AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 467

106TH CONGRESS, *2d Session* | SENATE | REPORT 106–248

OREGON LAND EXCHANGE ACT OF 2000

MARCH 22, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 1629]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1629) to provide for the exchange of certain land in the State of Oregon, 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 "Oregon Land Exchange Act of 2000".

SEC. 2. FINDINGS.

The Congress finds that—

(1) certain parcels of private land located in northeast Oregon are intermingled with land owned by the United States and administered—

(A) by the Secretary of the Interior as part of the Central Oregon Resource Area in the Prineville Bureau of Land Management District and the Baker Resource Area in the Vale Bureau of Land Management District; and

(B) by the Secretary of Agriculture as part of the Malheur National Forest, the Wallowa-Whitman National Forest, and the Umatilla National Forest;

(2) the surface estate of the private land described in paragraph (1) is intermingled with parcels of land that are owned by the United States or contain valuable fisheries and wildlife habitat desired by the United States;

(3) the consolidation of land ownerships will facilitate sound and efficient management for both public and private lands;

(4) the improvement of management efficiency through the land tenure adjustment program of the Department of the Interior, which disposes of small isolated tracts having low public resource values within larger blocks of contiguous parcels of land, would serve important public objectives, including—

(A) the enhancement of public access, aesthetics, and recreation opportunities within or adjacent to designated wild and scenic river corridors;

(B) the protection and enhancement of habitat for threatened, endangered, and sensitive species within unified landscapes under Federal management; and

(C) the consolidation of holdings of the Bureau of Land Management and the Forest Service—

(i) to facilitate more efficient administration, including a reduction in administrative costs to the United States; and

(ii) to reduce right-of-way, special use, and other permit processing and issuance for roads and other facilities on Federal land;

(5) time is of the essence in completing a land exchange because further delays may force the identified landowners to construct roads in, log, develop, or sell the private land and thereby diminish the public values for which the private land is to be acquired; and

(6) it is in the public interest to complete the land exchanges at the earliest practicable date so that the land acquired by the United States can be preserved for—

(A) protection of threatened and endangered species habitat; and

(B) permanent public use and enjoyment.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "Clearwater" means Clearwater Land Exchange—Oregon, an Oregon partnership that signed the document entitled "Assembled Land Exchange Agreement between the Bureau of Land Management and Clearwater Land Exchange—Oregon for the Northeast Oregon Assembled Lands Exchange, OR 51858," dated October 30, 1996, and the document entitled "Agreement to initiate" with the Forest Service, dated June 30, 1995, or its successors or assigns;

(2) the term "identified landowners" means private landowners identified by Clearwater and willing to exchange private land for Federal land in accordance with this Act;

(3) the term "map" means the map entitled "Northeast Oregon Assembled Land Exchange/Triangle Land Exchange", dated November 5, 1999; and

(4) the term "Secretary" means the Secretary of the Interior or the Secretary of Agriculture, as appropriate.

SEC. 4. BLM—NORTHEAST OREGON ASSEMBLED LAND EXCHANGE.

(a) IN GENERAL.—Upon the request of Clearwater, on behalf of the appropriate identified landowners, the Secretary of the Interior shall exchange the Federal lands described in subsection (b) for the private lands described in subsection (c), as provided in section 6.

(b) BLM LANDS TO BE CONVEYED.—The parcels of Federal lands to be conveyed by the Secretary to the appropriate identified landowners are as follows:

(1) the parcel comprising approximately 45,824 acres located in Grant County, Oregon, within the Central Oregon Resource Area in the Prineville District of the Bureau of Land Management, as generally depicted on the map;

(2) the parcel comprising approximately 2,755 acres located in Wheeler County, Oregon, within the Central Oregon Resource Area in the Prineville District of the Bureau of Land Management, as generally depicted on the map;

(3) the parcel comprising approximately 726 acres located in Morrow County, Oregon, within the Baker Resource Area if the Vale District of the Bureau of Land Management, as generally depicted on the map; and

(4) the parcel comprising approximately 1,015 acres located in Umatilla County, Oregon, within the Baker Resource Area in the Vale District of the Bureau of Land Management, as generally depicted on the map.

