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SENATE

{ REPORT
105-234

HART MOUNTAIN TRANSFER ACT OF 1998

JULY 2, 1998.—Ordered to be printed

Filed under authority of the order of the Senate of June 26, 1998

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

REPORT

[To accompany S. 1807]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1807) to transfer administrative jurisdiction over certain parcels of public domain land in Lake County, Oregon, to facilitate management of the land, and for other purposes, 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. SHORT TITLE.

This Act may be cited as the “Hart Mountain Transfer Act of 1998”.

SEC. 2. TRANSFERS OF ADMINISTRATIVE JURISDICTION OVER PARCELS OF LAND ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT AND THE UNITED STATES FISH AND WILDLIFE SERVICE.

(a) TRANSFER FROM THE BUREAU OF LAND MANAGEMENT TO THE UNITED STATES FISH AND WILDLIFE SERVICE.—

(1) IN GENERAL.—Administrative jurisdiction over the parcels of land identified for transfer to the United States Fish and Wildlife Service on the map entitled “Hart Mountain Jurisdictional Transfer”, dated February 26, 1998, comprising approximately 12,100 acres of land in Lake County, Oregon, located adjacent to or within the Hart Mountain National Antelope Refuge, is transferred from the Bureau of Land Management to the United States Fish and Wildlife Service.

(2) INCLUSION IN REFUGE.—The parcels of land described in paragraph (1) shall be included in the Hart Mountain National Antelope Refuge.

(3) WITHDRAWAL.—Subject to valid existing rights, the parcels of land described in paragraph (1)—

(A) are withdrawn from—

(i) surface entry under the public land laws;

(ii) leasing under the mineral leasing laws and Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); and

(iii) location and entry under the mining laws; and

(B) shall be treated as parcels of land subject to the provisions of Executive Order No. 7523 of December 21, 1936, as amended by Executive Order No. 7895 of May 23, 1938, and Presidential Proclamation No. 2416 of July 25, 1940, that withdrew parcels of land for the Hart Mountain National Antelope Refuge.

(4) MANAGEMENT.—The land described in paragraph (1) shall be included in the Hart Mountain National Antelope Refuge and managed in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), and other applicable law and with management plans and agreements between the Bureau of Land Management and the United States Fish and Wildlife Service for the Hart Mountain Refuge.

(b) CONTINUED MANAGEMENT OF GUANO CREEK WILDERNESS STUDY AREA BY THE BUREAU OF LAND MANAGEMENT.—

(1) IN GENERAL.—The parcels of land identified for cooperative management on the map entitled “Hart Mountain Jurisdictional Transfer”, dated February 26, 1998, comprising approximately 10,900 acres of land in Lake County, Oregon, located south of the Hart Mountain National Antelope Refuge, shall be retained under the jurisdiction of the Bureau of Land Management.

(2) MANAGEMENT.—The parcels of land described in paragraph (1) that are within the Guano Creek Wilderness Study Area Act shall be managed so as not to impair the suitability of the area for designation as wilderness, in accordance with current and future management plans and agreements (including the agreement known as the “Shirk Ranch Agreement” dated September 30, 1997), until such date as Congress enacts a law directing otherwise.

(c) TRANSFER FROM THE UNITED STATES FISH AND WILDLIFE SERVICE TO THE BUREAU OF LAND MANAGEMENT.—

(1) IN GENERAL.—Administrative jurisdiction over the parcels of land identified for transfer to the Bureau of Land Management on the map entitled “Hart Mountain Jurisdictional Transfer”, dated February 26, 1998, comprising approximately 7,700 acres of land in Lake County, Oregon, located adjacent to or within the Hart Mountain National Antelope Refuge, is transferred from the United States Fish and Wildlife Service to the Bureau of Land Management.

(2) REMOVAL FROM REFUGE.—The parcels of land described in paragraph (1) are removed from the Hart Mountain National Antelope Refuge, and the boundary of the refuge is modified to reflect that removal.

(3) REVOCATION OF WITHDRAWAL.—The provisions of Executive Order No. 7523 of December 21, 1936, as amended by Executive Order No. 7895 of May 23, 1938, and Presidential Proclamation No. 2416 of July 25, 1940, that withdrew the parcels of land for the refuge, shall be of no effect with respect to the parcels of land described in paragraph (1).

