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HILL CREEK CULTURAL PRESERVATION AND ENERGY DEVELOPMENT

JUNE 27, 2013.—Ordered to be printed

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

R E P O R T

[To accompany S. 27]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 27) to clarify authority granted under the Act entitled "Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, 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. 27 is to clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah."

BACKGROUND AND NEED

The Uintah and Ouray Indian Reservation, located in northeastern Utah, is the second largest Indian reservation in the country and the homeland for approximately 20,000 Ute Indians. Under the Act of March 11, 1948, (62 Stat. 72), Congress added 510,000 acres of public domain known as the "Hill Creek Extension" to the Reservation to protect tribal grazing rights. In making this addition to the Indian Reservation, the United States retained the subsurface rights to lands held in trust for the Tribe, while the State of Utah retained 38,000 acres of land it previously acquired in a checkerboard pattern typical in Western states. The State lands in the Hill Creek Extension are administered by The School and Institutional Trust Lands Administration (SITLA—a Utah State agen-

cy) for the benefit of Utah public schools and other State institutions.

In 1955, Congress authorized the State to relinquish its lands in the Hill Creek Extension to the United States for the benefit of the Tribe, in exchange for replacement lands that are mineral in character. The State subsequently sold much of the surface estate in the Hill Creek Extension to the Tribe, while retaining 38,000 acres of subsurface minerals and the right of access to develop them. The State today wants to relinquish to the United States (for the benefit of the Tribe) 18,000 acres of subsurface rights in the remote, southern (Grand County) portion of the Hill Creek Extension, in exchange for 18,000 acres of subsurface rights in the northern (Uintah County) area of the Extension.

In 2006, SITLA filed an application with the BLM to enter into the exchange pursuant to the 1948 Hill Creek Act and the 1955 amendments. The BLM has declined to process the application, claiming the law establishing and amending the Hill Creek Extension does not permit the State to select minerals in the northern part of the Extension. Although the State has come to the opposite legal conclusion, legislation is necessary to clarify the authority to effectuate the exchange.

LEGISLATIVE HISTORY

S. 27 was introduced by Senators Hatch and Lee on January 22, 2013. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 27 on April 25, 2013. At its business meeting on May 16, 2013, the Committee ordered the bill favorably reported. A similar bill, H.R. 356, was introduced by Representative Bishop in the House of Representatives. That bill passed the House by a voice vote on May 16, 2013.

In the 112th Congress, a similar bill, H.R. 4027, was introduced by Representative Matheson in the House of Representatives. That bill passed the House by a voice vote on June 18, 2012.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 16, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 27.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the "Hill Creek Cultural Preservation and Energy Development Act".

Section 2 amends "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes", approved March 11, 1948 (62 Stat. 72), as amended by the Act entitled "An Act to amend the Act extending the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah so as to authorize such State to exchange certain mineral lands for other lands mineral in character" approved August 9, 1955, (69 Stat. 544) by adding a new section 5. The new section authorizes the State of Utah to relinquish to the United States, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation, State school trust or other State-owned subsurface mineral lands in the southern part of an area of the Res-

ervation known as the "Hill Creek Extension," and to select in lieu of any relinquished lands, on an acre-for-acre basis, Federal mineral rights in the northern portion of the Hill Creek extension.

The section subjects the exchange of subsurface interests to the following conditions: Paragraph (1) directs the Secretary of the Interior to reserve an overriding interest in any minerals subject to leasing under the Mineral Leasing Act, in any mineral lands conveyed to the State of Utah, delineated in Public Law 440 (approved March 11, 1948).

Subsection (1) requires the Secretary of the Interior to reserve an overriding interest in that portion of the mineral estate comprised of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 171 et seq.) in any mineral lands conveyed to the State.

Paragraph (2) describes the extent of the overriding interest, and consists of 50 percent of any bonus bid or other payment received by the State as consideration for securing a lease or authorization to develop the minerals. The overriding interest also includes 50 percent of any rental or other payments received by the State as consideration for the lease or authorization to develop the mineral resources, along with a 6.25 percent overriding royalty on the gross proceeds of oil and gas production under any lease or authorization to develop the oil and gas resources. Finally, for minerals other than oil and gas, the overriding interest includes an overriding royalty on the gross proceeds of production of the minerals, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011.

Paragraphs (3) and (4) direct the State of Utah to reserve, for the benefit of the State school trust, the extent of the overriding interest described in paragraph (2) that represents the State's 50 percent share under the Mineral Leasing Act (30 U.S.C. 181 et seq.).

