

**Calendar No. 596**

107TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 107-277

**DESCHUTES AND CROOK COUNTIES, OREGON**

SEPTEMBER 12, 2002.—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. 2482 ]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2482) to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road, 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. COUNTY-RIGHT-OF-WAY TO WEST BUTTE ROAD IN THE STATE OF OREGON**

(a) DEFINITIONS.—In this Act.

(1) WEST BUTTE ROAD.—The term “West Butte Road” means the unpaved Bureau of Land Management road in the State of Oregon identified on the map as BLM Road 6520.

(2) COUNTY.—The term “County” means each of Crook County and Deschutes County in the State of Oregon.

(3) MAP.—The term “map” means the map entitled “West Butte Road Right of Way” dated July 17, 2002.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(b) GRANT TO COUNTIES.—Effective on the date the Secretary has received from a county notice that the county relinquishes any right in and to a right-of-way under section 2477 of the Revised Statutes (43 U.S.C. 932 note) by such county to the portion of the road known as George Millican Road that is located in the area described in subsection (c)(1), such county is granted a right-of-way to the West Butte Road located within such county by operation of law, subject only to the common terms, conditions, and stipulations identified in the county’s rights-of-way grants that apply on the date of enactment of this Act.

(c) BOUNDARIES.—

(1) IN GENERAL.—Subject to paragraph (2), the rights-of-way granted under subsection (b) shall—

(A) extend in length from Reservoir Road in Crook County to United States Route 20 in Deschutes County, Oregon; and

(B) shall extend in width 100 feet on each side of the centerline of West Butte Road.

(2) MODIFICATIONS.—

(A) STATE ROADS.—The Secretary shall modify the existing rights-of-way of each of the counties as contained in its respective road case file to include the rights-of-way granted under subsection (b).

(B) WEST BUTTE ROAD.—The Secretary shall adjust the right-of-way width and alignment granted under subsection (b) in portions of the West Butte Road as necessary to meet applicable State and Federal highway standards.

PURPOSE

The purpose of S. 2482 is to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road upon the relinquishment by the counties of rights-of-way claims to the nearby George Millican Road.

BACKGROUND AND NEED

The community of Prineville, in Crook County, Oregon, proposes construction of a paved road to connect the community with U.S. Highway 20 to provide an alternative route for both passenger and commercial traffic traveling between Portland, Oregon and Boise, Idaho. The proposed paved road would also assist Prineville industry by routing traffic towards the Prineville/Crook County Industrial Parks, which have been reserved with the intent of improving industrial diversification within the county.

Environmental benefits would also result from enactment of this legislation. The proposed road would traverse flat desert and reclaim an old highway straightaway. In contrast, improving the current roadway to accommodate traffic would likely result in damage to the nearby Crooked River and riparian zones. Traffic congestion would also be reduced on the overcrowded highway 97 as it passes through Bend and Redmond, Oregon.

The proposed right-of-way is currently being considered by the BLM on the basis of revision to its existing Upper Deschutes Resource Management Plan. BLM's decision will entail an extensive process and involve significant delays, possibly as much as four to six years.

Enactment of S. 2482 will facilitate the transfer of the West Butte Road right-of-way to expedite construction of the new road.

LEGISLATIVE HISTORY

S. 2482 was introduced by Senator Wyden on May 8, 2002. Senator Smith of Oregon was added as a cosponsor on June 17, 2002. The Subcommittee on Public Lands and Forests held a hearing on S. 2482 on June 18, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered S. 2482, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 2482, if amended as described herein.

## COMMITTEE AMENDMENT

During the consideration of S. 2482, the Committee adopted an amendment in the nature of a substitute. The amendment corrects references to the applicable maps and made other clarifying changes.

## SECTION-BY-SECTION ANALYSIS

*Section 1* (a) defines key terms.

Subsection (b) requires the Secretary of the Interior to grant to Crook County and Deschutes County a right-of-way to the West Butte Road, effective on the date the Secretary receives notice from each county that it is relinquishing any R.S. 2477 rights-of-way claim to the George Millican Road.

Subsection (c) requires the Secretary to adjust the boundaries of the right-of-way to meet approved standards applicable to an improved road.

## 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, August 7, 2002.*

Hon. JEFF BINGAMAN,  
*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. 2482, a bill to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the state of Oregon a right-of-way to West Butte Road.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 2482—A bill to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the state of Oregon a right-of-way to West Butte Road*

CBO estimates that enacting S. 2482 would have no significant impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 2482 would direct the Secretary of the Interior to grant to Deschutes and Crook Counties, Oregon, rights-of-way to the West Butte Road, which was constructed in 1968 by the Bureau of Land Management (BLM) through lands owned by that agency. In exchange, those counties would relinquish right-of-way interests in the George Millican Road, which passes through the same segment

of federal land as the West Butte Road. According to BLM, the agency currently collects no fees for the affected rights-of-way, and exchanging them would not affect the agency's costs to manage the surrounding lands.

S. 2482 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The right-of-way grant authorized by this bill would benefit the state of Oregon and the affected local governments in the state. Any costs that these governments would incur to meet the conditions of this grant would be voluntary.

On July 30, 2002, CBO transmitted a cost estimate for H.R. 4853, similar legislation, as ordered reported by the House Committee on Resources on July 24, 2002. The two bills are substantively similar, and our cost estimates are the same.

The CBO staff contacts for this estimate are Megan Carroll (for federal costs), and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, 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. 2482. 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. 2482, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 2482 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, June 25, 2002.*

Hon. JAMES V. HANSEN,  
*Chairman, Committee on Resources,  
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 2482, a bill "to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road." The bill also provides for the relinquishment of right-of-way interests in the George Millican Road (or "Old Millican Road").

