

NORTHERN CHEYENNE LANDS ACT

SEPTEMBER 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 4350]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4350) to direct the Secretary of the Interior to take lands and mineral rights on the reservation of the Northern Cheyenne Tribe of Montana and other culturally important lands into trust, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Northern Cheyenne Lands Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Northern Cheyenne Tribe has depended on its lands and land-based resources to support its way of life since time immemorial.

(2) The Tribe has made supreme and historic sacrifices to repossess and maintain its homeland, including its Reservation in Montana.

(3) The Tribe currently suffers from tremendous social and economic challenges, including a lack of employment opportunities on the Reservation, which can be improved by strengthening its control over its land base, natural resources, and trust funds.

(4) The Tribe and its members are currently the beneficial owners of over 95 percent of the surface lands on the Northern Cheyenne Reservation and all but approximately 5,000 subsurface acres of the Reservation.

(5) The Tribe seeks to obtain ownership of approximately 5,000 subsurface acres on its Reservation it does not own because of an error by the United States to secure that subsurface when the Reservation was expanded in 1900.

(6) In 2002, the Tribe agreed by settlement to dismiss its lawsuit against the United States, which alleged that the United States failed to protect the Reservation from the impacts of coal development, in return for assistance in secur-

ing tribal ownership of those subsurface rights substantially in the form of this Act, and to secure mitigation funding to address the impacts of coal development in areas adjacent to the Reservation, among other conditions.

(7) To increase tribal ownership of the surface lands, the Tribe has purchased approximately 932 acres of land within its Reservation that were taken out of trust ownership status for various reasons.

(8) The Tribe has purchased approximately 635 acres of land near Bear Butte, South Dakota, which the Tribe considers sacred ground for its members, as well as for members of other tribes.

(9) The Tribe now seeks to have the aforementioned lands and subsurface within the Reservation and Bear Butte lands taken into trust on its behalf by the United States.

(10) If the actions authorized by this Act are completed, the Tribe will waive all legal claims against the United States arising out of the longstanding loss of the subsurface rights and arising out of the United States management of the Northern Cheyenne Trust Fund.

SEC. 3. DEFINITIONS.

In this Act:

(1) **FUND.**—The term “Fund” means the Northern Cheyenne Trust Fund identified in the June 7, 1999 Agreement Settling Certain Issues Relating to the Tongue River Dam Project which was entered into by the Tribe, the State of Montana, and delegates of the Secretary of the Interior, and managed by the Office of Special Trustee in the Department of the Interior.

(2) **GREAT NORTHERN PROPERTIES.**—The term “Great Northern Properties” means the Great Northern Properties Limited Partnership, which is a Delaware limited partnership.

(3) **PERMANENT FUND.**—The term “Permanent Fund” means the Northern Cheyenne Tribe Permanent Fund managed by the Northern Cheyenne Tribe pursuant to the Plan for Investment, Management and Use of the Fund, as amended by vote of the Tribal membership on November 2, 2010.

(4) **RESERVATION.**—The term “Reservation” means the Northern Cheyenne Reservation.

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

(6) **STATE.**—The term “State” means the State of Montana.

(7) **TRIBE.**—The term “Tribe” means the Northern Cheyenne Tribe.

SEC. 4. TRIBAL FEE LANDS TO BE TAKEN INTO TRUST.

Not later than 60 days after the date of the enactment of this Act, the Secretary shall take the approximately 1,568 acres of land depicted on the map entitled “Northern Cheyenne Land Act—Fee-to-Trust Lands” and dated March 26, 2014, and on the map entitled “Northern Cheyenne Land Act—Fee-to-Trust Lands—Lame Deer Townsite”, and dated March 26, 2014, into trust for the benefit of the Northern Cheyenne Tribe.

SEC. 5. MINERAL RIGHTS TO BE TAKEN INTO TRUST.