Paragraph (5) clarifies that neither the United States nor the State of Utah shall be obligated to lease or otherwise develop oil and gas resources in which the other party retains an overriding interest under this section.

Paragraph (6) authorizes the Secretary of the Interior to enter into cooperative agreements with the State and the tribe to facilitate the relinquishment and selection of lands to be conveyed under this section, and the administration of the reserved overriding interests.

COST AND BUDGETARY CONSIDERATIONS

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

S. 27—Hill Creek Cultural Preservation and Energy Development Act

S. 27 would authorize a conveyance of mineral rights within the Uintah and Ouray Indian Reservation in Utah among the state of Utah's School and Institutional Trust Land Administration (SITLA), the federal government, and the Ute Indian Tribe. SITLA currently owns the subsurface mineral rights to approximately 18,000 acres in the Hill Creek Extension of the reservation; however, the surface rights to that land are held in trust for the Ute Indian Tribe by the federal government. The legislation would authorize SITLA to relinquish to the Ute Indian Tribe its subsurface

mineral rights in exchange for the subsurface rights to about 18,000 acres of other land within the Hill Creek Extension owned by the federal government.

CBO estimates that the legislation would have no significant impact on the federal budget over the 2014–2023 period. Enacting S. 27 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 27 would authorize a transfer of federally owned subsurface mineral rights for an equivalent number of acres of state land. However, the acres transferred may not have the same value because mineral deposits are not evenly spread across all areas. To compensate for such a potential imbalance, S. 27 would preserve a royalty interest in the value of any subsurface minerals that are developed on the transferred properties for the state and the federal governments.

S. 27 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. Enacting the bill would benefit the tribe and state.

On May 9, 2013, CBO transmitted a cost estimate for H.R. 356, the Hill Creek Cultural Preservation and Energy Development Act, as ordered to be reported by the House Committee on Natural Resources on April 24, 2013. The two bills are similar, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, 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. 27.

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. 27, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 27, as 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 Bureau of Land Management at the April 25, 2013, Subcommittee on Public Lands, Forests, and Mining hearing on S. 27 follows:

STATEMENT OF JAMIE CONNELL, ACTING DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for inviting the Department of the Interior to testify on S. 27, the Hill Creek Cultural Preservation and Energy Development Act. The Department supports the goals of S. 27, and we could support the bill if amended as discussed below. The Department recognizes that we have a unique trust responsibility to the Ute Tribe; and therefore we are committed to finding an equitable solution.

BACKGROUND

In 1948, Congress, through P.L. 80–440, extended the boundary of the Uintah and Ouray Reservation by approximately 900 square miles to include what is generally known as the "Hill Creek Extension." The Act transferred the Federal surface estate to the Tribe, while the mineral estate in those parts of the area affected by then existing withdrawals was reserved to the Federal government. Furthermore, that Act as amended in 1955 (P.L. 84–263), authorized the State of Utah to relinquish state sections for the benefit of the Tribe and subsequently select Federal lands (including the mineral interest in land) of equal value outside of the Hill Creek Extension area.

The State of Utah's School and Institutional Trust Land Administration (SITLA) holds the mineral interest in about 28 square miles (approximately 18,000 acres) within the southern portion of the Hill Creek Extension in Grand County, while the surface ownership is held in trust for the Tribe. The Tribe would like to obtain the mineral estate underlying tribal lands in the Grand County portion of the Hill Creek Extension in order to prevent development on lands that have special significance to the Tribe. However, the Tribe does not object to development of other mineral estate, retained by the Federal government, within the Hill Creek Extension in Uintah County.

SITLA proposed to relinquish their mineral estate within the Hill Creek Extension in Grand County in exchange for similar acreage of Federal mineral estate in Uintah County, also within the Hill Creek Extension. However, the 1955 law specified that the selection by the state should take place "outside of the area hereby withdrawn," and therefore outside of the Hill Creek Extension.

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S. 27 proposes to amend the 1948 and 1955 Acts to permit relinquishment of mineral estate in exchange for similar acreage of Federal mineral estate within the Hill Creek Extension. The legislation further provides that the transaction should be on an acre-for-acre basis and establishes a limited overriding interest for both the United States and SITLA in the lands exchanged.

The Department has no objection to allowing for the selection by SITLA of mineral estate within the Hill Creek Extension and supports that provision of the legislation. However, the 1948 and 1955 laws as well as FLPMA require that these transfers be of equal value. The per-acre value of mineral estate can vary dramatically from one acre to another, and this area of Utah has significant oil and gas resources.

