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CRAGS, COLORADO LAND EXCHANGE 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. 1941]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1941) to authorize, direct, expedite, and facilitate a land exchange in El Paso and Teller Counties, 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. 1941 is to authorize, direct, expedite, and facilitate a land exchange in El Paso and Teller Counties, Colorado.

BACKGROUND AND NEED

Emerald Valley Ranch has a colorful history, with improvements at the site dating back nearly 100 years. Spencer Penrose developed many of the existing buildings at Emerald Valley after he acquired the original cabin in 1923. After Penrose's death, the buildings were operated as a camp by the YMCA, Boys Scouts, and other non-profit groups. Starting in the 1970s, the buildings were operated by the Turley Family as the Emerald Valley Guest Ranch. Broadmoor Hotel, Inc., acquired the buildings from the Turley Family in 2012. In October 2012, the U.S. Forest Service (USFS) issued a 20-year special use permit to operate and maintain Emerald Valley Ranch as a guest ranch. Since issuance of the special use permit, Broadmoor Hotel, Inc., has invested in significant upgrades and improvements throughout the resort.

The Broadmoor Hotel, Inc. has proposed a land exchange in order to own the USFS land encumbered by the ranch in order to guarantee its ability to operate, maintain, and continue to invest

in the resort, rather than continuing to renew its special use permit. These USFS lands have lost their national forest character. In exchange, the Broadmoor Hotel, Inc. has acquired the 320-acre Crags property and a perpetual public access easement for the lower portion of the Barr Trail that it would convey to the USFS.

The land to be acquired by the USFS is a high value inholding in the Pike National Forest with views of the Pikes Peak Massif. The property provides several opportunities to connect USFS trails emanating from the Crags Campground with trails in the Horsethief Park/Putney Gulch area. The property has been the top acquisition priority for the Pikes Peak Ranger District for several years.

The trailhead for the Barr Trail is located on property owned by the City of Manitou Springs. After climbing a series of switchbacks, the trail enters property owned by the Manitou and Pikes Peak (M&PP) Railway Company, a sister company of Broadmoor Hotel, Inc. Historically, the M&PP Railway Company granted term easements to the USFS to provide legal public access along the segment of the Barr Trail. Although there is currently no easement in place on this segment, the M&PP Railway Company is presently allowing public access on the trail.

S. 1941 facilitates an equal value land exchange. If the value of the non-Federal parcel exceeds the value of the Federal parcel and perpetual access easement, Broadmoor Hotel, Inc., would donate the excess value to the United States. This land exchange would provide increased recreational opportunities for the public on the Pike National Forest, secure perpetual legal access to the Barr Trail, eliminate permanent encumbrances on USFS lands and liability to the United States associated with buildings, a water supply system, and two dams at Emerald Valley Ranch, and streamline USFS management responsibilities by eliminating the need to oversee the resort special use permit at Emerald Valley Ranch.

LEGISLATIVE HISTORY

An identical companion bill to S. 1941, H.R. 2223, was introduced in the House of Representatives by Representatives Lamborn and Polis on May 1, 2015. On June 16, 2015, the House Natural Resources Subcommittee on Federal Lands held a hearing on H.R. 2223, and the Natural Resources Committee ordered the bill reported on July 9, 2015. The House of Representatives passed H.R. 2223 under suspension of the rules by a voice vote on September 16, 2015. H.R. 2223 was received in the Senate and referred to the Committee on Energy and Natural Resources on September 17, 2015.

S. 1941 was introduced by Senators Gardner and Bennet on August 5, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on both S. 1941 and H.R. 2223 on October 8, 2015.

On November 19, 2015, the Committee on Energy and Natural Resources met in open business session and ordered both S. 1941 and H.R. 2223 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. 1941.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the "Crags, Colorado Land Exchange Act of 2015."

Section 2 contains the purpose of the bill, to authorize, direct, expedite, and facilitate the land exchange and to promote enhanced public outdoor recreational and natural resource conservation opportunities in Pike National Forest.

Section 3 contains definitions.

