

BUFFALO TRACT PROTECTION ACT

SEPTEMBER 8, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2640]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2640) to withdraw certain Bureau of Land Management land from mineral development, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Buffalo Tract Protection Act”.

SEC. 2. WITHDRAWAL.

(a) IN GENERAL.—Subject to valid existing rights, the Federal land described in subsection (b) is withdrawn from all forms of—

- (1) location, entry, and patent under the mining laws; and
- (2) disposition under the mineral leasing, mineral materials, and geothermal leasing laws.

(b) DESCRIPTION.—The Federal land referred to in subsections (a) and (c) is the approximately 4,288 acres of land administered by the Director of the Bureau of Land Management and generally depicted as “Tract A”, “Tract B”, “Tract C”, and “Tract D” on the map entitled “Placitas, New Mexico Area Map” and dated November 13, 2019.

(c) SURFACE ESTATE.—

(1) IN GENERAL.—Subject to the reservation of the mineral estate under paragraph (2), nothing in this Act prohibits the Secretary of the Interior from conveying the surface estate of the Federal land described in subsection (b) in accordance with—

(A) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

(B) the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (43 U.S.C. 869 et seq.).

(2) MINERAL ESTATE.—Any conveyance of the surface estate of the Federal land described in subsection (b) shall require a reservation of the mineral estate to the United States.

PURPOSE OF THE BILL

The purpose of H.R. 2640 is to withdraw four specified parcels of Bureau of Land Management land near Placitas, New Mexico, from all forms of mineral development under all laws pertaining to mineral leasing or mineral materials, including locatable minerals.

BACKGROUND AND NEED FOR LEGISLATION

The Bureau of Land Management (BLM) oversees more than 247 million acres of land and 700 million acres of subsurface mineral estate across the United States. BLM’s mandate in the Federal Land Policy and Management Act requires the agency to manage public domain lands for multiple uses, but numerous court cases have affirmed that not all uses are suitable, or need to be considered, for all multiple-use lands.¹

BLM’s Resource Management Plans (RMPs) serve as region-specific blueprints for land use planning. The Rio Puerco RMP in development will review and update BLM’s management of public lands in Bernalillo, Cibola, McKinley, Sandoval, Torrance, and Valencia counties of central New Mexico. When approved, the RMP will replace the 1986 Rio Puerco RMP and its 1992 amendments and will provide updated management decisions for a variety of uses and resources in the area for 15 to 20 years.²

In 2012, the Rio Puerco BLM Field Office released its Draft RMP.³ In the draft plan, BLM proposed allowing additional mineral development, including gravel mining, on the Buffalo Tract—named for the shape of the northwestern parcel—in southern Sandoval County.⁴ This area of Sandoval County already has six gravel mines, four of them being among New Mexico’s largest.⁵

Since the release of the draft plan, residents have expressed deep concerns about the impacts to public health, cultural heritage, and wildlife that could result from additional gravel mining near their community.

The community is already disproportionately burdened by this intense concentration of mines. The separate and cumulative adverse impacts of gravel mining have had negative effects on economic development as well as public health. Another mine on the Buffalo Tract would not only exacerbate these impacts but also irreparably damage cultural heritage and a key wildlife corridor be-

¹ See generally *Nat’l Mining Ass’n v. Zinke*, 877 F.3d 845 (9th Cir. 2017) and references therein.

² *Rio Puerco Resource Management Plan*, BLM, <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/new-mexico/rio-puerco-rmp> (last visited on Sept. 3, 2020).

³ Available at *BLM National NEPA Register*, BLM, <https://eplanning.blm.gov/eplanning-ui/project/64954/570> (last updated on July 16, 2020).

⁴ See 1 BLM, RIO PUERCO RESOURCE MANAGEMENT DRAFT PLAN & ENVIRONMENTAL IMPACT STATEMENT (2012), https://eplanning.blm.gov/epl-front-office/projects/lup/64954/78493/89458/RPFO-Vol1_Draft_RMP.pdf.

⁵ See *GIS, Maps and Mine Data*, N.M. ENERGY, MINS. & NAT. RES. DEP’T (EMNRD), <http://www.emnrd.state.nm.us/MMD/gismapminedata.html> (last visited on Sept. 3, 2020).

tween the Sandia Mountain Range and the Sangre de Cristo Mountains.

