

## Calendar No. 336

114TH CONGRESS      }  
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                      SENATE      {  
                      REPORT  
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### MOUNT HOOD COOPER SPUR LAND EXCHANGE CLARIFICATION ACT

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DECEMBER 16, 2015.—Ordered to be printed

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

#### R E P O R T

[To accompany S. 2069]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2069) to amend the Omnibus Public Land Management Act of 2009 to modify provisions relating to certain land exchanges in the Mt. Hood Wilderness in the State of Oregon, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, strike lines 12 through 17.
2. On page 2, line 18, strike "(b)" and insert "(A)".
3. On page 2, line 23, strike "60" and insert "120".
4. On page 4, line 11, strike "(C)" and insert "(B)".
5. On page 4, line 16, strike "(D)" and insert "(C)".
6. Beginning on page 4, strike line 21 and all that follows through page 5, line 6, and insert the following:

“(i) the Secretary and Mt. Hood Meadows may mutually agree for the Secretary to reserve a conservation easement to protect the identified wetland in accordance with applicable law, subject to the requirements that—

“(I) the conservation easement shall be consistent with the terms of the September 30, 2015, mediation between the Secretary and Mt. Hood Meadows; and

“(II) in order to take effect, the conservation easement shall be finalized not later than 120 days after the date of en-

actment of the Mount Hood Cooper Spur Land Exchange Clarification Act; and".

#### PURPOSE

The purpose of S. 2069 is to amend section 1206 the Omnibus Public Land Management Act of 2009 to modify provisions relating to a land exchange between the Forest Service and the Mt. Hood Meadows Oregon Limited Partnership in the State of Oregon.

#### BACKGROUND AND NEED

Section 1206 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) included authorization for a land exchange to guide where future development would take place around Mount Hood. The land exchange would allow Federal land in Government Camp (120 acres) to be made available for development while protecting the larger parcel of non-Federal land at Cooper Spur (770 acres) under Federal ownership.

Although the 2009 authority included language that it was the intent of Congress that the exchange be completed within 16 months after the date of enactment, over six years have passed without completion of the exchange. The long delay, which has been primarily due to an inability to agree on conservation easement terms to protect wetlands on the properties to be exchanged, has frustrated the local communities, Mt. Hood Meadows, and other interested parties.

On September 30, 2015, the Forest Service and Mt. Hood Meadows engaged in a mediation session in an attempt to resolve the easement terms that were in dispute. Subsequently the parties released a joint statement that they were able to arrive at mutually satisfactory terms during the mediation session.

S. 2069 updates the details and process for the land exchange to clarify issues relating to land appraisals and the parameters of a wetland conservation easement on the Federal land to be conveyed.

#### LEGISLATIVE HISTORY

S. 2069 was introduced by Senators Wyden and Merkley on September 22, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on the bill on October 8, 2015.

At its business meeting on November 19, 2015, the Committee on Energy and Natural Resources, on a voice vote, ordered S. 2069 favorably reported as amended.

#### 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. 2069, if amended as described herein.

#### COMMITTEE AMENDMENTS

During its consideration of S. 2069, the Committee adopted several amendments, which: extend the timeline for selection of an appraiser from 60 to 120 days; address the protection of a wetland located on the Federal parcel through a conservation easement; and make technical and conforming edits.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains the short title, “Mount Hood Cooper Spur Land Exchange Clarification Act.”

*Section 2* amends section 1206(a) of the Omnibus Public Land Management Act of 2009 (P.L. 111-11; 123 Stat. 1018) to update the acreage of Forest Service land to be conveyed and add improvements to the definition of non-Federal land. The Secretary of Agriculture (Secretary) and Mt. Hood Meadows are given up to 120 days following the enactment of S. 2069 to jointly select an appraiser to conduct appraisals of the Federal and non-Federal parcels of land. Separate values should be assigned to each parcel, and these values will remain in effect for up to three years following their acceptance by the Secretary unless the condition of the Federal or non-Federal land changes significantly due to fire, windstorms, or other events. The Secretary is directed to make the appraisals available to the public prior to completing the land exchange.

