

## Calendar No. 137

118TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
118-63

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### BUFFALO TRACT PROTECTION ACT

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JULY 19, 2023.—Ordered to be printed

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Mr. MANCHIN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 534]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 534), to withdraw certain Bureau of Land Management land from mineral development, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 534 is to withdraw approximately 4,288 acres of federal land administered by the Bureau of Land Management in Sandoval County, New Mexico from mineral development.

#### BACKGROUND AND NEED

In 2012, the Bureau of Land Management (BLM) released a draft of the new resource management plan (RMP) for BLM lands in central New Mexico, which proposed to open four parcels, including the Buffalo Tract and Crest of the Montezuma, in southern Sandoval County to mineral development, including gravel mining. Since the release of the draft plan, some local residents and stakeholders have expressed concerns about a gravel mine on this land.

S. 534 would withdraw approximately 4,288 acres of land administered by the BLM near Placitas, New Mexico, from location, entry, and patent under the mining laws and disposition under the mineral leasing, mineral materials, and geothermal leasing laws. In 2019 testimony on a previous version of the bill, S. 526 in the 116th Congress, the BLM projected that a final environmental impact statement and Record of Decision for the RMP would be re-

leased by the end of the year. Since that time, the planning process has been paused.

#### LEGISLATIVE HISTORY

S. 534 was introduced by Senators Heinrich and Luján on February 27, 2023. Similar legislation, S. 180, was introduced in the 117th Congress by Senators Heinrich and Luján on February 2, 2021. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 180 on October 19, 2021. The Committee ordered S. 180 reported favorably without amendment on November 18, 2021 (S. Rept. 117–60). Representatives Stansbury, Leger Fernandez, McNerney, and Huffman introduced an identical bill, H.R. 5805, on November 1, 2021.

In the 116th Congress, Senators Heinrich and Udall introduced a similar bill, S. 526, on February 14, 2019. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 526 on May 14, 2019 (S. Hrg. 116–323). The Committee ordered S. 526 reported favorably with an amendment in the nature of a substitute by voice vote on December 12, 2019. Senators Barrasso, Risch, and Lee were recorded as voting no.

In the 115th Congress, Senators Heinrich and Udall introduced a similar bill, S. 390, on February 15, 2017. No further action was taken. Likewise, during the 114th Congress, Senators Heinrich and Udall introduced a similar bill, S. 3221, on July 14, 2016. No further action was taken.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2023, by a majority vote of a quorum present, recommends that the Senate pass S. 534.

The roll call vote on reporting the measure was 13 yeas, 6 nays as follows:

YEAS	NAYS
Mr. Manchin	Mr. Barrasso
Mr. Wyden	Mr. Risch *
Ms. Cantwell	Mr. Lee *
Mr. Sanders *	Mr. Cassidy *
Mr. Heinrich	Mrs. Hyde-Smith
Ms. Hirono	Mr. Hawley
Mr. King	
Ms. Cortez Masto	
Mr. Kelly	
Mr. Hickenlooper	
Mr. Daines	
Ms. Murkowski *	
Mr. Hoeven *	

\* Indicates vote by proxy

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides the short title, the “Buffalo Tract Protection Act.”

### Section 2. Withdrawal

*Subsection (a)* withdraws the Federal land described in subsection (b) from location, entry, and patent under the mining laws and from disposition under the mineral leasing, mineral materials, and geothermal leasing laws.

*Subsection (b)* describes the Federal lands to be withdrawn, as generally depicted on the referenced map.

*Subsection (c)* clarifies that nothing in this section prohibits the Secretary of the Interior from conveying the surface estate of the Federal land described in subsection (b) in accordance with the Federal Land Policy Management Act (43 U.S.C. 1071 et seq.) or the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.), subject to the reservation of the mineral estate.

#### COST AND BUDGETARY CONSIDERATIONS

The Committee has requested, but has not yet received, the Congressional Budget Office's estimate of the cost of S. 534 as ordered reported. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at [www.cbo.gov](http://www.cbo.gov).

The CBO cost estimate for S. 180 in the 117th Congress follows:

At a Glance			
<b>Buffalo Tract Protection Act</b>			
As on November 18, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
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 2032?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

The bill would

- Withdraw roughly 4,300 acres of federal land in New Mexico from hardrock mining, mineral and geothermal leasing, and disposal under mineral materials laws, subject to valid existing rights

Estimated budgetary effects would mainly stem from

- Forgone government income resulting from the withdrawal

Areas of significant uncertainty include

- Estimating the amount of income forgone under the bill

Bill summary: S. 180 would withdraw roughly 4,300 acres of federal land in New Mexico from hardrock mining, mineral and geothermal leasing, and disposal under mineral materials laws, subject to valid existing rights. That is, the bill would not allow new mineral extraction from that land, which is managed by the Bureau of Land Management (BLM).