The population of the region has grown significantly since the 1992 RMP amendments. The population in the region covered by the Rio Puerco Field Office has doubled since 1992 from 500,000 to 1,000,000. In Placitas, New Mexico, an unincorporated area of Sandoval County immediately adjacent to the proposed mineral development, the population has grown from less than 1,000 in 1980 to more than 5,000.⁶ Placitas is a retirement community of seniors who moved to the region for its beauty and clean air. Gravel mining generates large amounts of particulate matter (PM_{2.5} and PM₁₀) that pose significant health risks. New Mexico Environment Department (NMED) particulate monitoring in 2016–17 showed Placitas as the only “orange dot,” indicating unhealthy air quality for sensitive groups, on the state map.⁷

Sandoval County, the Town of Bernalillo, the Merced De Comunidad De San Antonio De Las Huertas, the Pueblo of San Felipe, the Pueblo of Santa Ana, and Placitas residents are all opposed to gravel mining at this location.

H.R. 2640 seeks to address the concerns of the community immediately affected by the proposed mines by withdrawing four parcels of land near Placitas from mineral development. This bill maintains the authority of BLM to sell, lease, or exchange the surface rights to the parcels, and ensures that if rights are sold, leased, or exchanged, the mineral rights will remain withdrawn from development.

Opponents of the bill suggest that it is not in the country’s interest to put resources off-limits in perpetuity. However, some areas are suitable for mining, while others are not. As residential development in Placitas has grown, gravel mining has become increasingly incompatible with the area’s character and zoning restrictions.⁸

While sand and gravel are important resources to infrastructure and construction, BLM’s own mineral resource studies indicate that there are ample gravel supplies from existing mines in the area that could be used for decades of regional development.⁹ There are other potential sites for new gravel mines elsewhere in Sandoval and neighboring counties, away from wildlife corridors and at a safe distance from population centers.

Opponents also cite job creation and other economic benefits of additional gravel mines as a reason to oppose this legislation. Sandoval County maintains it would stand to lose more tax revenue than it would gain with new mineral development.¹⁰ Minerals are not taxed at the point of origin, but at the point of sale, and most gravel would likely be sold outside the county. Residents and leaders have strong concerns about public health, heritage, and

⁶SANDOVAL CNTY. BD. OF COMM’RS, PLACITAS AREA PLAN 10 (2009), <http://www.sandovalcountynm.gov/wp-content/uploads/2017/06/papfinal.pdf>.

⁷See generally *Envista—Air Resources Manager*, NMED, <http://nmaqinow.net/>.

⁸See, e.g., Letter from Sandoval Bd. Of Cnty. Comm’rs, to Alan Lowenthal, Chair, Subcomm. on Energy & Mineral Res., Paul Gosar, Ranking Member, Subcomm. on Energy & Mineral Res. (Aug. 22, 2019), <https://docs.house.gov/meetings/II/II06/20190919/109957/HHRG-116-II06-20190919-SD005.pdf>.

⁹INTERA, INC. (prepared for BLM RIO PUERCO FIELD OFF.), MINERAL RESOURCE POTENTIAL AND REASONABLY FORESEEABLE DEVELOPMENT FOR PLANNING UNITS 1–5 (2010), https://eplanning.blm.gov/public_projects/lup/64954/78492/89454/Mineral_Resource_Potential_and_Reasonably_Foreseeable_Development_Report_01-11-10.pdf.

¹⁰Letter, *supra* note 8, at 2.

wildlife—concerns that could be costly and deter people from moving into the growing community.

The local advocates for the bill claim they have been deceived by mining companies before regarding lease extensions and argue that legislation is the only way to bring certainty to the affected and at-risk communities in Sandoval County. The Committee agrees.

COMMITTEE ACTION

H.R. 2640 was introduced on May 9, 2019, by Representative Deb Haaland (D–NM). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On September 19, 2019, the Subcommittee held a hearing on the bill. On January 15, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Rep. Haaland offered an amendment in the nature of a substitute, which was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 13 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 2640

Amendment:

Disposition: Final Passage: H.R. 2640, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 13 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA	X		
3	Mr. Case, HI	X		
4	Mr. Clay, MO			
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO	X		
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Garcia, IL	X		
12	Mr. Grijalva, AZ (Chair)	X		
13	Ms. Haaland, NM	X		
14	Mr. Horsford, NV			
15	Mr. Huffman, CA	X		
16	Mr. Levin, CA	X		
17	Mr. Lowenthal, CA	X		
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA	X		
20	Mr. Neguse, CO	X		
21	Mr. Sablan, CNMI	X		
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL	X		
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY			
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA		X	
10	Mr. Hern, OK		X	
11	Mr. Hice, GA			
12	Mr. Johnson, LA		X	
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL		X	
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA		X	
19	Mr. Young, AK			
	TOTALS	20	13	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 2640: legislative hearing by the Subcommittee on Energy and Mineral Resources held on September 19, 2019.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 4, 2020.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2640, the Buffalo Tract Protection Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance			
H.R. 2640, Buffalo Tract Protection Act			
As ordered reported by the House Committee on Natural Resources on January 15, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	*	1
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	1
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			
The bill would			
<ul style="list-style-type: none"> Withdraw roughly 4,300 acres of federal land in New Mexico from entry under hardrock mining laws, disposal under mineral materials laws, and from mineral and geothermal leasing 			
Estimated budgetary effects would primarily stem from			
<ul style="list-style-type: none"> Forgone government income resulting from prohibiting sand and gravel production on the affected land 			
Detailed estimate begins on the next page.			