(c) PRIVATE LANDS TO BE ACQUIRED.—The parcels of private lands to be conveyed by the appropriate identified landowners to the Secretary are as follows:

(1) the parcel comprising approximately 31,646 acres located in Grant County, Oregon, within the Central Oregon Resource Area in the Prineville District of the Bureau of Land Management, as generally depicted on the map;

(2) the parcel comprising approximately 1,960 acres located in Morrow County, Oregon, within the Baker Resource Area in the Vale District of the Bureau of Land Management, as generally depicted on the map; and

(3) the parcel comprising approximately 10,544 acres located in Umatilla County, Oregon, within the Baker Resource Area in the Vale District of the Bureau of Land Management, as generally depicted on the map.

SEC. 5. FOREST SERVICE—TRIANGLE LAND EXCHANGE.

(a) IN GENERAL.—Upon the request of Clearwater, on behalf of the appropriate identified landowners, the Secretary of Agriculture shall exchange the Federal lands

described in subsection (b) for the private lands described in subsection (c), as provided in section 6.

(b) FOREST SERVICE LANDS TO BE CONVEYED.—The National Forest System lands to be conveyed by the Secretary to the appropriate identified landowners comprise approximately 3,901 acres located in Grant and Harney Counties, Oregon, within the Malheur National Forest, as generally depicted on the map.

(c) PRIVATE LANDS TO BE ACQUIRED.—The parcels of private lands to be conveyed by the appropriate identified landowners to the Secretary are as follows:

(1) the parcel comprising approximately 3,752 acres located in Grant and Harney Counties, Oregon, within the Malheur National Forest, as generally depicted on the map;

(2) the parcel comprising approximately 1,702 acres located in Baker and Grant Counties, Oregon, within the Wallowa-Whitman National Forest, as generally depicted on the map; and

(3) the parcel comprising approximately 246 acres located in Grant and Wallowa Counties, Oregon, within or adjacent to the Umatilla National Forest, as generally depicted on the map.

SEC. 6. LAND EXCHANGE TERMS AND CONDITIONS.

(a) IN GENERAL.—Except as otherwise provided in this Act, the land exchanges implemented by this Act shall be conducted in accordance with section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716) and other applicable laws.

(b) MULTIPLE TRANSACTIONS.—The Secretary of the Interior and the Secretary of Agriculture may carry out a single or multiple transactions to complete the land exchanges authorized in this Act.

(c) COMPLETION OF EXCHANGES.—Any land exchange under this Act shall be completed not later than 90 days after the Secretary and Clearwater reach an agreement on the final appraised values of the lands to be exchanged.

(d) APPRAISALS.—(1) The values of the lands to be exchanged under this Act shall be determined by appraisals using nationally recognized appraisal standards, including as appropriate—

(A) the Uniform Appraisal Standards for Federal Land Acquisitions (1992); and

(B) the Uniform Standards of Professional Appraisal Practice.

(2) To ensure the equitable and uniform appraisal of the lands to be exchanged under this Act, all appraisals shall determine the best use of the lands in accordance with the law of the State of Oregon, including use for the protection of wild and scenic river characteristics as provided in the Oregon Administrative Code.

(3)(A) All appraisals of lands to be exchanged under this Act shall be completed, reviewed and submitted to the Secretary not later than 90 days after the date Clearwater requests the exchange.

(B) Not less than 45 days before an exchange of lands under this Act is completed, a comprehensive summary of each appraisal for the specific lands to be exchanged shall be available for public inspection in the appropriate Oregon offices of the Secretary, for a 15-day period.

(4) After the Secretary approves the final appraised values of any parcel of the lands to be conveyed under this Act, the value of such parcel shall not be reappraised or updated before the completion of the applicable land exchange, except for any adjustments in value that may be required under subsection (e)(2).

(e) EQUAL VALUE LAND EXCHANGE.—(1)(A) The value of the lands to be exchanged under this Act shall be equal, or if the values are not equal, they shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)) or this subsection.

(B) The Secretary shall retain any cash equalization payments received under subparagraph (A) to use, without further appropriation, to purchase land from willing sellers in the State of Oregon for addition to lands under the administration of the Bureau of Land Management or the Forest Service, as appropriate.