The section includes a provision that it is the intent of Congress that the exchange be completed within 12 months, and the conveyance conditions are updated to allow the Secretary and Mt. Hood Meadows to mutually agree on the reservation of a conservation easement to protect a wetland located on the Federal land in accordance with the terms of the September 30, 2015 mediation between the parties. The conservation easement is required to be finalized within 120 days following enactment of S. 2069. The updated conveyance conditions also direct the Secretary to reserve a 24-foot-wide, nonexclusive trail easement on the Federal land to be conveyed.

If the appraised values of the Federal and non-Federal lands are not equal, monetary compensation may be made or a smaller amount of land may be conveyed to equalize the values of the properties. If the value of the non-Federal land exceeds the value of the Federal land after payment of compensation or adjustment of the land area, it will be considered a donation by Mt. Hood Meadows to the United States.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

#### 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. 2069. 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. 2069, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2069, 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 U.S. Forest Service at the October 8, 2015, hearing on S. 2069 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. 414, S. 1592, and S. 2069.

**S. 414, "CALIFORNIA DESERT CONSERVATION AND RECREATION ACT OF 2015"**

The Department supports S. 414 and would like to work with the Committee and bill sponsor on several clarifications, some of which we will highlight in the testimony that follows. We defer to the Department of Interior regarding the provisions in this bill concerning lands under its management.

The majority of National Forest System lands in S. 414, Title XIV (Sand to Snow National Monument) are within the San Gorgonio Wilderness Area on the San Bernardino National Forest (NF). The San Bernardino National Forest Land and Resource Management Plan (Forest Plan) was revised in 2006 and then amended in 2014 using an extensive public process. The proposed Monument and wilderness designations in S. 414, Title XIV, are closely aligned with recommended wilderness and forest management objectives included in the Forest Plan.

S. 414 would designate approximately 62,648 acres of the San Bernardino National Forest, along with approximately 73,000 acres administered by the Bureau of Land Management (BLM), as the Sand to Snow National Monument. The Monument would be managed jointly by both agencies. This approach has been successful for over 15 years on the Santa Rosa and San Jacinto Mountains National Monument in California. The purpose of the Monument would be to preserve the nationally significant bio-

logical, cultural, educational, geological, historic, scenic, and recreational values at the convergence of the Mojave and Colorado deserts and the San Bernardino Mountains.

The 2014 Forest Plan Revision for the San Bernardino NF recognized the importance of wildlife connections and corridors to and from the Forest, as well as the significant biological, cultural, scenic and recreational values of the greater San Gorgonio Mountain ecosystem.

The Department welcomes the opportunity to work with the Secretary of the Interior in jointly managing the proposed Monument using the different authorities and guidelines governing the National Forest and Bureau of Land Management lands designated within the Monument. Using a joint management model, the Secretaries would be responsible for separately managing lands under their jurisdictions. The Department recommends distinguishing between the Secretary of Agriculture and the Secretary of Interior in this legislation to avoid confusion about which sections of the bill pertain to National Forest System or BLM-administered lands.

In Section 1403(b), the Department is asking the Committee and the bill sponsor to consider adding “management” to the general authority on Cooperative Agreements that could be used in the Monument. This change would allow the Forest Service to work with the BLM and the advisory committee in considering a Service First Agreement to manage the Monument. This approach is currently being used successfully on the Santa Rosa and San Jacinto Mountains National Monument.

Section 1501(c), as added to the California Desert Protection Act of 1994 by S. 414, would designate a 7,141-acre wilderness addition on the west and south ends of the existing 95,953-acre San Gorgonio Wilderness; this addition includes 1,000 acres of private property owned by the Wildlands Conservancy. The area under consideration is currently an inventoried roadless area. The Department supports this wilderness addition as it would improve management efficiencies in this area, and would like to work with the Subcommittee to ensure the roadless areas can be consistently managed pursuant to this Act and the Wilderness Act.

Section 104(2)(209)(A) and Section 104(2)(210)(A) of this legislation would designate approximately 76.3 miles of the specified rivers as part of the National Wild and Scenic Rivers System. Of this total, approximately 34.5 miles of Deep Creek, including its principal tributary, Holcomb Creek, and 17.1 miles of the North, Middle and South Forks of the Whitewater River are within the boundary of the San Bernardino National Forest and would be administered by the Forest Service. In order to ensure consistency with the current provisions of the Wild and Scenic Rivers Act and the 2014 Revision of the San Bernardino NF Plan, the Department would like to work with the Subcommittee to include some technical corrections in Section 104(2).