Bill summary: H.R. 2640 would withdraw roughly 4,300 acres of federal land in New Mexico from entry under hardrock mining laws, disposal under mineral materials laws, and from mineral and geothermal leasing, subject to valid existing rights. That is, the bill would not allow new extraction of materials from that land, which is managed by the Bureau of Land Management (BLM).

Estimated Federal cost: The costs of the legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2020.

Background: Businesses interested in extracting materials, including sand, gravel, crushed rock, and other materials typically used in construction, from land managed by BLM may execute contracts with the agency for disposal of those materials. Under those contracts, operators pay BLM the in-place value, a royalty equal to the value of the material in the ground before it is extracted, as determined by an analysis of its fair market value. Those payments are classified in the budget as offsetting receipts, or reductions in direct spending. Counties where any such production is located receive 5 percent of those receipts. In 2018, BLM collected roughly \$2 million in gross receipts from mineral materials produced in New Mexico, mostly from calcium.

The agency also issues free-use permits to government entities and nonprofit organizations for the extraction of mineral materials; however, such permits do not generate any income to the federal government.

Using information from BLM, CBO expects that the affected land has high potential for sand and gravel extraction and minimal potential, if any, for extraction of all other minerals. According to the agency, the affected land contains an estimated 36 million cubic yards of sand and gravel. Based on the typical timeframe for processing expressions of interest and contracts, we expect that production of those materials could commence in 2024.

In recent years, operators on BLM land in New Mexico have produced, on average, 370,000 cubic yards annually of sand and gravel.¹ CBO estimates that annual production on the affected land will average between 60 percent and 80 percent of that amount. Using information from BLM, and based on the in-place values for sand and gravel in recent years, we estimate that the federal government will collect about \$1.50 per cubic yard in royalties. That amount is equal to roughly 10 percent of the market value of processed sand and gravel. Gross receipts will total less than \$3 million under current law, CBO estimates.

Direct spending: CBO has no basis to estimate whether or how many contracts BLM would execute for the affected land. In the absence of specific information, CBO uses a 50 percent probability that such contracts will be executed under current law. On that basis, and accounting for payments to counties of 5 percent, we estimate that net federal receipts from sand and gravel production on the affected land will total \$1 million over the 2020–2030 period. Under the bill, the federal government would forgo those receipts. Thus, CBO estimates that enacting H.R. 2640 would increase direct spending by \$1 million over the 2020–2030 period.

Spending subject to appropriation: Based on the costs of similar activities, CBO estimates that any administrative costs incurred by BLM to implement the withdrawal would be insignificant; any spending would be subject to the availability of appropriated funds.

Uncertainty: The amount the government will collect from mineral materials contracts in the proposed withdrawal area is uncertain and could be higher or lower than CBO estimates. Specifically, CBO cannot predict with certainty whether or when BLM will execute such contracts. CBO also cannot foresee with certainty the volume or value of sand and gravel production on the affected land.

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. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 1.

¹ See Bureau of Land Management, *Public Land Statistics* (issues 2014 to 2018), accessed February 12, 2020, www.blm.gov/about/data/public-land-statistics.

TABLE 1.—CBO’s ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 2640, THE BUFFALO TRACT PROTECTION ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JANUARY 15, 2020

	By fiscal year, millions of dollars—													
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030	
	Net Increase in the Deficit													
Pay-As-You-Go Effect	0	0	0	0	0	0	0	0	0	0	0	0	0	1

Increase in long-term deficits: CBO estimates that enacting H.R. 2640 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2031.

Mandates: None.

Previous CBO estimate: On February 19, 2020, CBO transmitted a cost estimate for S. 526, the Buffalo Tract Protection Act, as reported by the Senate Committee on Energy and Natural Resources on December 17, 2019. The two pieces of legislation are similar, and CBO’s estimates of their budgetary effects are the same.