(2) If the value of the private lands exceeds the value of the Federal lands by 25 percent or more, Clearwater, after consultation with the affected identified landowners and the Secretary, shall withdraw a portion of the private lands necessary to equalize the values of the lands to be exchanged.

(3) If any of the private lands to be acquired do not include the rights to the subsurface estate, the Secretary may reserve the subsurface estate in the Federal lands to be exchanged.

(f) LAND TITLES.—(1) Title to the private lands to be conveyed to the Secretary shall be in a form acceptable to the Secretary.

(2) The Secretary shall convey all right, title, and interest of the United States in the Federal lands to the appropriate identified landowners, except to the extent the Secretary reserves the subsurface estate under subsection (c)(2).

(g) MANAGEMENT OF LANDS.—(1) Lands acquired by Secretary of the Interior under this Act shall be administered in accordance with sections 205(c) of the Federal Land Policy and Management Act (43 U.S.C. 1715(c)), and lands acquired by the Secretary of Agriculture shall be administered in accordance with sections 205(d) of such Act (43 U.S.C. 1715(d)).

(2) Lands acquired by the Secretary of the Interior pursuant to section 4 which are within the North Fork of the John Day subwatershed shall be administered in accordance with section 205(c) of the Federal Land Policy and Management Act (43 U.S.C. 1715(c)), but shall be managed primarily for the protection of native fish and wildlife habitat, and for public recreation. The Secretary may permit other authorized uses within the subwatershed if the Secretary determines, through the appropriate land use planning process, that such uses are consistent with, and do not diminish these management purposes.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

PURPOSE OF THE MEASURE

The purpose of S. 1629 is to provide for the exchange of certain lands in the State of Oregon.

BACKGROUND AND NEED

S. 1629 authorizes two exchanges of public and private lands in Oregon: the Triangle Land Exchange and the Northeast Oregon Assembled Land Exchange. Approximately 54,000 acres of Bureau of Land Management (BLM) and Forest Service land is proposed to be traded for nearly 50,000 acres currently held by private landowners in northeast Oregon. The bill requires that the lands to be exchanged be of equal value, or equalized by cash payments or a reduction in the amount of private land acquired.

Both the United States and the private landowners will benefit from this exchange. The BLM and Forest Service will acquire sensitive river corridors which will improve the efficiency of their protection efforts for threatened and endangered fish. Currently, many of these lands are intermingled with private parcels and make resource management difficult for the agencies. The improvement of fish-bearing streams and riparian areas is critical to the survival of many struggling species of fish in the Northwest.

Communities and landowners will also benefit from these exchanges. The consolidation of ownership patterns and the release of previously inaccessible forest lands will boost local economies and enhance the ability of the private sector to manage its own lands.

LEGISLATIVE HISTORY

S. 1629 was introduced by Senators Smith of Oregon and Wyden on September 23, 1999. The Subcommittee on Forests and Public Land Management held a hearing on S. 1629 on October 14, 1999. At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources ordered S. 1629 reported favorably with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on February 10, 2000, by a voice vote of a quorum present recommends that the Senate pass S. 1629 if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1629, the Committee adopted an amendment in the nature of a substitute. The amendment makes several technical, clarifying, and conforming changes and is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section (1) contains the short title, the "Oregon Land Exchange Act of 2000."

Section (2) contains congressional findings.

Section (3) defines terms used in the Act.

Section (4) requires the Secretary of the Interior, upon request of the Clearwater partnership, to exchange approximately 50,320 acres of Federal lands administered by the BLM for approximately 44,150 acres of private lands, as provided in section 6. The lands to be exchanged are identified on the referenced map.

Section (5) requires the Secretary of Agriculture, upon request of the Clearwater partnership, to exchange approximately 3,901 acres of Federal lands administered by the Forest Service for approximately 5,700 acres of private lands as provided in section 6. The lands to be exchanged are identified in the referenced map.

Section (6)(a) requires the land exchanges to be conducted in accordance with section 206 of the Federal Land Policy and Management Act and other applicable laws.

