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SENATE

{ REPORT
{ 113-242

TO EXCHANGE TRUST AND FEE LAND TO RESOLVE LAND DISPUTES CREATED BY THE REALIGNMENT OF THE BLACKFOOT RIVER ALONG THE BOUNDARY OF THE FORT HALL INDIAN RESERVATION, AND FOR OTHER PURPOSES

AUGUST 5 (legislative day, August 1), 2014.—Ordered to be printed

Mr. TESTER, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2040]

The Committee on Indian Affairs, to which was referred the bill (S. 2040) to exchange trust and fee land to resolve land disputes created by the realignment of the Blackfoot River along the boundary of the Fort Hall Indian Reservation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 2040 would rectify border changes to the Fort Hall Reservation following the realignment of the Blackfoot River and would allow the local Flood Control District to compensate non-Indian landowners for the land swapped with the Shoshone-Bannock Tribes.

BACKGROUND

The Fort Hall Reservation was created by Executive Order in 1867 and confirmed by the Fort Bridger Treaty of 1868. The Executive Order establishing the Reservation designates the Blackfoot River as the Reservation's northern boundary. Following the realignment of the Blackfoot River by the Army Corps of Engineers in 1964, land disputes arose as various tracts of land that had previously been on one side of the River were now on the other. At issue are 25 parcels of land (approximately 37.04 acres) of Indian land formerly on the southern side of the river now on the northern side and 19 parcels (approximately 31.01 acres) of non-Indian land formerly on the northern side and now on the southern side and

within the Reservation's boundary. Due to their inaccessibility, the non-Indian lands have remained unused for years.

In the late 1980's, the Snake River Basin Adjudication began decreeing water rights on all streams and rivers within the Snake River Basin in Idaho, which includes the Blackfoot River. Several non-Indian landowners whose lands were affected by the realignment of the Blackfoot River asserted claims for water rights on Fort Hall Reservation lands. The Shoshone-Bannock Tribes opposed these claims, which has resulted in litigation still currently pending as part of the Snake River Basin Adjudication.

NEED FOR LEGISLATION

Congressional approval of the settlement agreement is required to extinguish claims and title to certain trust lands and to place other lands into trust for the benefit of the Tribes.

LEGISLATIVE HISTORY

This legislation was introduced on February 25, 2014, by Senator Mike Crapo (R-ID) with Senator James Risch (R-ID) as an original cosponsor. The bill was referred to the Committee on Indian Affairs. On May 7, 2014, the committee held a hearing on the bill. On May 21, 2014, the committee met to consider the bill. No amendments were offered, and the bill was ordered to be reported favorably to the Senate by voice vote. There is an identical companion bill in the House of Representatives (H.R. 5049), which was introduced by Representative Michael Simpson (R-ID) and Representative Betty McCollum (D-MN).

There have been two previous introductions of this legislation. In the 111th Congress, Senators Crapo and Risch introduced S. 2802 which was favorably reported by the Committee to the full Senate. No further action was taken. In the 112th Congress, Senators Crapo and Risch introduced S. 1065 which was reported favorably out of Committee. No further action was taken. There have also been House companion bills in previous Congresses.

Previous versions of this bill authorized funds to be released by the Treasury for the execution of the land swap, but the current legislation does not. In the 111th Congress, S. 2802 authorized \$1 million to compensate Indians and non-Indians for the trespass to land and for the land's value. In the 112th Congress, S. 1065 would have reduced the authorization to \$700,000. The stakeholders support the current bill without these authorizations.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section sets forth the short title of the Act as the "Blackfoot River Land Exchange Act of 2014."

Section 2. Findings; purposes

This section describes the findings and purposes of the Act, including a summary of relations between the United States and the Tribes and a description of the Reservation. According to the Executive Order establishing the boundaries of the Reservation, the Blackfoot River in its natural state forms the northern border of the Reservation.

Section 3. Definitions

Section 3 sets forth the definitions for terms within the Act.