Section 4(a) directs the Secretary to accept the parcel of non-Federal land if Broadmoor Hotel, Inc., offers to convey it to the U.S. Government and in return, to simultaneously convey the Federal land at the Emerald Valley Ranch to Broadmoor Hotel, Inc. Section 4(c) grants Broadmoor Hotel, Inc., a nonexclusive, perpetual access easement. Section 4(d) requires the road be maintained by Broadmoor Hotel, Inc., and provides that it may be improved, relocated, or otherwise altered if the Secretary and Broadmoor Hotel, Inc., mutually agree. Section 4(e) requires Broadmoor Hotel, Inc., to pay for all land survey, appraisal, and other costs associated with the exchange.

Section 5(a) requires the Secretary to conduct appraisals of the parcels of land. Section 5(b) requires the land exchange to be of equal value. If the value of the Federal land exceeds the value of the non-Federal land, Broadmoor Hotel, Inc., must make a cash equalization payment to be deposited into the fund established under P.L. 90–171 (16 U.S.C. 484a). Any cash equalization payments received by the Secretary are to be used to acquire land or interests in land in Region 2 of the USFS. If the value of the non-Federal land exceeds the value of the Federal land, the surplus value of the non-Federal land will be considered a donation by Broadmoor Hotel, Inc., to the U.S. Government. Section 5(c) directs that the appraisals should not take into account the special use permit at Emerald Valley Ranch or the Barr Trail easement when determining the value of the parcels.

Section 6 contains miscellaneous provisions relating to the lands to be exchanged. Section 6(a) permanently withdraws all the lands acquired by the Secretary under this Act from all forms of appropriation and disposal under the public land laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1930 (30 U.S.C. 1001 et seq.). If there are any public land orders that withdraw the Federal land from appropriation or disposal, they are revoked to the extent necessary to permit disposal of the Federal land to Broadmoor Hotel, Inc. All Federal land authorized to be exchanged under this Act, if not already withdrawn from appropriation or disposal under public land laws upon enactment of this Act, are withdrawn, subject to valid existing rights, until the date of conveyance of the Federal land to Broadmoor Hotel, Inc. Section 6(b) specifies that the land acquired by the Secretary under this Act will become part of the Pike-San Isabel National Forest. Section 6(c) states that it is the intent of Congress that the land exchange be completed within one year. Section 6(d) allows the Secretary and Broadmoor Hotel, Inc., to make minor adjustments to the maps, descriptions, or acreage if both parties agree.

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. 1941, the Crags, Colorado Land Exchange 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. 1941—Crags, Colorado Land Exchange Act of 2015

S. 1941 would require the Forest Service to exchange, at the request of a private entity, 82 acres of federal lands in the Pike National Forest for 320 acres of private lands in that forest. Because CBO expects that the parcels would have a similar value per acre, we estimate that the total value of the private lands would exceed the value of the affected federal lands. Under the bill, the federal government would not be required to compensate the private entity to make up for that difference. However, CBO expects that the Forest Service will receive annual payments of a little more than $30,000 for a special use permit on the affected federal parcel.

On that basis, CBO estimates that enacting S. 1941 would reduce offsetting receipts, which are treated as reductions in direct spending, by about $350,000 over the 2016–2025 period; therefore, pay-as-you-go procedures apply. Enacting S. 1941 would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2026.

Because S. 1941 would require the private entity to pay any administrative costs associated with the land exchange and CBO expects that any updates to maps or signage would be completed in conjunction with scheduled reprinting and routine maintenance, we estimate that implementing the bill would not affect discretionary spending.

S. 1941 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The land exchange between the federal government and a private business would have a small incidental effect on property taxes collected by local governments in Colorado. That effect, however, would not result from an intergovernmental mandate as defined in UMRA.

On September 9, 2015, CBO transmitted a cost estimate for H.R. 2223, the Crags, Colorado Land Exchange Act of 2015, as ordered reported by the House Committee on Natural Resources on July 9,

2015. The two versions of the legislation are similar, and the estimated costs are the same.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Jon Sperl (for intergovernmental mandates). This 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. 1941. 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. 1941, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1941, 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. 1941 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.
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> ### 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.

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