The Forest Service has found each of these rivers to be eligible for designation based on their free-flowing character and regionally important river-related values. The Department supports designation of these eligible rivers as Wild and Scenic based on general support from the communities of interest and consistency of designation with the management of National Forest System lands within the river corridors.

Section 1406 of this bill would establish an advisory committee to provide advice on the development and implementation of the management plan for the proposed Monument, closely mirroring the successful approach of the Santa Rosa and San Jacinto Mountains National Monument. The Department believes an advisory committee would contribute greatly to the development of the management plan for the Sand to Snow National Monument. Given the length of time necessary to establish a committee under the Federal Advisory Committee Act, and the importance of creating a successful monument management plan, the Department requests the time frame for completing the plan be changed to three years after the advisory committee is established, rather than three years after the date of enactment of the bill.

Finally, Section 1403(g)(4) of this legislation states that pending completion of the Monument management plan, the Secretary shall manage any Federal land and Federal interests in land within the boundary of the Monument in accordance with section 1.6D of the Bureau of Land Management manual numbered 6220, dated July 13, 2012, and entitled "National Monuments, National Conservation Areas, and Similar Designations."

The Department would like to work with the Committee and the bill sponsor on this section to ensure that interim management of the Monument is consistent with current uses occurring on both National Forest System and BLM-administered lands under the authorities, policies, and existing management plans of both the Forest Service and the BLM for such lands, and in a manner that is consistent with other applicable Federal laws.

Title XIX of S. 414, Section 1905 ("Transfer of Administrative Jurisdiction"), would transfer administrative jurisdiction of over approximately 40 acres of National Forest System land to the BLM for inclusion in the proposed Alabama Hills National Scenic Area. This is an isolated parcel of land and the Department supports the transfer of administrative jurisdiction to the BLM.

In Title XX—Miscellaneous, Section 105 (Conforming Amendments) the Department would like to work with the Committee and bill sponsor on proposed amendments to provisions of the California Desert Protection Act to address concerns related to effects on wilderness from activities outside the wilderness boundary.

S. 1592, “A BILL TO CLARIFY THE DESCRIPTION OF CERTAIN FEDERAL LAND UNDER THE NORTHERN ARIZONA LAND EXCHANGE AND VERDE RIVER BASIN PARTNERSHIP ACT OF 2005 TO INCLUDE ADDITIONAL LAND IN THE KAIBAB NATIONAL FOREST”

S. 1592 would authorize the Secretary of Agriculture to convey an additional 25 acres to Young Life Lost Canyon Organizational Camp. The Department can support enactment of S. 1592, if a technical amendment is included that would provide an easement for a proposed extension for the Water Storage Tank Road.

This legislation clarifies the Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005. The original Act authorized a land exchange with Yavapai Ranch and the United States that was not completed. The Act also authorized the sale of a parcel of National Forest System lands to Young Life Lost Canyon Organizational Camp on the Kaibab National Forest.

The legislative map referenced by the Act for the Young Life private property showed an area of only approximately 212 acres to be conveyed, instead of the approximately 237.5 acres stated in the Act. The area shown on the legislative map excluded a particular 25-acre parcel. Because the legislative map controlled over the reference to approximately 237.5 acres, the Act did not authorize conveyance of the 25-acre parcel excluded by the map. S. 1592 was introduced to clarify that conveyance of the 25-acre parcel is also authorized, allowing the United States to convey a total of approximately 237.5 acres to Young Life.

In summary, S. 1592 would resolve the disparity between the legislative map and the total acreage authorized for conveyance, allowing the Secretary to proceed with the direct sale of a total of approximately 237.5 acres to Young Life Lost Canyon Organizational Camp. In order to ensure agreement between the acreage and the legal description, the Agency is willing to provide additional technical assistance to the Committee, and wants to work with the Committee to include the easement for the Water Tank Road Extension.

