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ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST CONVEYANCE ACT OF 2015

DECEMBER 16, 2015.—Ordered to be printed

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

R E P O R T

[To accompany S. 1942]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1942) to require a land conveyance involving the Elkhorn Ranch and the White River National Forest in the State of Colorado, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1942 is to require a land conveyance involving the Elkhorn Ranch and the White River National Forest in the State of Colorado.

BACKGROUND AND NEED

Beginning in 1908, three families homesteaded near present-day Rifle, Colorado, and for decades legally owned portions of the 148 acres identified in this bill. Shortly before the acreage was originally patented into private ownership, the General Land Office placed the homesteads in Section 18 with east-west fence lines, which conform to the present-day fence lines. In 1949, a new government survey was completed for the area that placed the boundary line at an angle rather than on a true east-west line. This resurvey led to the inclusion of 148 acres in the White River National Forest rather than in private ownership. The landowners were never contacted concerning the resurvey and were unaware that their title to the land had been called into question. Since that time, the property, commonly called “Elkhorn Ranch” has changed

hands several times, most recently in 1998 when the Gordman-Leverich Partnership purchased the ranch.

In 2002, the boundary and title discrepancy came to light. The Surveyor of the White River National Forest began to examine the conflicting surveys and issued a report in 2014, “Short Summary of Boundary Status—Beaver Creek; Sections 18 and 19, T. 7 S. R. 93 W., 6th PM.,” confirming that the original patents were based on a proper survey. The report recommended a legislative boundary adjustment to correct the survey discrepancy and return the acreage to the rightful private landowner.

The Bureau of Land Management issued Federal oil and gas lease COC-75070 in 2011. This lease includes part of Elkhorn Ranch. S. 1942 recognizes the lease as a valid existing right and reserves to the United States the right to collect rent and royalty payments from this lease.

Since 1909, the law has guaranteed that resurveys are not to “impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement” (43 U.S.C. 772). The U.S. Forest Service (USFS) has never managed the 148-acre parcel as national forest system land. For decades, the landowners have paid property taxes on the land, made improvements to it, and used it for agricultural and ranching purposes. The parcel is currently fenced as part of the ranch and is occupied by stock ponds, roads, and other improvements.

By transferring the 148-acre parcel to Gordman-Leverich Partnership, S. 1942 would correct a long-standing survey discrepancy and provide a free and clear title to the land subject to valid, existing rights, including the existing Federal oil and gas lease.

LEGISLATIVE HISTORY

In the House of Representatives, an identical companion bill to S. 1942, H.R. 1554, was introduced by Representatives Tipton and Polis on March 23, 2015. On June 16, 2015, the House Natural Resources Subcommittee on Federal Lands held a hearing on H.R. 1554, and the Natural Resources Committee ordered the bill reported on July 9, 2015. The House of Representatives passed H.R. 1554 under suspension of the rules by a voice vote on September 16, 2015. H.R. 1554 was received in the Senate and referred to the Committee on Energy and Natural Resources on September 17, 2015.

S. 1942 was introduced by Senator Gardner on August 5, 2015. Senator Bennet is a cosponsor. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 1942 and H.R. 1554 on October 8, 2015.

On November 19, 2015, the Committee on Energy and Natural Resources met in open business session and ordered both S. 1942 and H.R. 1554 favorably reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 19, 2015, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1942.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, “Elkhorn Ranch and White River National Forest Conveyance Act of 2015.”

Section 2(a) conveys approximately 148 acres of Federal land to the Gordman-Leverich Partnership. *Section 2(b)* subjects the conveyance to valid existing rights, including oil and gas lease COC-75070, and reserves for the United States the right to collect rent and royalty payments on existing oil and gas leases. *Section 2(c)* makes clear that the conveyance does not modify the existing boundaries of the White River National Forest or Sections 18 and 19 of Township 7 South. *Section 2(d)* specifies that the conveyance should be completed within 180 days following enactment of the Act, and that all costs related to surveying, platting, or other activities to process the conveyance shall be paid by the Gordman-Leverich Partnership.

COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 7, 2015.

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

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1942, the Elkhorn Ranch and White River National Forest Conveyance Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 1942—Elkhorn Ranch and White River National Forest Conveyance Act of 2015

S. 1942 would require the Forest Service to convey 148 acres of federal lands in Colorado to a private entity. Under the bill, the federal government would retain the right to collect rent and royalty payments from an existing oil and gas lease on those lands; however, if that lease expires, the Bureau of Land Management (BLM) would not be allowed to offer the parcel for lease. Because CBO expects that enacting the bill could reduce offsetting receipts, which are treated as reductions in direct spending, from bonus bids over the next 10 years, pay-as-you-go procedures apply. However, we estimate that net bonus bids from the affected parcel would total less than \$500,000 over that period. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

In 2012, BLM issued a federal oil and gas lease on a portion of the affected lands. If the firm holding that lease takes certain steps

to begin producing oil and gas before the lease is set to expire in 2022, the firm would retain the lease until production ended. Under current law and under the bill, the federal government would collect rent and any royalties generated from oil and gas produced on that lease, and 49 percent of those proceeds would be paid to the state of Colorado. In that case, enacting the bill would have no effect on direct spending.

If the lease expires in 2022, BLM could offer the parcel for lease after that date under current law. However, the agency could not offer the affected parcel for lease under the bill. Because CBO has no basis for determining how the relevant parties would respond if the lease were allowed to expire, our estimate reflects a point within a range of possible outcomes. Based on the amount paid for the lease in 2012 (\$335,000), CBO estimates that enacting the bill would reduce receipts by less than \$500,000 over the 2022–2025 period.