Section 4. Release of claims to certain Indian and non-Indian owned lands

This section extinguishes or releases claims relating to the boundary disputes caused by the realignment of the Blackfoot River. All existing and future claims to the lands transferred by this legislation and all right, title, and interest that the Tribes, allottees, non-Indian landowners, and the Blackfoot River Flood Control District No. 7 may have had to the land are extinguished. With respect to Indian lands, any interests or claims held by the Tribes, allottees, or the United States acting as trustee for the Tribes or allottees arising under section 2116 of the Revised Statutes (Indian Trade and Intercourse Act, 25 U.S.C. 177) are extinguished. Any transfer of non-Indian land under section 5 of this Act that violates section 2116 of the Revised Statutes shall be considered valid as long as it is consistent with all other applicable Federal laws (including regulations). Section (b) states that the Secretary may execute and file appropriate documentation with the Bingham County (Idaho) clerk, or any other appropriate county officer, as she sees fit.

Section 5. Non-Indian land to be placed into trust for tribes

Section 5 provides that, effective on the date of enactment of the Act, the non-Indian land described within the bill shall be considered to be held in trust by the United States for the benefit of the Shoshone-Bannock Tribes.

Section 6. Trust land to be converted to fee land

This section requires the Secretary to transfer the Indian land at issue in the Act to the Blackfoot River Flood Control District No. 7 for use or sale. Proceeds from the sale of the former trust land will be used to compensate non-Indian land owners for any net loss of land resulting from this Act as well as to provide for administrative and other expenses incurred by the Flood Control District in its carrying out the Act. The Flood Control District may dispose of remaining land after the sale of the land as it deems appropriate.

Section 7. Effect on original reservation boundary

This section states that nothing in this Act will alter the boundary of the Fort Hall Reservation as determined by the Executive Order of 1867 and confirmed by the treaty in 1868.

Section 8. Effect on tribal water rights

Section 8 affirms that nothing in this Act affects the water rights controlled by the Tribes pursuant to the 1990 Fort Hall Indian Water Rights Agreement, ratified by the Fort Hall Indian Water Rights Act of 1990 (P.L. 101-602).

Section 9. Disclaimers regarding claims

Section 9 ensures that nothing in the Act: (1) affects Idaho's sovereign claim to title in the beds and banks of the River; (2) affects Idaho's ability to establish title under the Quiet Title Act; (3) affects the Tribes' or the United States' ability to claim ownership of

the beds and banks of the River; or (4) extinguishes or conveys any water rights or claims to water rights of non-Indian landowners in the Snake River Basin Adjudication.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated June 17, 2014, was prepared for S. 2040:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 2014.

Hon. JON TESTER,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2040, the Blackfoot River Land Exchange Act of 2014.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2040—Blackfoot River Land Exchange Act of 2014

S. 2040 would require an exchange of tribal and private lands to settle a dispute between the Shoshone-Bannock Tribes and certain non-Indian landowners in southeastern Idaho. Under the bill, the Department of the Interior (DOI) would exchange 37 acres of Indian trust land for 31 acres of private land that would be held in trust for the Shoshone-Bannock Tribes. Based on information provided by DOI, CBO estimates that implementing the legislation would have no significant effect on the federal budget. Enacting S. 2040 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

By requiring the exchange of lands through federal statute, S. 2040 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on tribal and nontribal land owners. The bill would terminate rights to certain parcels of land surrounding the Blackfoot River, and extinguish any past, present, or future claims on that land. The cost of the mandates would be the forgone compensation for damages that could have been collected through legal actions related to clarifying title to the property, and the net value of the land being exchanged by the federal government. Any forgone damages are unlikely to be significant. In a market study used by DOI, the value of the land is estimated to be less than \$500,000. Therefore, CBO estimates that the aggregate cost of the mandates would fall well below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates (\$76 million and \$152 million, respectively, in 2014, adjusted annually for inflation).

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), Melissa Merrell (for the state and local impact) and Marin Burnett (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2040 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2040.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 2040 will not make any changes in existing law.