(a) **COMPLETION OF MINERAL CONVEYANCES.**—Not later than 60 days after the date on which the Secretary receives the notification described in subsection (d), in a single transaction—

(1) Great Northern Properties shall convey to the Tribe all right, title, and interest of Great Northern Properties, consisting of coal and iron ore mineral interests, underlying the land on the Northern Cheyenne Reservation generally depicted as “Great Northern Properties” on the map entitled “Northern Cheyenne Land Act—Coal Tracts” and dated February 27, 2014;

(2) the Secretary shall convey to Great Northern Properties all right, title, and interest of the United States in and to the coal mineral interests underlying the land generally depicted as “Bull Mountains” and “East Fork” on the map entitled “Northern Cheyenne Land Act—Coal Tracts” and dated February 27, 2014; and

(3) the Secretary shall ensure that the deed for the conveyance authorized by paragraph (2) shall include a covenant, running with the land—

(A) that precludes the coal conveyed from being mined by methods other than underground mining techniques until any surface owner (as defined in section 714 of Public Law 95–87 (30 U.S.C. 1304(e))) for any specific tract has given written consent to Great Northern Properties to enter such specific tract and commence surface mining; and

(B) shall not create any property interest in the United States or any surface owner (as defined in section 714 of Public Law 95–87 (30 U.S.C. 1304(e))).

(b) **TRUST STATUS.**—Upon tribal request, the coal and iron ore mineral interests conveyed to the Tribe under this section shall be held in trust by the United States for the benefit of the Tribe.

(c) **IMMUNITIES.**—The right, title, and interests conveyed to the Tribe under subsection (a)(1) shall not be subject to taxation by the State of Montana (including any political subdivision of the State of Montana).

(d) **REVENUE SHARING AGREEMENT.**—Consistent with the Settlement Agreement entered into effective February 19, 2002, by the Montana State Board of Land Commissioners and the Tribe, the Tribe and Great Northern Properties have agreed on a formula for sharing revenue from development of the Northern Cheyenne Federal Tracts in the event that the Northern Cheyenne Federal Tracts are developed at a later date. The Tribe shall notify the Secretary in writing that the revenue sharing agreement remains in effect.

(e) **WAIVER OF LEGAL CLAIMS.**—In return for the conveyances of mineral interests under subsection (a)—

(1) the Tribe shall waive any and all claims arising from the continuing failure of the United States to acquire the private coal and iron ore mineral interests identified in subsection (a)(1) in trust for the Tribe as part of the Reservation as directed by Congress in 1900; and

(2) Great Northern Properties shall waive any claim against the United States relating to the value or completion of the conveyances under subsection (a).

(f) **RESCISSION OF MINERAL CONVEYANCES.**—If any portion of the mineral conveyances under subsection (a) is invalidated by a court of competent jurisdiction and the judgment of that court is not vacated or reversed on appeal—

(1) not later than 1 year after the date on which there is a final judgment, the Secretary or Great Northern Properties may rescind completely each mineral conveyance under subsection (a); and

(2) if the Secretary or Great Northern Properties carries out a rescission under paragraph (1), the waiver of the Tribe under this section shall be considered to be rescinded.

SEC. 6. TRANSFER OF NORTHERN CHEYENNE TRUST FUND TO TRIBE.

(a) **TRANSFER OF FUND.**—Not later than 30 days after the date of the enactment of this Act, the Fund shall be transferred to the Tribe and deposited into the Tribe's Permanent Fund.

(b) **PERMITTED USES OF FUND.**—The principal of the Fund, upon deposit in the Permanent Fund, shall be maintained in perpetuity, and the earnings of the Permanent Fund shall be used as provided in the Northern Cheyenne Tribe Permanent Fund Plan.

(c) **WAIVER OF LEGAL CLAIMS.**—In return for transfer of the Fund under subsection (a), the Tribe shall waive any and all claims arising from the United States management of the Fund.

SEC. 7. ELIGIBILITY FOR OTHER FEDERAL BENEFITS.

No sums or other benefits provided to the Tribe under this Act shall result in the reduction or denial of any Federal services, benefits, or programs to the Tribe or to any member of the Tribe to which the Tribe or member is entitled or eligible because of—

- (1) the status of the Tribe as a federally recognized Indian tribe; or
- (2) the status of the member as a member of the Tribe.