(4) STATUS.—The parcels of land described in paragraph (1)—

(A) are designated as public land; and

(B) shall be open to—

(i) surface entry under the public land laws;

(ii) leasing under the mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); and

(iii) location and entry under the mining laws.

(5) MANAGEMENT.—The land described in paragraph (1) shall be managed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, and the agreement known as the “Shirk Ranch Agreement” dated September 30, 1997.

(d) MAP.—A copy of the map described in subsections (a), (b), and (c) and such additional legal descriptions as are applicable shall be kept on file and available for public inspection in the Office of the Regional Director of Region 1 of the United States Fish and Wildlife Service, the local District Office of the Bureau of Land Management, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives.

SEC. 3. KLAMATH MARSH NATIONAL WILDLIFE REFUGE.

Section 28 of the Act of August 13, 1954 (68 Stat. 718, chapter 732; 72 Stat. 818; 25 U.S.C. 564w-1), is amended in subsections (f) and (g) by striking “Klamath Forest National Wildlife Refuge” each place it appears and inserting “Klamath Marsh National Wildlife Refuge”.

PURPOSE

S. 1807, as ordered reported, would transfer administrative jurisdiction over certain parcels of public domain land in Lake County, Oregon, to facilitate management of the land.

BACKGROUND AND NEED

In 1932, a group of Oregon ranchers, businessmen, journalists, and sportsmen came together in Eastern Oregon to talk about what could be done to address the decline in the local antelope herds. These individuals came together under the leadership of the Lakeview Chamber of Commerce, and their work led to the creation of the Hart Mountain National Antelope Refuge.

Three years ago, the U.S. Fish and Wildlife Service moved to reduce grazing on refuge lands. Isolated parcels of refuge lands are currently surrounded by Bureau of Land Management (BLM) grazing allotments, and enacting differing range practices on lands not separated by fences is difficult.

The Fish and Wildlife Service and BLM worked with local ranchers, the state, and the environmental community to develop a plan that would improve habitat protections for antelope and improve the workability of grazing allotments for the local permittees.

Under S. 1807, all of the outlying refuge parcels would be transferred to the BLM and become part of the Beaty Butte grazing allotment, including the highly productive Shirk Ranch property. In exchange, approximately 10,000 acres of BLM land on the refuge's south boundary would become part of the Refuge. In addition, grazing would be excluded from all but a very small portion of the 10,000 acre Guano Creek BLM Wilderness Study Area.

Ten miles of Guano Creek riparian habitat would be restored as a wildlife corridor, critical pronghorn fawning grounds would no longer be bisected by jurisdictional boundaries, and the management of water and vegetation at the Shirk Ranch will make it more conducive for migratory waterfowl.

The cattle grazing that was displaced by the transfer is being relocated. The MC Beaty Butte Grazing Association will now be able to graze the irrigated meadows of the Shirk Ranch. John O'Keeffe's small allotment on Guano Creek was replaced by an allotment made available by the Nature Conservancy.

LEGISLATIVE HISTORY

S. 1807 was introduced on March 20, 1998 by Senators Wyden and Smith. The Subcommittee on Forests and Public Land Management held a hearing on S. 1807 on March 25, 1998. At the business meeting on May 13, 1998, the Committee on Energy and Natural Resources ordered S. 1807, as amended, favorably reported.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 13, 1998, by a unanimous vote of a quorum present recommends that the Senate pass S. 1807, if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas, no nays as follows:

YEAS	NAYS
Mr. Murkowski	
Mr. Domenici	
Mr. Nickles ¹	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl	
Mr. Grams ¹	
Mr. Smith	
Mr. Gorton	
Mr. Burns ¹	
Mr. Bumpers	
Mr. Ford	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan ¹	
Mr. Graham ¹	
Mr. Wyden	
Mr. Johnson	
Ms. Landrieu	

¹ Indicates vote by proxy.

COMMITTEE AMENDMENT

During consideration of S. 1807, the Committee adopted an amendment in the nature of a substitute offered by Senators Wyden and Smith. The amendment clarifies that the Guano Creek Wilderness Study Area is to be managed so as not to impair the suitability of the area for wilderness designation. The amendment also added a provision that modifies the refuge boundary to reflect the removal of the identified parcels of land. Finally, the amendment Additionally, changes the name of the refuge from “Klamath Forest National Wildlife Refuge” to “Klamath Marsh National Wildlife Refuge.”

