CRAGS, COLORADO LAND EXCHANGE ACT

MAY 9, 2017.—Ordered to be printed

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

REPORT

[To accompany S. 280]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 280) to authorize, direct, expedite, and facilitate a land exchange in El Paso and Teller Counties, Colorado, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 280 is to authorize, direct, expedite, and facilitate a land exchange in El Paso and Teller Counties, Colorado.

BACKGROUND AND NEED

Emerald Valley Ranch has a colorful history, with improvements at the site dating back nearly 100 years. Spencer Penrose developed many of the existing buildings at Emerald Valley after he acquired the original cabin in 1923. After Penrose’s death, the buildings were operated as a camp by the YMCA, Boys Scouts, and other non-profit groups. Starting in the 1970s, the buildings were operated by the Turley Family as the Emerald Valley Guest Ranch. Broadmoor Hotel, Inc., acquired the buildings from the Turley Family in 2012. In October 2012, the U.S. Forest Service (USFS) issued a 20-year special use permit to operate and maintain Emerald Valley Ranch as a guest ranch. Since issuance of the special use permit, Broadmoor Hotel, Inc., has invested in significant upgrades and improvements throughout the resort.
The Broadmoor Hotel, Inc., has proposed a land exchange to own the USFS land encumbered by the ranch in order to guarantee its ability to operate, maintain, and continue to invest in the resort, rather than continuing to renew its special use permit. These USFS lands have lost their national forest character. In exchange, the Broadmoor Hotel, Inc., has acquired the 320-acre Crags property and a perpetual public access easement for the lower portion of the Barr Trail that it would convey to the USFS.

The land to be acquired by the USFS is a high value inholding in the Pike National Forest with views of the Pikes Peak Massif. The property provides several opportunities to connect USFS trails emanating from the Crags Campground with trails in the Horsethief Park/Putney Gulch area. The property has been the top acquisition priority for the Pikes Peak Ranger District for several years.

The trailhead for the Barr Trail is located on property owned by the City of Manitou Springs. After climbing a series of switchbacks, the trail enters property owned by the Manitou and Pikes Peak (M&PP) Railway Company, a sister company of Broadmoor Hotel, Inc. Historically, the M&PP Railway Company granted term easements to the USFS to provide legal public access along the segment of the Barr Trail. Although there is currently no easement in place on this segment, the M&PP Railway Company is presently allowing public access on the trail.

S. 280 facilitates an equal value land exchange. If the value of the non-Federal parcel exceeds the value of the Federal parcel and perpetual access easement, Broadmoor Hotel, Inc., would donate the excess value to the United States. This land exchange would provide increased recreational opportunities for the public on the Pike National Forest, secure perpetual legal access to the Barr Trail, eliminate permanent encumbrances on USFS lands and liability to the United States associated with buildings, a water supply system, and two dams at Emerald Valley Ranch, and streamline USFS management responsibilities by eliminating the need to oversee the resort special use permit at Emerald Valley Ranch.

LEGISLATIVE HISTORY

Senators Gardner and Bennet introduced S. 280 on February 2, 2017.

An identical bill, H.R. 618, was introduced in the House of Representatives by Representative Lamborn on January 24, 2017 and was referred to the House Natural Resources Committee. The House of Representatives passed H.R. 618 under suspension of the rules by a voice vote on February 6, 2017. H.R. 618 was received in the Senate and referred to the Committee on Energy and Natural Resources on February 7, 2017.

During the 114th Congress a similar measure, S. 1941, was introduced by Senators Gardner and Bennet on August 5, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on both S. 1941 and its House companion, H.R. 2223, on October 8, 2015. On November 19, 2015, the Committee on Energy and Natural Resources met in open business session and ordered both S. 1941 and H.R. 2223 favorably reported without amendment.

The measure was included in S. Amendment 3234, which the Senate agreed to on April 19, 2016, as an amendment to S. 2012,
the Energy Policy Modernization Act of 2016, which the Senate passed, as amended, on April 20, 2016.

H.R. 2223 was introduced in the House of Representatives by Representatives Lamborn and Polis on May 1, 2015. On June 16, 2015, the House Natural Resources’ Subcommittee on Federal Lands held a hearing on H.R. 2223, and the Natural Resources Committee ordered the bill reported on July 9, 2015. The House of Representatives passed H.R. 2223 on September 16, 2015. H.R. 2223 was received in the Senate and referred to the Committee on Energy and Natural Resources on September 17, 2015.

On March 30, 2017, the Committee on Energy and Natural Resources met in open business session and ordered both S. 280 and H.R. 618 favorably reported without amendment.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 280.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the “Crags, Colorado Land Exchange Act.”

Section 2 states that the purpose of the bill is to authorize, direct, expedite, and facilitate the land exchange and to promote enhanced public outdoor recreational and natural resource conservation opportunities in Pike National Forest.

Section 3 contains definitions.

Section 4(a) directs the Secretary of Agriculture (Secretary) to accept the parcel of non-Federal land if Broadmoor Hotel, Inc., offers to convey it to the U.S. Government and in return, to simultaneously convey the Federal land at the Emerald Valley Ranch to Broadmoor Hotel, Inc.

Subsection (b) requires that the title to the conveyed non-Federal land must be acceptable to the Secretary and meet applicable title approval standards.

Subsection (c) grants Broadmoor Hotel, Inc., a nonexclusive, perpetual access easement; requires Forest Service Road 371 be maintained by Broadmoor Hotel, Inc., and allow public use in accordance with the Forest Service travel management plan.

Subsection (d) provides that Forest Service Road 371 may be improved, relocated, or otherwise altered if the Secretary and Broadmoor Hotel, Inc., mutually agree.

