

Calendar No. 119

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-92

ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST CONVEYANCE ACT

JUNE 7, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 286]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 286) to require a land conveyance involving the Elkhorn Ranch and the White River National Forest in the State of 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. 286 is to require a land conveyance by the Secretary of Agriculture involving the Elkhorn Ranch and the White River National Forest in the State of Colorado.

BACKGROUND AND NEED

Beginning in 1908, three families homesteaded near present-day Rifle, Colorado, and for decades legally owned portions of the 148 acres identified in this bill. Shortly before the acreage was originally patented into private ownership, the General Land Office placed the homesteads in Section 18 with east-west fence lines, which conform to the present-day fence lines. In 1949, a new government survey was completed for the area that placed the boundary line at an angle rather than on a true east-west line. This resurvey led to the inclusion of 148 acres in the White River National Forest rather than in private ownership. The landowners were never contacted concerning the resurvey and were unaware that

their title to the land had been called into question. Since that time, the property, commonly called “Elkhorn Ranch” has changed hands several times, most recently in 1998 when the Gordman-Leverich Partnership purchased the ranch.

In 2002, the boundary and title discrepancy came to light. The Surveyor of the White River National Forest began to examine the conflicting surveys and issued a report in 2014, “Short Summary of Boundary Status—Beaver Creek; Sections 18 and 19, T. 7 S. R. 93 W., 6th PM.,” confirming that the original patents were based on a proper survey. The report recommended a legislative boundary adjustment to correct the survey discrepancy and return the acreage to the private landowner.

The Bureau of Land Management issued Federal oil and gas lease COC-75070 in 2011. This lease includes part of Elkhorn Ranch. S. 286 recognizes the lease as a valid existing right and reserves to the United States the right to collect rent and royalty payments from this lease.

Since 1909, the law has guaranteed that resurveys are not to “impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement” (43 U.S.C. 772). The U.S. Forest Service (USFS) has never managed the 148-acre parcel as national forest system land. For decades, the landowners have paid property taxes on the land, made improvements to it, and used it for agricultural and ranching purposes. The parcel is currently fenced as part of the ranch and is occupied by stock ponds, roads, and other improvements.

By transferring the 148-acre parcel to Gordman-Leverich Partnership, S. 286 would correct a long-standing survey discrepancy and provide a free and clear title to the land subject to valid, existing rights, including the existing Federal oil and gas lease.

LEGISLATIVE HISTORY

Senators Gardner and Bennet introduced S. 286 on February 2, 2017.

An identical bill, H.R. 698, was introduced by Representative Tipton on January 24, 2017. H.R. 698 passed the House of Representatives by voice vote on February 6, 2017, and was referred to the Senate Committee on Energy and Natural Resources on February 7, 2017.

In the 114th Congress, similar legislation, H.R. 1554, was introduced in the House of Representatives by Representatives Tipton and Polis on March 23, 2015. On June 16, 2015, the House Natural Resources Subcommittee on Federal Lands held a hearing on H.R. 1554, and the Natural Resources Committee ordered the bill reported on July 9, 2015 (H. Rept. 114-251). The House of Representatives passed H.R. 1554 by a voice vote on September 16, 2015.

In the Senate, an identical companion bill, S. 1942, was introduced by Senator Gardner on August 5, 2015. Senator Bennet was a cosponsor. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 1942 and H.R. 1554 on October 8, 2015. On November 19, 2015, the Committee on Energy and Natural Resources met in open business session and ordered both S. 1942 and H.R. 1554 favorably reported without amendment (S. Rept. 114-195).

The measure was included in 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.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 286 and H.R. 698 favorably reported.

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. 286.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, “Elkhorn Ranch and White River National Forest Conveyance Act.”

Section 2 (a) conveys approximately 148 acres of Federal land to the Gordman-Leverich Partnership.

Subsection (b) subjects the conveyance to valid existing rights, including oil and gas lease COC-75070, and reserves for the United States the right to collect rent and royalty payments on existing oil and gas leases.