Subsection (b) provides that any exchange of land may be accomplished in a single transaction or in phases.

Subsection (c) requires completion of exchanges within 90 days of an agreed upon appraisal.

Subsection (d)(1) requires appraisals to be determined by recognized appraisal standards.

Paragraph (2) requires all appraisals to determine the best use of the land in accordance with the law of the State of Oregon, including use for the protection of wild and scenic river characteristics.

Paragraph (3) requires appraisals to be completed and submitted to the appropriate Secretary for approval no later than 90 days after the date Clearwater requests the exchange. A summary of each appraisal will be available for public inspection.

Paragraph (4) requires that after the appropriate Secretary approves the appraised value of the land conveyed, the land shall not be reappraised or updated.

Subsection (e) requires that the values of the offered land and the selected land shall be equal or if not equal, shall be equalized. Cash received by the Secretary may be used to purchase land from willing sellers.

Subsection (g)(1) requires that the land acquired by the Secretary of the Interior shall be managed in accordance with laws and regu-

lations applicable to Bureau of Land Management lands. The land acquired by the Secretary of Agriculture shall be manager in accordance with laws and regulations applicable to National Forest System lands, except lands within the North Fork of the John Day subwatershed shall also be managed primarily for fish, wildlife, and public recreation. Other uses may occur if the Secretary determines that such uses are consistent with, and do not diminish, these purposes. This requirement will provide additional protection beyond that provided in other applicable Federal land management regulations and statutes.

Section (7) authorizes the appropriation of such sums as may be necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 8, 2000.

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. 1629, the Oregon Land Exchange Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria Heid Hall (for federal costs), and Marjorie Miller (for the state, local, and tribal impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1629—Oregon Land Exchange Act of 2000

CBO estimates that implementing S. 1629 would have no significant impact on the federal budget. Because the bill creates new direct spending authority, pay-as-you-go procedures would apply, but CBO estimates there would be no significant spending as a result of enacting this bill. The bill 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. 1629 provides that upon the request of Clearwater Land Exchange—Oregon (an Oregon partnership), the Secretaries of the Interior and Agriculture shall exchange certain federal lands in the state of Oregon for certain private lands in the state. Specifically, the Secretary of the Interior shall convey about 50,320 acres of Bureau of Land Management (BLM) land in exchange for about 44,150 acres of private land. In addition, the Secretary of Agriculture shall convey 3,901 acres of federal land within the Malheur National Forest in exchange for about 5,700 acres of private land within the Malheur, Wallowa-Whitman, and Umatilla National

Forests. Based on information from the two agencies, the exchanges could affect grazing allotments, but we estimate that any impact on grazing receipts would be trivial.

S. 1629 would give the Secretaries the authority to retain any cash equalization payments received in these exchanges and to spend them, without further appropriation, to purchase other land in Oregon. The Secretaries do not have such authority under current law. Therefore, enacting S. 1629 could result in new direct spending if the private parties in these exchanges make cash equalization payments to the federal government to complete the transactions. According to BLM and the Forest Service, the land exchanges are intended to be of equal value and no cash equalization payments are planned. Based on that information, we estimate that there would be no significant direct spending under the bill.

The CBO staff contacts for this estimate are Victoria Heid Hall (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, 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. 1629.

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 person 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. 1629, as ordered reported.

EXECUTIVE COMMUNICATIONS

On February 10, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Department of Agriculture, and the Office of Management and Budget setting forth Executive agency recommendations on S. 1629. These reports had not been received at the time the report on S. 1629 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management and the Forest Service at the Subcommittee hearing follows:

STATEMENT OF CARSON (PETE) CULP, ASSISTANT DIRECTOR OF MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to testify on S. 1629, the Oregon Land Exchange Act of 1999. The Bureau does not support S. 1629, the Oregon Land Exchange Act of 1999 because we believe the exchange ob-

jectives discussed in this bill can be accomplished within existing administrative authorities and it is important to complete the public review process as part of our land exchange procedures.