PURPOSE OF THE BILL

The purpose of H.R. 4350 is to direct the Secretary of the Interior to take lands and mineral rights on the reservation of the Northern Cheyenne Tribe of Montana and other culturally important lands into trust.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4350 authorizes a land exchange to consolidate in tribal ownership approximately 5,000 acres (or about 8 sections) of private subsurface land within the Northern Cheyenne Indian Reservation in Montana. The subsurface contains a significant quantity of saleable coal. The bill also places two parcels of off-reservation land owned by the Northern Cheyenne Tribe into trust, waives certain claims of the Tribe against the United States, and transfers

certain funds held by the United States in trust for the benefit of the Tribe into the Tribe's Permanent Fund.

The Northern Cheyenne Lands Act is supported by the entire State of Montana's Board of Land Commissioners, the Montana-Wyoming Tribal Leader's Council, and the National Congress of American Indians.

In 1884, an Executive Order reserved lands bordering the Crow Reservation for the benefit of the Northern Cheyenne Indians who had returned to their southeastern Montana homelands after a forced relocation to Oklahoma in 1877. In 1900, pursuant to an Act of Congress and another Executive Order, the reservation was expanded eastward to the Tongue River, and an Indian Inspector embarked on a plan to ease hostilities and tensions between the Tribe's members and non-Indian settlers and squatters by purchasing all private (mostly railroad) lands within the Tribe's reservation. The Indian Inspector, however, missed approximately 8 sections of subsurface land owned by Northern Pacific Railway. The subsurface land bears significant coal resources.

Today, a majority of the Tribe's 10,000 members reside on the reservation, almost all of which is held in trust by the United States for the benefit of the Tribe except approximately 5,000 acres of subsurface coal. The coal interests in the 5,000 acres of subsurface the government failed to purchase are currently owned by Great Northern Properties (GNP), a privately held limited liability partnership that in 1992 acquired a portion of the former Northern Pacific Railroad land grant lands in Eastern Montana and Western North Dakota (Letter of May 21, 2014, submitted for the Subcommittee hearing record on H.R. 4350, from Charles H. Kerr, President and CEO, Great Northern Properties Limited Partnership).

The Tribe filed claims against the United States for its failure to purchase the eight sections of mineral estate owned by GNP within its reservation. More than 20 years ago, the Tribe approached GNP with a proposal to acquire the eight section inholding through a land exchange with the Bureau of Land Management (BLM). H.R. 4350 authorizes the exchange negotiated by the Tribe and GNP.

Under H.R. 4350, GNP shall transfer to the Tribe (to be held in trust by the Secretary of the Interior) its mineral interests in all eight sections of land in the reservation. These lands are depicted as "Great Northern Properties" on a map entitled "Northern Cheyenne Land Act—Coal Tracts" (note: due to a drafting error H.R. 4350 as introduced uses an incorrect map title). The Secretary shall then convey to GNP an equivalent amount of federal mineral interests (on a ton-for-ton basis) in tracts of BLM-administered land off the reservation. Such lands are depicted as "Bull Mountains" and "East Fork" on the same map.

Under the exchange authorized by H.R. 4350, GNP will relinquish to the Tribe 117.5 million tons of estimated saleable coal amenable to surface mining. GNP will receive in return approximately 112.9 million tons of estimated saleable coal amenable to a combination of underground and surface mining methods. Significant tracts transferred to GNP are speculative for mining development because mining conditions are challenging and significant amounts of coal are lower quality than that of the tracts GNP relinquishes to the Tribe. A detailed technical analysis of the coal

and mining conditions on tracts conveyed to the Tribe and GNP is included in GNP's May 21, 2014, letter for the record (referenced above).

The land exchange is triggered when the Tribe notifies the Secretary of the Interior in writing that a revenue sharing agreement described in Section 5(d) of the bill is in effect. Under the revenue sharing agreement, which was negotiated by the Tribe and GNP (consistent with a Settlement Agreement entered into effective February 19, 2002, by the Montana State Board of Land Commissioners and the Tribe), the Tribe will receive a 40 percent royalty from GNP's development of coal on the federal tracts transferred to GNP. The revenues will assist the Tribe in mitigating impacts from the mining of coal around its reservation. Moreover, the revenues will offset a 40 percent royalty BNSF Railroad (or its successors) would receive from the development of coal in the reservation inholding. Such a royalty is required pursuant to the 1992 purchase agreement whereby GNP acquired the eight sections of land in the Northern Cheyenne Reservation. This royalty is a covenant running with the land.