S. 1942 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On September 9, 2015, CBO transmitted a cost estimate for H.R. 1554, the Elkhorn Ranch and White River National Forest Conveyance Act of 2015, as ordered reported by the House Committee on Natural Resources on July 9, 2015. The two pieces of legislation are similar, and the estimated costs are the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, 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. 1942. 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. 1942, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1942, 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 USFS at the October 8, 2015, Subcommittee on Public Lands, Forests, and Mining hearing on S. 1942 follows:

STATEMENT OF GLENN CASAMASSA, ASSOCIATE DEPUTY
CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE,
U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding S. 1295, S. 1448, S. 1941, and S. 1942.

S. 1295, THE "ARAPAHO NATIONAL FOREST BOUNDARY
ADJUSTMENT ACT"

S. 1295 would modify the boundary of the Arapaho National Forest in the State of Colorado to incorporate approximately 92.95 acres of land currently outside the proclaimed National Forest boundary. All Federal land within the new boundary would be included in the Bowen Gulch Protection Area established under section 6 of the Colorado Wilderness Act of 1993. S. 1295 requires the Secretary to obtain written permission from the owners of lots to include the lots in the boundary adjustment. Private land owners have provided letters of support.

The Federal lands within the new boundary would be closed to motorized use by the public. S. 1295 allows for continued motorized access over historical routes by owners of non-Federal land within the new boundary.

The Department supports S. 1295. It would provide National Forest status for parcels previously purchased. It would also allow the Forest Service to use its existing land exchange authorities to acquire additional parcels from willing landowners within the new boundary. Completion of these acquisitions would ensure protection of the Rocky Mountain National Park view-shed and the resource values of the Bowen Gulch Protection Area. We would also like to work with the Committee to clarify that motorized use for administrative purposes within the new boundary area is allowed.

S. 1448, THE "FRANK MOORE WILD STEELHEAD SANCTUARY
DESIGNATION ACT"

The Department supports S. 1448, which establishes the "Frank Moore Wild Steelhead Sanctuary". The area proposed for designation (Steamboat Creek) represents the major spawning tributary for wild steelhead in the North Umpqua River, and serves as an important sanctuary for conservation and long term persistence of this highly valued fisheries resource. Scientific studies and data indicate this area provides an important thermal refuge for wild steelhead production in the basin. Its designation and associated watershed restoration activities will aid in promoting a resilient landscape for wild steelhead conservation into the future in the face of changing climate.

Frank Moore is a legendary fly angler, wild fish conservationist, and World War II veteran who stormed the beaches of Normandy, France in 1944 for the D-Day allied invasion. He survived and together with his wife of 70+

years, Jeanne, built and were the long-time proprietors of the world-renowned Steamboat Inn along the North Umpqua River. In 2010, Frank Moore was inducted into the Fresh Water Fishing Hall of Fame, and is also featured in the recent, critically acclaimed documentary “Mending the Line.”

This designation is a tribute to Frank Moore and his service to our country in more ways than one. In a TED Talk last year (TEDxPortland, May 15, 2014), one of the viewers commented: “Absolutely amazing . . . I am 19 and my generation needs role models like this man.”

S. 1941, THE “CRAGS, COLORADO LAND EXCHANGE ACT OF 2015”

S. 1941 would require a land exchange between the United States and Broadmoor Hotel, Inc. (BHI). The United States would convey an 83 acre tract of National Forest System Land and a non-exclusive perpetual easement for access in exchange for a 320 acre parcel and a permanent trail easement for a section of the Barr trail owned by BHI. Both exchange parcels are located within the Pike National Forest.

The Department generally supports S. 1941 but would like to work with the committee on concerns with the bill. For example, we would like to help develop language that would ensure the northern boundary of the land conveyed is located to provide adequate space for Forest Service road maintenance and administration.

The National Forest parcel that would be conveyed in the exchange has long been encumbered with significant resort improvements managed under special use authorization. In return for this parcel, the United States would receive an isolated inholding that the Forest Service has placed a high priority on acquiring. The inholding has significant recreational values and provides additional access for the public to the National Forest.

As a result, the exchange will eliminate potentially significant development in a sensitive area in exchange for conveying Federal land where development impacts have already occurred. In addition, The United States would secure legal access on a segment of the very popular Barr trail. This trail provides an important recreational access to the Pike National Forest.

S. 1942, THE “ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST CONVEYANCE ACT LAND EXCHANGE ACT OF 2015”

S. 1942 would direct the conveyance of a 148 acre parcel of National Forest System land to the Gordman-Leverich Partnership. The parcel is located within the White River National Forest.

While the Administration has serious reservations about the use of Federal lands to compensate a private landowner, acknowledging the unusual circumstances in this specific case, the Department does not oppose S. 1942. The

bill would resolve a long standing title issue associated with the property.

A dependent resurvey, which is a survey dependent upon prior surveys of record, was completed in 1949, and established a property monument approximately 2,100 feet from the corner, relied upon by the original homesteaders. This meant that this parcel of national forest land had been managed as private land. 43 U.S.C. 772, enacted in 1909, provided for such resurveys and guaranteed that the bona fide rights of landowners would be protected.

Because this land survey discrepancy only came to light within the past 15 years, and because the parcel has never been managed as National Forest, protection of the bona fide rights of the landowners is appropriate. Resolution of this title issue will end a long-standing title claim in an efficient, fair manner.

This concludes my remarks. I would be happy to answer any questions. Thank you for the opportunity to testify.

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 as ordered reported.