Subsection (c) makes clear that the conveyance does not modify the existing boundaries of the White River National Forest or Sections 18 and 19 of Township 7 South.

Subsection (d) specifies that the conveyance should be completed within 180 days following enactment of the Act, and that all costs related to surveying, platting, or other activities to process the conveyance shall be paid by the Gordman-Leverich Partnership.

COST AND BUDGETARY CONSIDERATIONS

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

Elkhorn Ranch and White River National Forest Conveyance Act

S. 286 would require the Forest Service to convey 148 acres of federal lands in Colorado to a private entity. Under the legislation, the federal government would retain the right to collect rent and royalty payments from an existing oil and gas lease on those lands; however, if that lease expires, the Bureau of Land Management (BLM) would not be allowed to offer the parcel for lease. Because CBO expects that enacting the legislation could reduce offsetting receipts, which are treated as reductions in direct spending, from bonus bids over the next 10 years, pay-as-you-go procedures apply. However, we estimate that net bonus bids from the affected parcel would total less than \$500,000 over that period. Enacting S. 286 would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

In 2012, BLM issued a federal oil and gas lease on a portion of the affected lands. If the firm holding that lease takes certain steps to begin producing oil and gas before the lease is set to expire in 2022, the firm would retain the lease until production ended.

Under current law and under the legislation, the federal government would collect rent and any royalties generated from oil and gas produced on that lease, and 49 percent of those proceeds would be paid to the state of Colorado. In that case, enacting S. 286 would have no effect on direct spending.

If the lease expires in 2022, BLM could offer the parcel for lease after that date under current law. However, the agency could not offer the affected parcel for lease under the legislation. Because CBO has no basis for determining how the relevant parties would respond if the lease were allowed to expire, our estimate reflects a point within a range of possible outcomes. Based on the amount paid for the lease in 2012 (\$335,000), CBO estimates that enacting S. 286 would reduce receipts by less than \$500,000 over the 2022–2027 period.

S. 286 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On April 7, 2017, CBO transmitted a cost estimate for H.R. 698, the Elkhorn Ranch and White River National Forest Conveyance Act of 2017, as ordered reported by the Senate Committee on Energy and Natural Resources on March 30, 2017. S. 286 and H.R. 698 are similar and CBO’s cost estimate for each piece of legislation is the same.

The CBO staff contact for this estimate is Jeff LaFave. The 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. 286. 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. 286, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 286, 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

Because S. 286 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The testimony provided by the USFS at the hearing before the Subcommittee on Public Lands, Forests, and Mining on October 8, 2015, follows:

STATEMENT OF GLENN CASAMASSA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, BEFORE THE UNITED STATES SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, FORESTS AND MINING

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. 1295, S. 1448, S. 1941, and S. 1942.

S. 1942, THE "ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST CONVEYANCE ACT LAND EXCHANGE ACT OF 2015"

S. 1942 would direct the conveyance of a 148 acre parcel of National Forest System land to the Gordman-Leverich Partnership. The parcel is located within the White River National Forest.

While the Administration has serious reservations about the use of Federal lands to compensate a private landowner, acknowledging the unusual circumstances in this specific case, the Department does not oppose S. 1942. The bill would resolve a long standing title issue associated with the property.

A dependent resurvey, which is a survey dependent upon prior surveys of record, was completed in 1949, and established a property monument approximately 2,100 feet from the corner, relied upon by the original homesteaders. This meant that this parcel of national forest land had been managed as private land. 43 U.S.C. 772, enacted in 1909, provided for such resurveys and guaranteed that the bona fide rights of landowners would be protected.

Because this land survey discrepancy only came to light within the past 15 years, and because the parcel has never been managed as National Forest, protection of the bona fide rights of the landowners is appropriate. Resolution of this title issue will end a long-standing title claim in an efficient, fair manner.

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, the Committee notes that no changes in existing law are made by the bill as ordered reported.