H.R. 4350 does not require the Tribe to develop any coal on its trust lands. Such development remains at the discretion of the Tribe. A tribal coal lease would undergo the usual review and approval of the Secretary of the Interior in accordance with applicable federal Indian mineral leasing laws.

Under the legislation, when the mineral conveyances under the bill are completed, the Tribe shall waive its claims related to the government's error committed in 1900 when it failed to purchase the 5,000 acres of subsurface estate that is today privately held by a non-Indian entity.

In addition to authorizing mineral conveyances, H.R. 4350 would transfer in trust several parcels of land the tribe currently owns in fee. The parcels total approximately 1,568 acres and are located within the tribe's reservation, off the reservation in Big Horn County, Montana, and in Meade County, South Dakota. The Tribe reports the South Dakota lands are sacred. These trust conveyances are depicted on maps entitled "Northern Cheyenne Land Act—Fee-to-Trust Lands" dated March 26, 2014; "Northern Cheyenne Land Act—Fee-to-Trust Lands—Lame Deer Townsite" dated March 26, 2014.

Finally, H.R. 4350 would transfer to the tribe a trust fund created under 1999 Agreement settling issues relating to the Tongue River Dam project. The trust fund is currently held by the Department of the Interior's Office of the Special Trustee for American Indians.

In the 112th Congress, a similar bill to consolidate the Northern Cheyenne Reservation through a land exchange with GNP and BLM was considered in the Natural Resources Committee. H.R. 1158 (Rehburg) was favorably reported by the Committee by unanimous consent following a hearing in which the Administration, the Tribe, and GNP testified. See H. Rept. 112–299. No further action occurred on the bill.

The Administration supports the goals of H.R. 4350 with certain modifications to address technical concerns. During Full Committee markup of the bill, an amendment addressing technical concerns—

correcting a typographical error relating to the name of a map—was adopted.

The importance of H.R. 4350 to the Northern Cheyenne Indians cannot be understated. President Llevando “Cowboy” Fisher, appearing before the Subcommittee on Indian and Alaska Native Affairs, testified that the bill “will improve the Tribe’s ability to self-govern and control its own destiny and will provide sorely needed economic development opportunities. I want to stress that the Northern Cheyenne Lands Act is a Tribal bill.”

COMMITTEE ACTION

H.R. 4350 was introduced on April 1, 2014, by Congressman Steve Daines (R-MT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Indian and Alaska Native Affairs and Energy and Mineral Resources. On May 7, 2014, the Subcommittee on Indian and Alaska Native Affairs held a hearing on the bill. On May 29, 2014, the Natural Resources Committee met to consider the bill. The Subcommittees on Indian and Alaska Native Affairs and Energy and Mineral Resources were discharged by unanimous consent. Congressman Daines offered an amendment designated Young #1; the amendment was adopted by voice vote. No further amendments were offered and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4350—Northern Cheyenne Lands Act

Summary: H.R. 4350 would require the Bureau of Land Management (BLM) to convey 9,400 acres of land containing coal deposits to Great Northern Properties, a private company, if the company conveys certain mineral rights to the Northern Cheyenne Tribe. The land conveyances would not be finalized unless the tribe waived all claims related to the failure of the United States to acquire certain mineral rights underlying the tribe’s reservation land.

Based on information provided by BLM, the tribe, and firms operating in the coal industry, CBO estimates that enacting the legislation would reduce net offsetting receipts (thus increasing direct spending) by \$2 million in 2024; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues and would have no significant impact on discretionary spending.

H.R. 4350 would preempt the authority of state and local governments to tax land and mineral interests conveyed to the Northern Cheyenne Tribe of Montana. Those requirements would be mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of the mandates would be minimal. The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4350 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—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015– 2019	2015– 2024
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	2	0	2
Estimated Outlays	0	0	0	0	0	0	0	0	0	2	0	2

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2014.

Forgone receipts from bonus bids

H.R. 4350 would require BLM to convey 9,400 acres of federal land containing coal deposits to Great Northern Properties.

