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SENATE

{ REPORT
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TO DIRECT THE SECRETARY OF THE INTERIOR TO TAKE CERTAIN LAND AND MINERAL RIGHTS ON THE RESERVATION OF THE NORTHERN CHEYENNE TRIBE OF MONTANA AND OTHER CULTURALLY IMPORTANT LAND INTO TRUST FOR THE BENEFIT OF THE NORTHERN CHEYENNE TRIBE, AND FOR OTHER PURPOSES

DECEMBER 12, 2014.—and ordered to be printed

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

R E P O R T

[To accompany S. 2442]

The Committee on Indian Affairs, to which was referred the bill (S. 2442) to direct the Secretary of the Interior to take certain land into trust for the Northern Cheyenne Tribe of Montana, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 2442 is to require the Secretary of the Interior to take certain land and mineral rights on the Northern Cheyenne Indian Reservation of Montana into trust for the benefit of the Northern Cheyenne Tribe, to transfer all amounts in the Tribe's Northern Cheyenne Trust Fund to the Tribe's Permanent Fund, and to inventory fractionated lands and report on the implementation of land consolidation activities on the Reservation.

BACKGROUND

The Northern Cheyenne Tribe is one of seven federally-recognized tribes in the state of Montana. The Tribe has an enrolled membership of over 10,800, nearly half of which reside on the Northern Cheyenne Indian Reservation. The Reservation is approximately 440,000 acres and is located southeast of Billings, Montana. Over 95 percent of the Northern Cheyenne Indian Reservation is held in trust for the Tribe and/or its members and nearly the entire subsurface estate is held in trust by the United States for the benefit of the Tribe.

However, due to an error by the United States in 1900, 5,000 subsurface acres within the Reservation were not transferred into trust ownership for the benefit of the Tribe. These subsurface tracts are currently owned in fee by Great Northern Properties. In 2002, the Tribe dismissed its lawsuit against the United States that concerned the transfer of coal tracts near the Reservation to the State of Montana in return for the United States' cooperation in re-acquiring the 5,000 subsurface acres within the Reservation, among other consideration. In return for securing the subsurface tracts within the Reservation's boundary through this legislation, the Tribe would waive any claims it has against the United States related to the federal government's failure to secure those mineral interests for the Tribe in the early 20th century.

Additionally, the Tribe owns numerous tracts of land in fee throughout the Reservation. The Tribe has acquired these tracts through its efforts to reduce fractionation of the land within the Reservation boundaries. This legislation would require these tracts of land to be held in trust by the United States on behalf of the Tribe.

The Tribe also has adjudicated water rights that it secured through the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992. A portion of that Act provided for a Trust Fund to enable the Tribe to develop its water rights and create other economic development opportunities. This legislation would enable the Tribe to exert greater authority over that Trust Fund.

NEED FOR LEGISLATION

This legislation, S. 2442, is needed to complete a land transaction between the United States, the Tribe and a private landowner. The bill would divest the federal government of off-reservation mineral interests in exchange for a private landowner transferring its on-reservation mineral interests to the Secretary, to hold the property in trust for the benefit of the Tribe. The legislation is also needed to extinguish any potential claims stemming from the United States' failure to secure the transfer of the on-reservation mineral interests to the Tribe in the early 20th Century. The legislation would also transfer all amounts in a settlement act trust fund into the Tribe's Permanent Fund, which requires Congressional action.

LEGISLATIVE HISTORY

S. 2442 was introduced on June 5, 2014, by Senators Jon Tester and John Walsh. The bill was referred to the Committee on Indian Affairs. On July 9, 2014, the Committee held a hearing on the bill. On July 30, 2014, the Committee met at a business meeting to consider the bill. One amendment was offered and adopted, and the bill, as amended, was ordered to be reported favorably to the Senate by voice vote.

There is a House companion bill, H.R. 4350; however, the bills are not identical. Additionally, another Senate bill, S. 2256, was introduced on April 11, 2014, and referred to the Committee on Energy and Natural Resources. S. 2256 does not include the land consolidation provisions found in this legislation. Similar bills were also introduced in the 112th Congress (S. 647, S. 2110, and H.R. 1158).

SUMMARY OF THE AMENDMENT

Chairman Tester filed an amendment in the nature of a substitute at a July 30, 2014, business meeting. The amendment made the following changes:

Fee to Trust Provisions

Section 4 of the legislation would direct the Secretary to take certain tracts of land identified in two maps into trust for the benefit of the Northern Cheyenne Tribe. The amendment inserted a limitation excluding any land identified in the map located in South Dakota from being taken into trust by the Secretary pursuant to this Act.