The Department supports the goal of S. 2482, to grant the right-of-way to the Oregon counties, but we would like to work with the Committee on amendments to the bill to provide for a process that would include community involvement in addressing issues related to conflicts with recreational uses and wildlife concerns in the area.

The population of central Oregon has been expanding rapidly, and for Crook County, Oregon, one of the integral components to this growth is the West Butte Road. The Bureau of Land Management (BLM) constructed the West Butte Road in 1968. It is a fairly straight road, approximately 14 miles in length that has become the preferred route from Four Corners to Highway 20. Crook County has maintained it for several years under a cooperative maintenance agreement with the BLM. Deschutes County sees this road as a means of relieving some of the traffic burden from Highway 97 in the ever-growing Bend and Redmond communities.

In 1968, the State of Oregon designated Highway 27, currently located further to the east near Prineville Reservoir, as a State Highway with the understanding that a new route for the road would be created. It was recognized that the current alignment of Highway 27—the only State Highway in Oregon that still has unpaved portions—could not be improved for economic reasons and physical limitations. Later, both State and Federal agencies recognized the natural values of the Crook River Canyon, which further reduced the desirability of upgrading Highway 27 in its current location. Ultimately, West Butte Road became the most likely replacement route for Highway 27.

The George Millican Road, meanwhile, extends from Prineville to Lakeview and was recognized in 1915 by Crook County as a country road. The northern segment of the road was converted to a right-of-way in 1991 and is no longer a concern to the counties. However, the southern segment of road from Four Corners south to Highway 20, near the town of Millican continues to be an area of concern. The route is a single lane, unimproved road that occupies the original 1915 alignment. Currently, the BLM has several rights-of-way over this segment of the George Millican Road.

Over the last three years, the BLM has been working with Crook and Deschutes Counties, the Oregon Department of Transportation, and Oregon Department of Fish and Wildlife identifying suitable alternatives to State Highway 27. One of the more suitable alternative routes that has been considered is the combined route known as the Millican and West Butte Road. The BLM's 1989 Resource Management Plan for Prineville failed to anticipate issues related to the rapidly growing human population in Bend, Redmond, Prineville, and surrounding areas. This combination of changing circumstances and new information has created a need to revise the existing Resource Management Plan. The Upper Deschutes Resource Management Plan is currently being prepared to address these issues, particularly the need to resolve a number of transportation problems including the West Butte Road. Recognizing the importance of these issues, the BLM has made the Upper Deschutes Resource Management Plan a priority and put it on a fast track, with a final Record of Decision planned for the Winter of 2004.

Through this process we have agreed to consider and analyze alternative corridors to determine the route that would be most suitable for future use as a State Highway. Following completion of the Upper Deschutes Resource Management Plan, the BLM would be able to issue a decision on the right-of-way, and assuming a favorable decision for the right-of-way, determine the final alignment of

the road, and also determine any mitigation measures for road design.

It is important to note that the Upper Deschutes Resource Management Plan provides intensive public and governmental collaboration. It utilizes a community-based collaborative process that helps solve important problems facing long-term management of the public lands within the planning area. It is a process that is deliberative and open to all. Accordingly, the BLM is using "Issue Teams" to focus on specific planning issues. Chartered by the Deschutes Provincial Advisory Committee, the Teams are composed of representatives of the general public, specific interest groups, permit holders, other stakeholders and relevant government agencies, including Crook and Deschutes Counties. Team members have been meeting since the Fall of 2001 and the majority of their work will involve review of public comments on the Draft Environmental Impact Statement for the Resource Management Plan near the end of 2002 or the beginning of 2003.

Finally, the transportation analysis component of the Upper Deschutes Resource Management Plan could begin as early as January of 2003, and be completed after the Record of Decision on the Resource Management Plan is signed in the Winter of 2004.

The Department of the Interior supports the goal of S. 2482 however, the Department believes the legislation would cut short the process currently underway to provide for greater community involvement in addressing issues related to final location and design of the West Butte Road. The Upper Deschutes Resource Management Planning process provides an appropriate vehicle for addressing and resolving this issue. The bill as currently drafted does not address the important issues under consideration in the Upper Deschutes Resource Management Planning process.

With regard to Off-Highway Vehicle recreation use, the current West Butte Road splits the Millican Off-Highway Vehicle recreational use area down the middle and further development of the West Butte Road could create safety conflicts and limit these recreation uses in the area. The Millican Off-Highway Vehicle trail system is one of the most popular in the state, and represents a significant financial investment by the State Off-Highway Vehicle Committee, attracting riders state-wide. Off-Highway Vehicle use in BLM's Resource Management Plan is an important issue, and the BLM is currently determining, on a broad-scale, how and where these Off-Highway Vehicle recreational uses will continue in the future. There is no provision in the legislation that provides for mitigation measures to provide for the safety of Off-Highway Vehicle users and ensure that the recreation impacts of future development of the West Butte Road are minimized.

Another outstanding concern is the issue of wildlife in the West Butte Road corridor. Currently, the West Butte Road falls on the fringe of fragile Sage Grouse habitat and within mule deer winter range. The Sage Grouse populations have declined in this area due to a number of factors, including human disturbances. There are nesting populations that as currently written, does not provide for a way to address the potential impacts of the development of the West Butte Road on the Sage Grouse and mule deer populations.

Finally, the establishment of a State Highway in the West Butte Road corridor may also increase the potential for development of

private lands that would be more easily accessed by an improved road, and these potential future development issues also should be considered.

The Department of the Interior looks forward to working with the Committee to help address these issues in a meaningful way that will meet Central Oregon's transportation needs.

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

Sincerely,

REBECCA W. WATSON,  
*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. 2482, as ordered reported.