S. 2069, “MOUNT HOOD COOPER SPUR LAND EXCHANGE CLARIFICATION ACT”

S. 2069 concerns the Mount Hood Cooper Spur Land Exchange Clarification Act. We would like to work with the Committee and Sponsor to address several concerns. The Cooper Spur Land Exchange was initially authorized by the Omnibus Public Land Management Act of 2009. Clarifications are needed to move forward with the exchange.

The following issues concern the Forest Service:

- The bill would require the Forest Service to reserve a 24-foot wide trail easement. The width of the easement would restrict the ability of the Forest Service to appropriately address reconstruction and repair

needs of the trail, the drainage and soil protection features that go beyond the normal 3–4 foot tread path, and the loss of buffer between the trail and any non-federally owned building or facility adjacent to the trail.

- The bill would eliminate the requirement that the Forest Service reserve a conservation easement on the Federal land to be conveyed. We understand there may be state-level protections under the bill; however, the Forest Service will have no legal right or obligation to monitor and enforce the status of any of the identified wetlands after conveyance because the United States will have no property interest, such as a conservation easement, protecting the property. In addition, without a reserved federal interest like a conservation easement, Executive Order 1990 will become inapplicable to the lands once they leave federal ownership.

- The bill would require the joint selection of an appraiser by the Forest Service and Mount Hood Meadows within 60 days after enactment of this legislation. Selection of an appraiser is not attainable within a 60 day period. The process to hire a non-agency appraiser must follow federal contracting regulations. The contracting process typically takes 120 days for contract selection.

- The bill would require the land exchange be completed within 1 year after passage of the legislation. It typically takes the better part of a year to just obtain an approved appraisal. Realistically, it will take more than 18 months to complete the appraisal and all necessary analysis to complete the exchange.

We look forward to working with the Committee and the Sponsor to resolve these issues.

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, changes in existing law made by the original bill, as 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):

#### **OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009**

\* \* \* \* \*

##### **SEC. 1206. LAND EXCHANGES.**

- (a) COOPER SPUR-GOVERNMENT CAMP LAND EXCHANGE.—
  - (1) DEFINITIONS.—In this subsection:
    - (A) COUNTY.—The term “County” means Hood River County, Oregon.

(B) EXCHANGE MAP.—The term “exchange map” means the map entitled “Cooper Spur/Government Camp Land Exchange”, dated June 2006.

(C) FEDERAL LAND.—The term “Federal land” means the approximately [120 acres] 107 acres of National Forest System land in the Mount Hood National Forest in Government Camp, Clackamas County, Oregon, identified as “USFS Land to be Conveyed” on the exchange map.

(D) MT. HOOD MEADOWS.—The term “Mt. Hood Meadows” means the Mt. Hood Meadows Oregon, Limited Partnership.

(E) NON-FEDERAL LAND.—The term “non-Federal land” means—

(i) the parcel of approximately 770 acres of private land at Cooper Spur identified as “Land to be acquired by USFS” on the exchange map; and

(ii) any buildings improvements, furniture, fixtures, and equipment at the Inn at Cooper Spur and the Cooper Spur Ski Area covered by an appraisal described in paragraph (2)(D).

(2) COOPER SPUR-GOVERNMENT CAMP LAND EXCHANGE.—

(A) CONVEYANCE OF LAND.—Subject to the provisions of this subsection, if Mt. Hood Meadows offers to convey to the United States all right, title, and interest of Mt. Hood Meadows in and to the non-Federal land, the Secretary shall convey to Mt. Hood Meadows all right, title, and interest of the United States in and to the Federal land (other than any easements reserved under subparagraph (G)), subject to valid existing rights.

(B) COMPLIANCE WITH EXISTING LAW.—Except as otherwise provided in this subsection, the Secretary shall carry out the land exchange under this subsection in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(C) CONDITIONS ON ACCEPTANCE.—

(i) TITLE.—As a condition of the land exchange under this subsection, title to the non-Federal land to be acquired by the Secretary under this subsection shall be acceptable to the Secretary.

(ii) TERMS AND CONDITIONS.—The conveyance of the Federal land and non-Federal land shall be subject to such terms and conditions as the Secretary may require.