Mineral Interest Conveyances

The amendment removed a reference in section 5(a)(2)(A)(ii) to a 1984 Bureau of Land Management Resource Management Plan. The legislation, as introduced, would have kept the limitations of land use found in the Resource Management Plan in place for the tracts being transferred out of federal ownership. In its place, a new provision was added as section 5(a)(2)(C), which states that nothing in the legislation shall “affect, abridge, or amend any valid existing rights of any surface owner of a specific tract or any adjacent tracts.” These provisions are in addition to the protections required under subsection 5(a)(2)(A), which requires surface owners to provide consent prior to any development of coal through techniques other than underground mining.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

Section 1 provides that the Act may be cited as the “Northern Cheyenne Lands Act.”

Section 2. Findings

Section 2 describes the Congressional findings related to the Act, including the history of the land the Northern Cheyenne Tribe seeks to have placed into trust for the benefit of the Tribe.

Section 3. Definitions

Section 3 defines the key terms used throughout this Act.

Section 4. Tribal fee land to be taken into trust

Section 4 mandates that the Secretary take 1,567 acres of land (specified by two maps dated April 22, 2014, and titled: (1) ‘Northern Cheyenne Lands Act-Fee-to-Trust Lands’ and (2) the ‘Northern Cheyenne Lands Act-Fee-to-Trust Lands—Lame Deer Townsite’) into trust for the benefit of the Tribe within 60 days of the enactment of this Act. Subsection (b) includes a limitation prohibiting any tracts of land identified on the maps located within the state of South Dakota from being taken into trust pursuant to this section of the Act. This would not preclude the South Dakota land from going into trust via another legislative or administrative procedure.

Section 5. Mineral rights to be taken into trust

Section 5(a) mandates that within 60 days of the Secretary being notified that a revenue sharing agreement remains in effect and Great Northern Properties has offered to convey its mineral interests on the Reservation to the Tribe, the Secretary shall convey certain federally-owned mineral interests to Great Northern Properties in exchange for Great Northern Properties' conveyance of its mineral interests on the Reservation to the Tribe. The Secretary will ensure that there is a covenant on the land that limits the method of mining available on the tracts conveyed to Great Northern Properties to underground mining techniques. Similar to the surface owner protections afforded by the Surface Mining Control and Reclamation Act, any other mining techniques are prohibited until a surface owner gives written consent to mine using other techniques on that surface owner's specific tract.

Section 5(a)(1) contains a minor drafting error regarding the mineral estate transfer between the United States and Great Northern Properties. Both subparagraphs of that section should reference the same map, titled "Northern Cheyenne Land Act—Coal Tracts" and dated April 22, 2014. That map depicts both the tracts that are to be transferred from Great Northern Properties to the Secretary to be held in trust for the benefit of the Tribe, and the tracts that are to be transferred from the United States to Great Northern Properties. However, subparagraph (B) contains an error by referencing the incorrect title of the map. Subparagraph (B) should be read to reference the "Northern Cheyenne Land Act—Coal Tracts" map dated April 22, 2014, which is the same map correctly referenced in subparagraph (A) of the same section.

Section 5(b) states that the mineral interests on the Reservation conveyed to the Tribe shall be held in trust by the Secretary upon request by the Tribe and the mineral interests shall not be subject to taxation by the State. Section 5(c) requires the revenue sharing agreement between the Tribe and Great Northern Properties be in place and remain in effect prior to the transfer of any mineral interests under this section.

Section 5(d) contains a waiver of all legal claims against the United States for the failure of the United States to take the 5,000 acres of subsurface mineral interests into trust on behalf of the Tribe any and all claims by Great Northern Properties against the United States relating to the value of the coal mineral interests. Section 5(e) describes the ability of the Secretary or Great Northern Properties to rescind any conveyance made pursuant to the Act within one year of any mineral interests conveyed under the Act being invalidated by a final judgment of a federal court. If any conveyances are rescinded under subsection (e), the legal waivers found in subsection (d) shall no longer apply.

Section 6. Transfer of Northern Cheyenne Trust Fund to tribe

Section 6(a) mandates that within 30 days after enactment of this Act, all amounts in the Northern Cheyenne Trust Fund shall be deposited in the Tribe's Permanent Fund. Subsection (b) states that the funds that are attributable to the principal of the Northern Cheyenne Trust Fund will be continually maintained and any interest earned on the principal will be used in the same manner as interest earned in the Permanent Fund. Subsection (c) states

that the Tribe waives any and all claims arising from the management of the Northern Cheyenne Trust Fund by the United States.

Section 7. Land consolidation and fractionation reporting

Section 7(a) requires the Secretary, in consultation with the Tribe, to inventory the fractionated land interests held by the United States for the benefit of the Tribe or individual Indians on the Reservation. The inventory is required to include details about the fractionated land on the Reservation that is suitable for agricultural purposes. The Secretary will submit the inventory to the Senate Committee on Indian Affairs and the House of Representatives Committee on Natural Resources within 180 days of enactment of this Act. Subsection (b) requires the Secretary to prepare annual reports for the first five years that discuss (1) the obstacles of consolidating fractionated trust land ownership, (2) the progress achieved toward reducing the level of fractionation, (3) an analysis of the progress made to making agricultural use economical, and (4) any applicable outcomes or lessons learned from land consolidation activities.