Estimate prepared by: Federal Costs: Janani Shankaran; Mandates: Andrew Laughlin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to withdraw four specified parcels of Bureau of Land Management land near Placitas, New Mexico, from all forms of mineral development under all laws pertaining to mineral leasing or mineral materials, including locatable minerals.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill’s purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 2640 will withdraw four parcels of Bureau of Land Management (BLM) lands totaling almost 4,200 acres near Placitas, New Mexico, from mineral development, including gravel mining.¹ If enacted, this legislation would prevent access to aggregates such as sand and gravel in a growing community near Albuquerque in perpetuity.

Saleable materials are critical for all building and construction projects. In 2018, industrial materials production including sand, gravel, and crushed stone had a total value of \$56.3 billion, a 7% increase from 2017.² These materials have low unit prices, yet their weight causes transportation costs to run very high. For this reason, an adequate local supply of these materials is critical for meeting the infrastructure and economic development needs of any community. BLM makes these materials available to the public and local governmental agencies whenever possible.

While the legislation acknowledges the valid and existing rights of current gravel mines in the area, there could be significant indirect and opportunity costs if the proposed withdrawal were to be implemented. The estimated 36 million cubic yards of sand and gravel in the withdrawal area could result in significant loss to the local community and the nation.³ Further, in the next 25–30 years, the population of the Albuquerque metro area (including Placitas) is estimated to almost double, creating increased demand for new infrastructure and other construction projects.⁴ According to the Department of the Interior, “[f]ederal minerals will play an important role in providing materials to meet the future population demands for infrastructure in the area.”⁵

New infrastructure, buildings and public works projects could become very costly if building materials need to be sourced from other locations around the country to replace the resources made off limits by this bill. Further, increased transportation of resources into the region would yield increased emissions, which could be avoided by local sourcing. Additionally, BLM, other government agencies, and non-profit organizations would no longer be able to receive free use permits for the sand and gravel to maintain roads and trails in the area.

¹Statement of Michael Nedd, Deputy Director for Operations, Bureau of Land Management, U.S. Department of the Interior, before the Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, Forests, & Mining regarding S. 526, the Buffalo Tract Protection Act. May 14, 2019.

²United States Geological Survey, “Mineral Commodities Summaries 2019,” February 28, 2019. https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/atoms/files/mcs2019_all.pdf.

³Statement of Michael Nedd, Deputy Director for Operations, Bureau of Land Management, before the Senate Committee on Energy and Natural Resources. May 14, 2019.

⁴Statement of Michael Nedd, Deputy Director for Operations, Bureau of Land Management, before the Senate Committee on Energy and Natural Resources. May 14, 2019.

⁵Statement of Michael Nedd, Deputy Director for Operations, Bureau of Land Management, before the Senate Committee on Energy and Natural Resources. May 14, 2019.

Furthermore, this bill would circumvent the established regulatory process for determining the appropriate usage of publicly-owned lands by making these parcels off limits to development in perpetuity. According to testimony provided by BLM during a hearing of the Senate Committee on Energy and Natural Resources on May 14, 2019, “the BLM is in the process of finalizing the Resource Management Plan (RMP) with the associated Environmental Impact Statement (EIS) for public lands in six counties of central New Mexico, which include the tracts affected by the legislation.” While concerns have been raised regarding the impact of a new gravel mine on nearby property values, it should also be noted that the community has seen healthy growth over the past two decades⁶ co-existing with active mines. Any local concerns regarding the effect of a new gravel mine on property values and continued population growth can be expressed through the many opportunities for public engagement in the environmental review process for the forthcoming RMP.

During the markup of H.R. 2640, the bill sponsor discussed ongoing negotiations at the local level to build consensus on a future management plan that protects responsible development and meets the needs of all stakeholders. The sponsor further stated that if such an agreement is reached, the legislation could become unnecessary. Specifically, Congresswoman Haaland stated, “If the company conducts a good faith outreach effort and reaches an agreement with the community, that would be great, and this bill might not need to become law.” Republican Members support ongoing discussions at the local level and through public comment as the BLM finalizes the RMP. In the meantime, Republicans oppose further action on H.R. 2640.

Finally, it should be noted that the title of this legislation, the “Buffalo Tract Protection Act,” is misleading, as mining in the region poses no threat to buffalo populations. In fact, the withdrawal area is merely in the *shape* of a buffalo. There are no actual buffalo impacted by this legislation.

For these reasons, we oppose H.R. 2640.

ROB BISHOP (UT).
LOUIE GOHMERT.
TOM MCCLINTOCK.

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⁶Eastern Sandoval Citizens association & Las Placitas Association, “Land of Enchantment . . . or Gravel?” September 2015.