The legislation proposes to address any difference in parcel value by reserving for each conveying party a financial interest in the mineral estate being transferred. However, as written, the overriding interest fails to acknowledge the potential change in value of the federal minerals. The royalty rate specified for the financial interest is the royalty rate in effect today, and fails to account for the possibility of a changed royalty rate in the future. We believe that the overriding interest should be based on the Federal royalty rate at the time the lease or permit is issued. The Department would also like the opportunity to work on other technical amendments with the Sponsor and the Committee.

CONCLUSION

Thank you for the opportunity to testify. The Department would welcome the opportunity to resolve these issues for the benefit of the Ute Indian Tribe and protect land that has special significance in a manner that also protects the fiduciary interest of the Federal government.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 27 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 11, 1948

(62 Stat. 72, chapter 108, as amended by Act of August 9, 1955, 69 Stat. 544, chapter 623)

AN ACT To define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the exterior boundary of the Uintah and Ouray Reservation in Grand and Uintah Counties, in the State of Utah, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation is hereby extended to include the following area:

* * * * * * *

SEC. 4. In any suit now pending or hereafter brought against the United States by the Ute Indian Tribe of the Uintah and Ouray Reservation, or by any one or more of the separate bands comprising said Ute Indian Tribe of the Uintah and Ouray Reserva-

tion, in the Court of Claims, the Indian Claims Commission or before any other tribunal, the United States may claim, as an offset against any judgment recovered therein, the fair market value as of the date of this Act of any interest in public lands conveyed by section 1 hereof, and any improvements thereon, and the fair market value as of the date of the transfer of title of the lands and improvements which may be relinquished by the State of Utah to the United States under section 3 of this Act. The validity and amount of any such claim shall be determined by the court, commission, or tribunal in conformity with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1049, 1050).

SEC. 5. In order to further clarify authorizations under this Act, the State of Utah is hereby authorized to relinquish to the United States, for the benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation, State school trust or other State-owned subsurface mineral lands located beneath the surface estate delineated in Public Law 440 (approved March 11, 1948) and south of the border between Grand County, Utah, and Uintah County, Utah, and select in lieu of such relinquished lands, on an acre-for-acre basis, any subsurface mineral lands of the United States located beneath the surface estate delineated in Public Law 440 (approved March 11, 1948) and north of the border between Grand County, Utah, and Uintah County, Utah, subject to the following conditions:

(1) RESERVATION BY UNITED STATES.—The Secretary of the Interior shall reserve an overriding interest in that portion of the mineral estate comprised of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 171 et seq.) in any mineral lands conveyed to the State.

(2) EXTENT OF OVERRIDING INTEREST.—The overriding interest reserved by the United States under paragraph (1) shall consist of—

(A) 50 percent of any bonus bid or other payment received by the State as consideration for securing any lease or authorization to develop such mineral resources;

(B) 50 percent of any rental or other payments received by the State as consideration for the lease or authorization to develop such mineral resources;

(C) a 6.25 percent overriding royalty on the gross proceeds of oil and gas production under any lease or authorization to develop such oil and gas resources; and

(D) an overriding royalty on the gross proceeds of production of such minerals other than oil and gas, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011.

(3) RESERVATION BY STATE OF UTAH.—The State of Utah shall reserve, for the benefit of its State school trust, an overriding interest in that portion of the mineral estate comprised of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 181 et seq.) in any mineral lands relinquished by the State to the United States.

(4) EXTENT OF OVERRIDING INTEREST.—The overriding interest reserved by the State under paragraph (3) shall consist of—

(A) 50 percent of any bonus bid or other payment received by the United States as consideration for securing any lease

or authorization to develop such mineral resources on the relinquished lands;

(B) 50 percent of any rental or other payments received by the United States as consideration for the lease or authorization to develop such mineral resources;

(C) a 6.25 percent overriding royalty on the gross proceeds of oil and gas production under any lease or authorization to develop such oil and gas resources; and

(D) an overriding royalty on the gross proceeds of production of such minerals other than oil and gas, equal to 50 percent of the royalty rate established by the Secretary of the Interior by regulation as of October 1, 2011.

(5) NO OBLIGATION TO LEASE.—Neither the United States nor the State shall be obligated to lease or otherwise develop oil and gas resources in which the other party retains an overriding interest under this section.

(6) COOPERATIVE AGREEMENTS.—The Secretary of the Interior is authorized to enter into cooperative agreements with the State and the Ute Indian Tribe of the Uintah and Ouray Reservation to facilitate the relinquishment and selection of lands to be conveyed under this section, and the administration of the overriding interests reserved hereunder.'.

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