(D) APPRAISALS.—

(i) IN GENERAL.—[As soon as practicable after the date of enactment of this Act, the Secretary and Mt. Hood Meadows shall select] Not later than 120 days after the date of the enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act, the Secretary and Mt. Hood Meadows shall jointly select an appraiser to conduct an appraisal of the Federal land and non-Federal land.

(ii) REQUIREMENTS.—[An appraisal under clause (i) shall] Except as provided under clause (iii), an appraisal under clause (i) shall assign a separate value

*to each tax lot to allow for the equalization of values and be conducted in accordance with nationally recognized appraisal standards, including—*

- (I) the Uniform Appraisal Standards for Federal Land Acquisitions; and
- (II) the Uniform Standards of Professional Appraisal Practice.

*(iii) FINAL APPRAISED VALUE.—*

*(I) IN GENERAL.—Subject to subclause (II), after the final appraised value of the Federal land and the non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value for a period of up to 3 years, beginning on the date of the approval by the Secretary of the final appraised value.*

*(II) EXCEPTION.—Subclause (I) shall not apply if the condition of either the Federal land or the non-Federal land referred to in subclause (I) is significantly and substantially altered by fire, wind-storm, or other events.*

*(iv) PUBLIC REVIEW.—Before completing the land exchange under this Act, the Secretary shall make available for public review the complete appraisals of the land to be exchanged.*

**(E) SURVEYS.—**

(i) IN GENERAL.—The exact acreage and legal description of the Federal land and non-Federal land shall be determined by surveys approved by the Secretary.

(ii) COSTS.—The responsibility for the costs of any surveys conducted under clause (i), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and Mt. Hood Meadows.

**(F) DEADLINE FOR COMPLETION OF LAND EXCHANGE.**—It is the intent of Congress that the land exchange under this subsection shall be completed not later than [16 months after the date of enactment of this Act] 1 year after the date of the enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act.

**(G) RESERVATION OF EASEMENTS.**—As a condition of the conveyance of the Federal land, the Secretary shall reserve—

[(i) a conservation easement to the Federal land to protect existing wetland, as identified by the Oregon Department of State Lands, that allows equivalent wetland mitigation measures to compensate for minor wetland encroachments necessary for the orderly development of the Federal land; and

[(ii) a trail easement to the Federal land that allows—

[(I) nonmotorized use by the public of existing trails;

[(II) roads, utilities, and infrastructure facilities to cross the trails; and

[(III) improvement or relocation of the trails to accommodate development of the Federal land.]

*(G) REQUIRED CONVEYANCE CONDITIONS.—Prior to the exchange of the Federal and non-Federal land—*

*(i) the Secretary and Mt. Hood Meadows may mutually agree for the Secretary to reserve a conservation easement to protect the identified wetland in accordance with applicable law, subject to the requirements that—*

*(I) the conservation easement shall be consistent with the terms of the September 30, 2015, mediation between Secretary and Mt. Hood Meadows; and*

*(II) in order to take effect, that conservation easement shall be finalized not later than 120 days after the date of enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act; and*

*(ii) the Secretary shall reserve a 24-foot-wide non-exclusive trail easement at the existing trail locations on the Federal land that retains for the United States existing rights to construction, reconstruction, maintain, and permit nonmotorized use by the public of existing trails subjects to the rights of the owner of the Federal land—*

*(I) to cross the trails with roads, utilities, and infrastructure facilities; and*

*(II) to improve or relocate the trails to accommodate development of Federal land.*

*(H) EQUALIZATION OF VALUES.—*

*(i) IN GENERAL.—Notwithstanding subparagraph (A), in addition to or in lieu of monetary compensation, a lesser area of Federal land or non-Federal land may be conveyed if necessary to equalize appraised values of the exchange properties, without limitation, consistent with the requirements of this Act and subject to the approval of the Secretary and Mt. Hood Meadows.*

*(ii) TREATMENT OF CERTAIN COMPENSATION OR CONVEYANCES AS DONATION.—If, after payment of compensation or adjustment of land area subject to exchange under this Act, the amount by which the appraised value of the land and other property conveyed by Mt. Hood Meadows under subparagraph (A) exceeds the appraised value of the land conveyed by the Secretary under subparagraph (A) shall be considered a donation by Mt. Hood Meadows to the United States.*

\* \* \* \* \*