This land exchange was first identified in the BLM John Day Resource Management Plan (RMP) in 1984. In 1993, several private land owners identified an opportunity for consolidated land ownership. One of the larger property owners in the area began land exchange discussions with a third party facilitation organization known as the Clearwater Land Exchange. The initial proposal involved an exchange where the BLM would dispose of difficult to manage isolated lands, and in exchange would gain valuable stream side areas.

As these proposals evolved, the Clearwater Land Exchange began to contact other area landowners to discuss the array of possible land exchanges with the BLM. Following a public tour in October of 1996, the BLM, in December of 1996, went forward with the notice of intent to develop an environmental impact statement (EIS) for the exchange. After extensive public outreach to landowners, local communities, and tribal governments the BLM began work on the draft environmental impact statement, and in June of 1998, the final EIS was published. However, the public review process has not been completed regarding individual proposed land exchange transactions.

In all, this proposed exchange involves the exchange of over 160,000 acres in multiple Oregon counties. The BLM would potentially transfer 90,000 acres of isolated public lands, and acquire 70,000 acres of private land with significant natural resource values thus creating an improved land ownership and management pattern in Northeast Oregon.

As one can imagine, the sheet scope of the land exchange being discussed has resulted in a process containing a series of smaller and more manageable phases. Once the Record of Decision and public review process is completed, and assuming the NEPA documentation supports the decision to go forward with the exchange, the first phase would primarily involve lands in Grant, Wheeler, Umatilla, and Morrow Counties. Following the completion of the disposal of lands in the first phase, the BLM would continue the public review process for future proposed exchange transactions and with the help of the Clearwater Land Exchange work to exchange the remaining lands.

CONCLUSION

Mr. Chairman, these bills presented before you today are an indication that the public lands are becoming more and more an avenue by which many can benefit. With the amendments suggested, we are pleased to be able to support the local communities of both Landusky, Montana and Carson City, Nevada in providing land for their needs. We

also support the tenets of the northeast Oregon land exchange proposal, however, without the use of legislation. We also look forward to working with the Westside Irrigation District to bring about an administrative solution to their rural needs. We would be happy to work with both the Oregon and Wyoming delegations to provide a solution.

Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee and discuss these bills. I will be glad to answer any questions.

STATEMENT OF SANDRA H. KEY, ASSOCIATE DEPUTY CHIEF, PROGRAMS AND LEGISLATION, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Thank you for your invitation to testify at this hearing today on S. 1629, a bill to provide for the exchange of certain land in the State of Oregon. I appreciate the opportunity to join you today.

We support the goal of completing the land exchange covered by Title II of S. 1629, known as the Triangle Land Exchange Act of 1999. The land exchange has been proceeding administratively and is well on its way to completion. We believe that this legislation is unnecessary, and that the exchange should be completed through the ongoing administrative process.

Title II of S. 1629 deals with the Triangle land exchange involving the Forest Service and Clearwater Land Exchange-Oregon (Clearwater), a third party facilitator acting on behalf of multiple private landowners. This exchange was first proposed in 1997, and involves approximately 5,700 acres of private land and approximately 3,901 acres of National Forest land on the Malheur, Umatilla, and Wallowa-Whitman National Forests.

The environmental analysis process was initiated for this exchange in August, 1997, and the environmental assessment was completed in April, 1999. Based on the analysis and public concerns raised during the process, as well as recent court rulings on land exchange cases, the Forest Service determined that an Environmental Impact Statement (EIS) would be required. We are now proceeding with completion of the EIS. While this will add time to the land exchange process, it will ensure that full public involvement and all significant environmental effects are addressed. We anticipate that a Record of Decision will be signed by August of the year 2000.

The bill, as written, would require that the land exchanges be completed not later than 90 days after the date on which Clearwater, on behalf of the identified landowners, makes the Secretary an offer to exchange. We believe this timeframe would not allow for completion of the EIS, leaving the Agency more vulnerable to appeals and litigation that could further delay the exchange. We feel that the bill is unnecessary, and that the administrative

process in place is working and should not be pre-empted by the timeline required in the bill.

While we support the goals of the Triangle Land Exchange, we do not support S. 1629 as currently written, as we believe the bill is unnecessary and that the administrative process should be continued to complete this exchange.

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 S. 1629, as ordered reported.

○