Based on information provided by BLM and firms operating in the coal industry, CBO estimates that the affected lands contain 113 million tons of coal. CBO expects that, under current law, the federal government will lease lands containing up to 90 percent of that coal as early as 2024. Based on information regarding recent bonus bids paid for federal lands in western states containing coal, CBO expects that firms would pay between 30 and 40 cents per ton to lease the affected land, and we estimate that the bonus bids for those leases would total about \$18 million. Because firms generally pay bonus bids on coal leases in five equal installments over a five-year period, CBO estimates that gross proceeds from bonus bids (before making payments to states) would be about \$3 million in 2024. CBO also estimates that conveying the affected lands would not affect offsetting receipts from royalties because any production on those lands will not occur until after 2024 under current law.

Because BLM would distribute 49 percent of those proceeds to the state of Montana and CBO expects that the federal government would receive payment for those leases in equal installments over five years beginning in 2024, we estimate that enacting the bill would reduce net offsetting receipts by \$2 million in 2024. That estimate reflects the expected value of offsetting receipts taking into account various scenarios regarding the quantity and value of the coal deposits and the timing of lease sales.

Waiver of claims

The Northern Cheyenne Tribe asserts claims against the federal government because the government did not acquire mineral rights on lands that were added to the reservation in 1900. Under the bill, the tribe would waive those claims. CBO expects that any litigation related to the claims would not be completed or settled within the next 10 years. Therefore, we estimate that the waiver of those claims would not affect direct spending during the next decade.

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. H.R. 4350 would reduce the amount of offsetting receipts that would be deposited in the Treasury from certain coal leases; therefore, pay-as-you-go procedures apply. The net changes in outlays 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 H.R. 4350, THE NORTHERN CHEYENNE LANDS ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON MAY 29, 2014

	By fiscal year, in millions of dollars—														2014– 2019	2014– 2024
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024					
NET INCREASE OR DECREASE (–) IN THE DEFICIT																
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	2	0	2		

Intergovernmental and private-sector impact: H.R. 4350 would preempt the authority of state and local governments to tax land and mineral interests conveyed to the Northern Cheyenne Tribe of Montana. Those requirements would be mandates as defined in UMRA, but CBO estimates that the costs of the mandates would be minimal. The bill would benefit the Northern Cheyenne Tribe of Montana. The bill contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Jeff LaFave and Martin von Gnechten; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Bureau of Land Management, the tribe, and firms operating in the coal industry, CBO estimates that enacting the legislation would reduce net offsetting receipts (thus increasing direct spending) by \$2 million in 2024.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to direct the Secretary of the Interior to take lands and mineral rights on the reservation of the Northern Cheyenne Tribe of Montana and other culturally important lands into trust.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

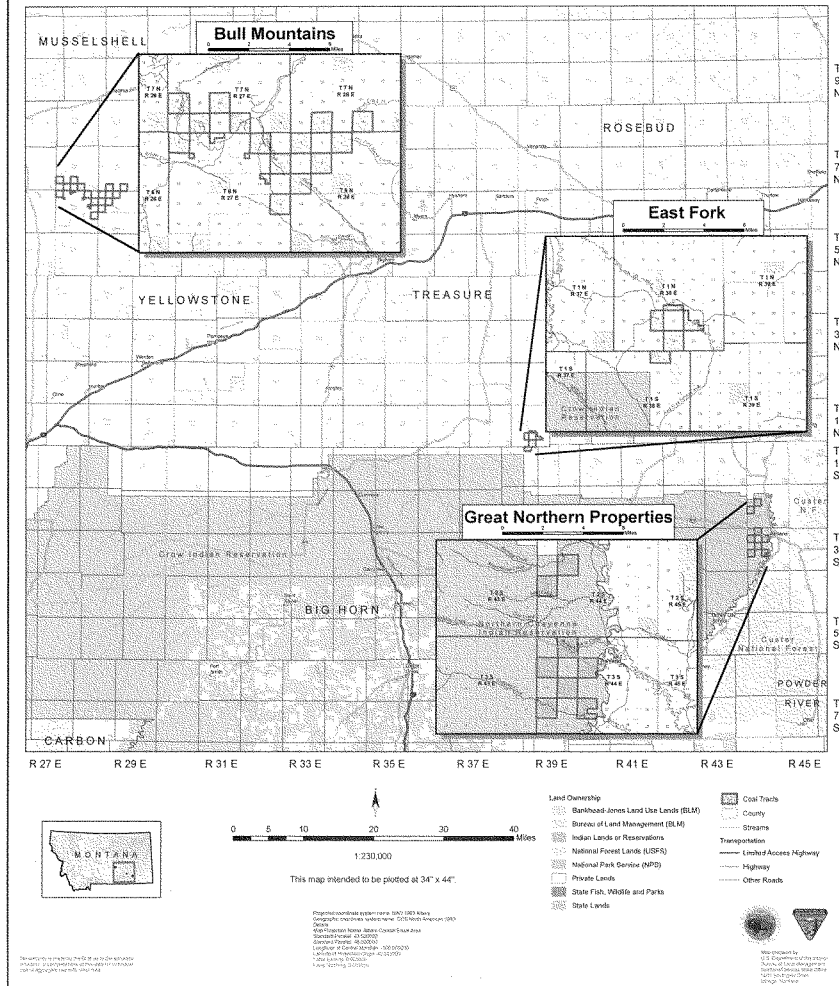
If enacted, this bill would make no changes in existing law.

