecessors in interest, 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. TRANSFER OF LOWE FAMILY PROPERTY.

(a) CONVEYANCE.—Subject to valid existing rights, the Secretary of the Interior is directed to issue, without consideration, a quitclaim deed to John R. and Margaret J. Lowe of Big Horn County, Wyoming, to the land described in subsection (b): *Provided*, That all minerals underlying such land are hereby reserved to the United States.

(b) LAND DESCRIPTION.—The land referred to in subsection (a) is the approximately 40-acre parcel located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, Township 51 North, Range 96 West, 6th Principal Meridian, Wyoming.

PURPOSE

The purpose of S. 814 is to direct the Secretary of the Interior to transfer to John R. and Margaret J. Lowe of Big Horn County, Wyoming, certain land so as to correct an error in the patent issued to their predecessors in interest.

BACKGROUND AND NEED

The 40-acre parcel of land in question was contained within a patent issued on September 12, 1910. While that patent listed a total of 160 acres, the legal description of the land only covered 120 acres. Records for Big Horn County indicate that property taxes for 160 acres have been collected off the land since its patent in 1910. In point of fact, Big Horn County seized the property in 1925 for back taxes and proceeded to resell it as a 160-acre tract. The Lowes purchased the property in 1966 and have been paying taxes on the full 160 acres since then.

The Bureau of Land Management has stated that the most reasonable options to clear the title are either enactment of legislation to transfer the property or for the Lowes to re-purchase the property at its current market value. In its views to the Committee, the Department of the Interior supports transfer to the Lowes as long as the mineral estate is retained by the United States.

LEGISLATIVE HISTORY

On May 23, 1997, S. 814 was introduced by Senators Enzi and Thomas. On September 25, 1997 the Subcommittee of Forests and Public Land Management held a hearing on the legislation.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on October 22, 1997, by voice vote of a quorum present, recommends that the Senate pass S. 814, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 814, the Committee adopted an amendment in the nature of a substitute. The amendment makes clarifying changes and adds language reserving all minerals underlying the land to the United States.

SUMMARY OF S. 814

S. 814 directs the Secretary of the Interior to issue a quitclaim deed to John R. and Margaret J. Lowe for lands described in Subsection (b) with a provision that all minerals underlying the land are reserved to the United States.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 23, 1997.

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. 814, a bill to direct the Sec-

retary of the Interior to transfer to John R. and Margaret J. Lowe of Big Horn County, Wyoming, certain land so as to correct an error in the patent issued to their predecessors in interest.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 814—A bill to direct the Secretary of the Interior to transfer to John R. and Margaret J. Lowe of Big Horn County, Wyoming, certain land so as to correct an error in the patent issued to their predecessors in interest

S. 814 would direct the Secretary of the Interior, acting through the Bureau of Land Management, to transfer without consideration about 40 acres of public land in Big Horn County, Wyoming, to John R. and Margaret J. Lowe. The federal government would retain the mineral interests in the land.

CBO estimates that enacting this bill would have no significant impact on the federal budget. Because S. 814 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 814 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Victoria V. Heid. This estimate was approved by 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. 814. 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 enactment of S. 814, as ordered reported.

EXECUTIVE COMMUNICATIONS

The legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 814 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 21, 1997.

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

DEAR MR. CHAIRMAN: Thank you for the opportunity to present the views of the Department of the Interior (Interior) on S. 814, a bill to transfer forty acres of public land in Big Horn County, Wyoming to John R. and Margaret J. Lowe. Interior testified on this bill before the Subcommittee on Forests and Public Lands Management on September 25, 1997.

Interior supports S. 814. There is a confusing history to this parcel, which is recorded in the public record, and which supports the Lowe's claim to this land.

The Bureau of Land Management (BLM) field office completed a status and record review of the forty-acre block. The land in question was originally part of a one hundred and sixty acre tract entered by Ms. Mary Keith under the Desert Land Act (DLA) in 1903. The DLA allows entry of up to three hundred and twenty acres prior to title transfer so the entryman can develop the lands and complete an irrigation system as required by law. A Final Certificate, the final administrative record prior to patent issuance, was issued for this one hundred and sixty acres in November of 1908. Records indicate that the disputed forty acres (SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 11, T. 51 N., R. 96 W., 6th Principal Meridian, Wyoming) were purposely relinquished by the entrywoman in the month of April, 1910. This relinquishment was accepted by the General Land Office. Ownership of the remaining one hundred and twenty acres was conveyed to Ms. Keith with the issue of a patent in September 1910. The last minute relinquishment of the forty acres apparently resulted in an error in the patent, which stated that one hundred and sixty acres were conveyed, even though the written legal description in the patent correctly describes one hundred and twenty acres.

Review of the Bighorn County Records, however, reveal a much more confusing history of this parcel. In 1925, the Bighorn County Treasurer issued a tax deed to Bighorn County for the forty acres in question. The tax deed was issued as a result of foreclosure for non-payment of taxes. However, we are unable to positively confirm why the county treasurer believed the forty acres was private property or who was supposedly delinquent in taxes. Once this tax deed was issued, the county was free to sell the parcel, which it did in 1936 to one M.H. English. In 1966, the Lowes purchased the forty-acre parcel from M.H. English. The Lowes obtained an abstract of title for this purchase. The abstractor who completed the title search noted, apparently incorrectly, that the original patent was in error. He provided the written opinion that, based on other entries in the county records, the legal description of the land being transferred by the issued abstract was sold, and the new owners have stated that they are not liable for the precious work. Our Solicitor believes the Lowes would only have a remote chance of prevailing against the title company in litigation at a cost which would

well exceed the value of the land. County records indicate the Lowes have been paying taxes on the land since 1966.

Obviously, the history of the forty acres is clouded. The BLM has reviewed three options normally available to clear up this type of issue. First, the Lowes could request that the original patent be corrected, but this would only result in the patent being changed to read one hundred and twenty acres as compared to the one hundred and sixty acres which is stated in error. As a second alternative, the Lowes could seek relief under the Color of Title Act. However, this application would be rejected as the forty-acre parcel has neither improvements nor a history of cultivation as required by the Act. Finally, the Lowes could seek to purchase the land at fair market value as allowed under the Federal Land Policy and Management Act. BLM can process a sale directly to the Lowes. However, this does not allow any reduction in value to recognize that the Lowes purchased the land in good faith and have paid taxes on the property since 1966. S. 814 will allow this problem to be rectified with no or minimal additional expense to either the Lowes or the BLM.

We could recommend, however, that the language of the bill be changed in order to recognize valid existing rights, as an existing irrigation ditch crosses through the property. We also recommend that the United States transfer its right, title, and interest in only the surface estate and that the mineral estate be reserved to the United States, as would be the case under a Color of Title resolution.

The Committee's majority staff provided a copy of a substitute amendment that is intended for introduction at the markup. It appears upon review of this substitute that the Department's concerns have been addressed and suggestions for modification taken. We would therefore support the reporting out of this bill from your Committee.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the President's program.

Sincerely,

BOB ARMSTRONG,
*Assistant Secretary for Land and
Minerals Management.*

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. 814, as ordered reported.