SECTION BY SECTION ANALYSIS

Section 1 provides the short title.

Section 2 (a) transfers administrative jurisdiction over parcels of land administered by the Bureau of Land Management to the Fish and Wildlife Service.

Paragraph (1) identifies the parcels of land.

Paragraph (2) provides that the parcels of land described in paragraph (1) shall be included in the Hart Mountain National Antelope Refuge.

Paragraph (3) states that, subject to valid existing rights, the parcels of land described in paragraph (1) are withdrawn from surface entry under public land law, leasing under mineral leasing laws, location and entry under mineral laws, and shall be treated as parcels of land subject to the provisions of the executive orders that originally withdrew parcels of land for the Hart Mountain National Antelope Refuge.

Paragraph (4) provides that the and described in paragraph (1) shall be included in the Hart Mountain National Antelope Refuge and managed in accordance with the National Wildlife Refuge System Administration Act and other applicable laws and with management plans and agreements between the Bureau of Land Management and the Fish and Wildlife Refuge.

Subsection (b)(1) identifies the parcels of land to be retained under the jurisdiction of the Bureau of Land Management.

Paragraph (2) states that the parcels of land described in paragraph (1) that are within the Guano Creek Wilderness Study Area Act shall be managed so as not to impair the suitability of the area for designation as wilderness, in accordance with current and future management plans and agreements, and the Shirk Ranch Agreement dated September 30, 1997.

Subsection (c)(1) transfers administrative jurisdiction over the parcels of land from the Fish and Wildlife Service to the Bureau of Land Management.

Paragraph (2) states that the parcels of land described in paragraph (1) are removed from the Hart Mountain National Antelope Refuge.

Paragraph (3) provides that the executive orders that originally withdrew the parcels of land for the refuge are no longer in effect for the parcels of land described in paragraph (1).

Paragraph (4) states that the parcels of land described in paragraph (1) are public land, shall be open to surface entry under the public land laws, leasing under the mineral leasing laws, and location and entry under the mining laws.

Paragraph (5) states that the land described in paragraph (1) shall be managed in accordance with the Federal Land Policy and Management Act and other applicable law and the Shirk Ranch Agreement dated September 30, 1997.

Subsection (d) contains standard language concerning filing of maps.

Section 3 changes the name of wildlife refuge.

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, May 28, 1998.

Hon. FRANK H. MURKOWSKI,
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. 1807, the Hart Mountain Transfer Act of 1998.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1807—Hart Mountain Transfer Act of 1998

CBO estimates that enacting S. 1807 would have no impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1807 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 1807 would provide for an exchange between the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) of land adjacent to or within the Hart Mountain National Antelope Refuge in Oregon. Specifically, the bill would transfer administrative jurisdiction of about 12,100 acres of BLM land to the FWS in exchange for about 7,700 acres of refuge property. Property transferred to the refuge would no longer be available for disposal or commercial use under public land laws. Land transferred to the BLM would be released from such restrictions. Finally, the bill would modify the boundaries of the Hart Mountain refuge to reflect the transfers.

Based on information provided by the BLM, CBO expects that the agency would use the acreage obtained from the FWS to satisfy requirements under existing grazing permits. Currently, this grazing takes place primarily on the acreage that the BLM would transfer to the FWS, but the irregular boundaries of the Hart Mountain refuge make it difficult to determine which agency's land is used for grazing at any given time. The exchange of property would make it easier to enforce the existing permits. The bill would not affect the number or identity of permittees, the amount of grazing that occurs on federal lands, or the amount of offsetting receipts collected from grazing fees. We further estimate that neither agency would incur any additional operating costs as a result of this legislation.

The CBO staff contact is Deborah Reis. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standings Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1807.

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. 1807.

EXECUTIVE COMMUNICATIONS

The legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1807 is set forth below:

OFFICE OF THE SECRETARY,
U.S. DEPARTMENT OF THE INTERIOR,
Washington, DC, April 27, 1998.

Hon. FRANK H. MURKOWSKI,
Chairman, Senate Committee on Energy and Natural Resources,
Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the Department's position with regard to S. 1807, Hart Mountain Transfer Act of 1998. The Department strongly supports this legislation.