Section 8. Eligibility for other federal benefits

Section 8 provides that the transfer of the trust fund under section 6 will not reduce or deny any Federal service, benefit, or program to the Tribe or tribal member to which the Tribe or tribal member is entitled to as a federally-recognized Indian tribe or member thereof.

Section 9. Authorization of appropriations

Section 9 authorizes the appropriations of the sums necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate was produced by the Congressional Budget Office on August 28, 2014.

Summary: S. 2442 would require the Bureau of Land Management (BLM) to convey 9,400 acres of land containing coal deposits to Great Northern Properties, a private company, if the company conveys certain mineral rights to the Northern Cheyenne Tribe. The land conveyances would not be finalized unless the tribe waived all claims related to the failure of the United States to acquire certain mineral rights underlying the tribe's reservation land. The bill also would direct the Secretary of the Interior to compile an inventory of land interests held in trust by the federal government for the benefit of the tribe.

Based on information provided by BLM, the tribe, and firms operating in the coal industry, CBO estimates that enacting the legislation would reduce net offsetting receipts (thus increasing direct spending) by \$2 million in 2024; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues and would have no significant effect on discretionary spending.

S. 2442 would preempt the authority of state and local governments to tax land and mineral interests conveyed to the Northern Cheyenne Tribe of Montana. Those requirements would be mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of the mandates would be mini-

mal. The bill would benefit the Northern Cheyenne Tribe of Montana. The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2442 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|----------------------------------|---|------|------|------|------|------|------|------|------|------|-----------|-----------|
| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2015–2019 | 2015–2024 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Estimated Outlays | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2014.

Forgone receipts from bonus bids: S. 2442 would require BLM to convey 9,400 acres of federal land containing coal deposits to Great Northern Properties.

Based on information provided by BLM and firms operating in the coal industry, CBO estimates that the affected lands contain 113 million tons of coal. CBO expects that, under current law, the federal government will lease lands containing up to 90 percent of that coal starting by 2024 or possibly later. Based on information regarding recent bonus bids paid for federal lands in western states containing coal, CBO expects that firms would pay about 35 cents per ton to lease the affected land, and we estimate that the bonus bids for those leases would total about \$36 million. Because firms generally pay bonus bids on coal leases in five equal installments over a five-year period, CBO estimates that gross proceeds from bonus bids (before the government pays states their share) would be about \$7 million a year. We assess a 50 percent chance that the lease sale would occur in 2024 and an equal chance that it would not occur until later. Therefore, accounting for that uncertainty, we project a loss of receipts (before payouts to states) of \$3 million to \$4 million per year. Because BLM would distribute 49 percent of those proceeds to the state of Montana, we estimate that enacting the bill would reduce net offsetting receipts by \$2 million in 2024.

CBO also estimates that conveying the lands would not affect offsetting receipts from royalties because any production on those lands would not occur until after 2024 under current law.

Waiver of claims: The Northern Cheyenne Tribe asserts claims against the federal government because the government did not acquire mineral rights on lands that were added to the reservation in 1900. Under the bill, the tribe would waive those claims. CBO expects that any litigation related to the claims would not be completed or settled within the next 10 years. Therefore, we estimate that the waiver of those claims would not affect direct spending during the next decade.

Pay-as-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 2442 would reduce the amount of offsetting receipts that would be deposited in the Treasury from certain coal leases; therefore, pay-as-you-go pro-

cedures apply. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU GO EFFECTS FOR S. 2442, THE NORTHERN CHEYENNE LANDS ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON MAY 29, 2014

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | | 2014– 2019 | 2014– 2024 |
|-------------------------------------|---|------|------|------|------|-----|------|------|------|------|------|---|---|---------------|---------------|
| | 2014 | 2015 | 2016 | 2017 | 2018 | 019 | 2020 | 2021 | 2022 | 2023 | 2024 | | | | |
| | NET INCREASE OR DECREASE (–) IN THE DEFICIT | | | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 | |

Estimated intergovernmental and private-sector impact: S. 2442 would preempt the authority of state and local governments to tax land and mineral interests conveyed to the Northern Cheyenne Tribe of Montana. Those requirements would be mandates as defined in UMRA, but CBO estimates that the costs of the mandates would be minimal. The bill would benefit the Northern Cheyenne Tribe of Montana. The bill contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 18, 2014, CBO transmitted a cost estimate for H.R. 4350, the Northern Cheyenne Lands Act, as ordered reported by the House Committee on Natural Resources on May 29, 2014. The two bills are similar, and the CBO cost estimates are the same.

Estimate prepared by: Federal Costs: Jeff LaFave and Martin von Gnechten; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Marin Burnett.

Estimate 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. 2442 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2442.

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. 2442 will not make any changes in existing law.