Subsection (e) requires Broadmoor Hotel, Inc., to pay for all land survey, appraisal, and other costs associated with the exchange.

Section 5(a) requires the Secretary to conduct appraisals of the parcels of land.

Subsection (b) requires the land exchange to be of equal value. If the value of the Federal land exceeds the value of the non-Federal land, Broadmoor Hotel, Inc., must make a cash equalization payment to be deposited into the fund established under Public Law 90–171 (16 U.S.C. 484a). Any cash equalization payments received by the Secretary are to be used to acquire land or interests in land in Region 2 of the USFS. If the value of the non-Federal land exceeds the value of the Federal land, the surplus value of the
non-Federal land will be considered a donation by Broadmoor Hotel, Inc. to the U.S. Government.

Subsection (c) directs that the appraisals should not take into account the special use permit at Emerald Valley Ranch or the Barr Trail easement when determining the value of the parcels.

Section 6(a) permanently withdraws all the lands acquired by the Secretary under this Act from all forms of appropriation and disposal under the public land laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1930 (30 U.S.C. 1001 et seq.). If there are any public land orders that withdraw the Federal land from appropriation or disposal, they are revoked to the extent necessary to permit disposal of the Federal land to Broadmoor Hotel, Inc. All Federal land authorized to be exchanged under this Act, if not already withdrawn from appropriation or disposal under public land laws upon enactment of this Act, are withdrawn, subject to valid existing rights, until the date of conveyance of the Federal land to Broadmoor Hotel, Inc.

Subsection (b) specifies that the land acquired by the Secretary under this Act will become part of the Pike-San Isabel National Forest.

Subsection (c) states that it is the intent of Congress that the land exchange be completed within one year.

Subsection (d) allows the Secretary and Broadmoor Hotel, Inc., to make minor adjustments to the maps, descriptions, or acreage if both parties agree.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

S. 280—Crags, Colorado Land Exchange Act

S. 280 would require the Forest Service to exchange, at the request of a private entity, 82 acres of federal lands in the Pike National Forest for 320 acres of private lands in that forest. Because CBO expects that the parcels would have a similar value per acre, we estimate that the total value of the private lands would exceed the value of the affected federal lands. Under the legislation, the federal government would not be required to compensate the private entity to make up for that difference. However, CBO expects that the Forest Service will receive annual payments of a little more than $30,000 for a special use permit on the affected federal parcel.

On that basis, CBO estimates that enacting S. 280 would reduce offsetting receipts, which are treated as reductions in direct spending, by about $350,000 over the 2017–2027 period; therefore, pay-as-you-go procedures apply. Enacting S. 280 would not affect revenues.

Because S. 280 would require the private entity to pay any administrative costs associated with the land exchange and CBO expects that any updates to maps or signage would be completed in conjunction with scheduled reprinting and routine maintenance, we estimate that implementing S. 280 would not affect discretionary spending.
CBO estimates that enacting the legislation would not increase
net direct spending or on-budget deficits by more than $5 billion
in any of the four consecutive 10-year periods beginning in 2028.

S. 280 contains no intergovernmental or private-sector mandates
as defined in the Unfunded Mandates Reform Act (UMRA). The bill
would authorize a land exchange between the federal government
and a private business, which would have a small incidental effect
on property taxes collected by local governments in Colorado. That
effect, however, would not result from an intergovernmental man-
date as defined in UMRA.

On April 7, 2017, CBO transmitted a cost estimate for H.R. 618,
the Crags, Colorado Land Exchange Act of 2017, as ordered re-
ported by the Senate Committee on Energy and Natural Resources
on March 30, 2017. S. 280 and H.R. 618 are similar and CBO's cost
estimate for each piece of legislation is the same.

The CBO staff contacts for this estimate are Jeff LaFave (for fed-
eral costs) and Jon Sperl (for intergovernmental mandates). This
estimate was approved by H. Samuel Papenfuss, 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. 280. The bill is not a regulatory measure in the sense of impos-
ing Government-established standards or significant economic re-
sponsibilities 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 enact-
ment of S. 280, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 280, as ordered reported, does not contain any congressionally
directed spending items, limited tax benefits, or limited tariff bene-
fits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

Because S. 280 is similar to legislation considered by the Com-
mittee in the 114th Congress, the Committee did not request Exec-
utive Agency views. The testimony provided by the U.S. Forest
Service at the hearing before the Subcommittee on Public Lands,
Forests, and Mining on October 8, 2015, follows:

STATEMENT OF GLEN CASAMASSA, ASSOCIATE DEPUTY
CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE,
U.S. DEPARTMENT OF AGRICULTURE

S. 1941 would require a land exchange between the
United States and Broadmoor Hotel, Inc. (BHI). The
United States would convey an 83 acre tract of National
Forest System Land and a non-exclusive perpetual eas-
ement for access in exchange for a 320-acre parcel and a
permanent trail easement for a section of the Barr trail
owned by BHI. Both exchange parcels are located within the Pike National Forest.

The Department generally supports S. 1941 but would like to work with the committee on concerns with the bill. For example, we would like to help develop language that would ensure the northern boundary of the land conveyed is located to provide adequate space for Forest Service road maintenance and administration.

The National Forest parcel that would be conveyed in the exchange has long been encumbered with significant resort improvements managed under special use authorization. In return for this parcel, the United States would receive an isolated inholding that the Forest Service has placed a high priority on acquiring. The inholding has significant recreational values and provides additional access for the public to the National Forest.

As a result, the exchange will eliminate potentially significant development in a sensitive area in exchange for conveying Federal land where development impacts have already occurred. In addition, The United States would secure legal access on a segment of the very popular Barr trail. This trail provides an important recreational access to the Pike National Forest.

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 the bill as ordered reported.