Under the land transfer proposed in S. 1807, the Bureau of Land Management and the Fish and Wildlife Service would exchange approximately 22,000 acres of land within and around the Hart Mountain National Antelope Refuge. The FWS and the BLM have worked together and with numerous public interests for more than three years to develop consensus on the jurisdictional transfer provided in this legislation. The proposed changes to the Refuge boundary resulting from enactment of S. 1807 would benefit wildlife, facilitate ecosystem restoration and management, and reduce administrative costs. Specifically, the bill would alter the administrative jurisdiction and grazing practices within or adjacent to the Refuge as follows:

1. Approximately 12,100 acres of BLM-managed land adjacent to the Refuge would be transferred to the FWS for inclusion in the Refuge; as such, they would be withdrawn from surface entry under the public land laws, mineral leasing, and location under the mining laws. Grazing would no longer be permitted on this land.

2. The BLM would continue to manage the approximately 10,900 acres of the Guano Creek Wilderness Study Area (WSA) under current and future management plans (including the "Shirk Ranch Agreement"¹ and any amendments to that agreement, which the bill incorporates by reference). Under the terms of the Shirk Ranch Agreement, grazing would be excluded from all but a very small portion of the WSA, thus protecting key wildlife habitat. The displaced grazing use would be relocated to the Shirk Ranch.

3. Approximately 7,700 acres now managed by the FWS would be removed from the Rehige and transferred to the BLM. Grazing would be permitted on this land. Sec. 2(c)(3) of the bill revokes the withdrawal of these parcels for the Refuge. Therefore, these lands would be designated public lands open to surface entry under the public land laws, mineral leasing, and location and entry under the mining laws.

Under the terms of the Shirk Ranch Agreement, the permittees are guaranteed 1,500 animal unit months of forage each year and more can be used if needed to meet the habitat management objec-

¹The Shirk Ranch Agreement is a land transfer proposal between the BLM, FWS and MC Grazing Association which became effective September 30, 1997. This agreement was developed in cooperation with numerous interested environmental groups, grazing permittees, and government agencies. It took more than three years to reach consensus on this issue.

tives. This area is particularly desirable because late summer/early fall livestock forage is extremely limited in this area. This land will provide not only a source of green forage but also a place to gather the cattle before moving them back to the Warner Valley. In return, the permittees are responsible for the irrigation of the property and maintenance of the ditches. Livestock grazing will be used as a tool to accomplish habitat management objectives for migratory waterfowl. These objectives (which are outlined in the Beaty Butte Allotment Management Plan) call for leaving a mixture of short, medium, and tall vegetation throughout the area after the cattle leave to provide optimum habitat for migrating waterfowl in the fall and spring.

In conclusion, S. 1807 would accomplish a fine-tuning of boundaries to make management more efficient and make it easier for the public to identify what land they are using. It would adjust the boundaries of the Hart Mountain Antelope Refuge and the BLM lands to follow roads or natural barriers instead of straight lines on a map. The bill represents a “win-win” situation in public land management. In addition to having strong local support, the proposed transfer would benefit wildlife, facilitate ecosystem restoration and management, and reduce administrative expenses. Meeting these objectives is consistent with the agencies’ mission and with the purposes for which the Refuge was established and is currently managed.

The Department strongly supports S. 1807, however, enclosed are our suggested amendments to clarify this legislation.

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

Sincerely,

DONALD BERRY,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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. 1807, 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):

【25 U.S.C.】

* * * * *

§ 564w-1. * * *

(a) * * *

(f) **【KLAMATH FOREST NATIONAL WILDLIFE REFUGE;】** *KLAMATH MARSH NATIONAL WILDLIFE REFUGE APPROPRIATION.*—The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe. Title to such lands is taken in the name of the United States, effective the earliest date after September 30, 1959, when the Secretary of the Interior determines

that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended [16 U.S.C.A. § 718 et seq.]. Such lands are designated as the [Klamath Forest National Wildlife Refuge] *Klamath Marsh National Wildlife Refuge*, which shall be administered in accordance with the law applicable to areas acquired pursuant to section 4 of the Act of March 16, 1934 (48 Stat. 451), as amended or supplemented [16 U.S.C.A. § 718d]. Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are authorized to be appropriated for that purpose.

(g) HOMESITES.—Any person whose name appears on the final roll of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the [Klamath Forest National Wildlife Refuge] *Klamath Marsh National Wildlife Refuge*.

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