APPENDIX I: MAPS

Northern Cheyenne Land Act - Coal Tracts

February 27, 2014

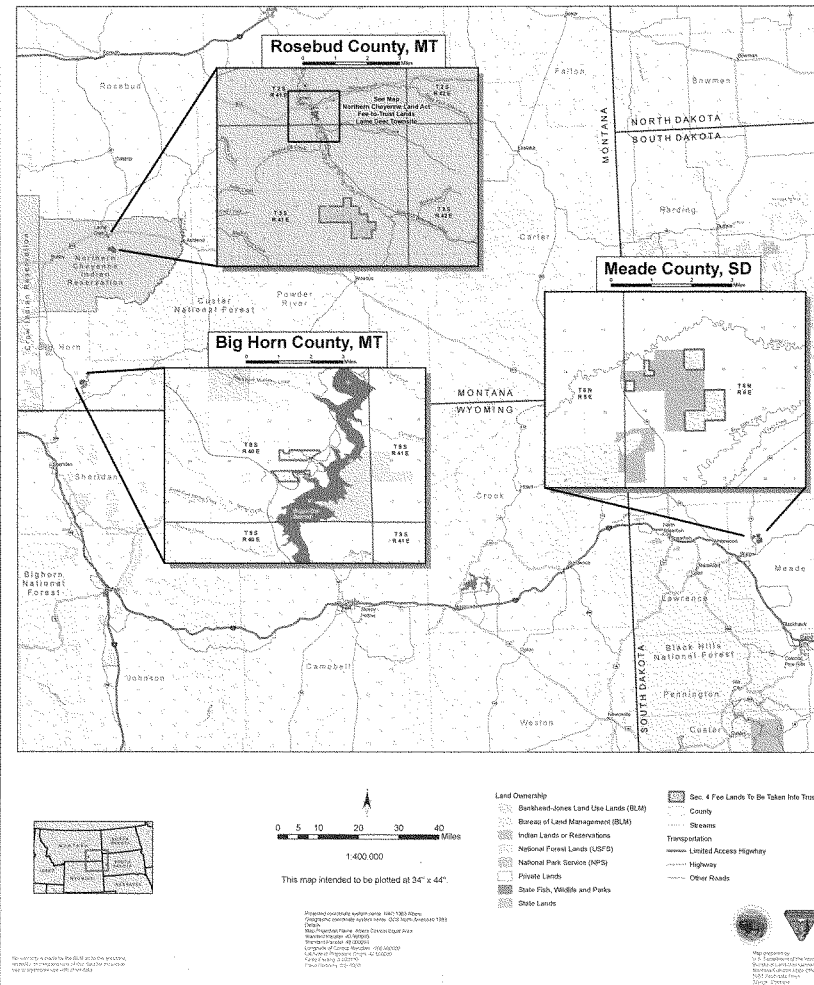
This map prepared at the request of Representative Daines



Northern Cheyenne Land Act - Fee-to-Trust Lands

March 26, 2014

This map prepared at the request of Representative Daines



Northern Cheyenne Land Act - Fee-to-Trust Lands - Lame Deer Townsite

March 26, 2014

This map prepared at the request of Representative Daines