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

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2022.

Background: Businesses interested in extracting materials, including sand, gravel, crushed rock, and other materials typically used in construction, from BLM land can 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 with production receive 5 percent of those amounts. In 2020, BLM collected roughly \$2 million in gross receipts from mineral materials production in New Mexico, mostly from calcium production.

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.

Direct Spending: Using information from BLM, CBO expects that the proposed withdrawal area has high potential for sand and gravel extraction and minimal potential, if any, for development 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 for extraction, we expect that production of those materials could commence in 2026.

In recent years, production under sand and gravel contracts on BLM land in New Mexico has averaged 280,000 cubic yards annually.<sup>1</sup> CBO estimates that annual production in the proposed withdrawal area will equal roughly 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, on average, between \$1.50 and \$1.60 per cubic yard in royalties.

However, CBO has no basis to estimate whether BLM will execute contracts for materials extraction on 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 in the proposed withdrawal area will total \$1 million over the 2022–2031 period. Under the bill, the federal government would forgo those receipts. Thus, CBO estimates that enacting S. 180 would increase direct spending by \$1 million over the 2022–2031 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 that the government will collect under mineral materials contracts in the proposed withdrawal area—and thus the amount of forgone income under the bill—is uncertain and

<sup>1</sup> See Bureau of Land Management, *Public Land Statistics* (issues 2016 to 2020), accessed December 21, 2021, <https://www.blm.gov/about/data/public-land-statistics>.

could be higher or lower than CBO estimates. Specifically, CBO cannot predict whether or when BLM will execute such contracts. CBO also cannot foresee 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.

TABLE 1.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF S. 180, THE BUFFALO TRACT PROTECTION ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON NOVEMBER 18, 2021

	By fiscal year, millions of dollars—											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022– 2026	2022– 2031
	Net Increase in the Deficit											
Pay-As-You-Go Effect .....	0	0	0	0	0	0	0	0	0	0	0	1

Increase in long-term deficits: CBO estimates that enacting S. 180 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates: None.

Estimate prepared by: Federal costs: Janani Shankaran; Mandates: Lilia Ledezma.

Estimate reviewed by: Stephen Rabent; Principal Analyst, Natural and Physical Resources Cost Estimates Unit. H. Samuel Papenfuss; Deputy Director of 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. 534. 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. 534, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 534, 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 Department of the Interior at the October 19, 2021, hearing on S. 180 in the 117th Congress follows:

STATEMENT OF STEVE FELDGUS, PH.D., DEPUTY ASSISTANT  
SECRETARY, LAND AND MINERALS MANAGEMENT, U.S.  
DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 180, the Buffalo Tract Protection Act. The bill would withdraw about 4,200 acres contained in four parcels of public land managed by the Bureau of Land Management (BLM) near Placitas, New Mexico, from location, entry, and patent under the mining laws; and disposition under all laws pertaining to mineral and geothermal leasing or mineral materials. S. 180 aligns with the Administration's conservation goals, and the BLM supports the bill.

*Background*

The lands proposed for withdrawal are located in close proximity to Placitas, New Mexico, which is an unincorporated area of Sandoval County, just north of Albuquerque. The population of the region has grown significantly in recent years, raising community concerns about the potential impacts of additional gravel mining in the area. The area is used for a variety of recreation activities.

S. 180 identifies the four parcels for withdrawal as tracts A (3,127 acres), B (903 acres), C (201 acres), and D (57 acres). Tract A is referred to as the "Buffalo Tract" and is used for hiking, off-highway vehicles (OHVs), and recreational shooting. The Buffalo Tract contains sand and gravel ridges and arroyos with juniper trees, shrubs, and grasses. Approximately 25 percent of tract A has been mined and reclaimed to date. Tract B is known as the "Crest of Montezuma" and is characterized by moderately steep slopes with pinyon and juniper trees intermixed with shrubs and sparse grasses. Tract C, which does not have a specific name, is similar in topography to the Buffalo Tract and is a common hiking area for local community members. Tract D, referred to as "San Francisco," is named after the arroyo that runs through it, and has terrain similar to that of the Buffalo Tract.

*S. 180, Buffalo Tract Protection Act*

S. 180, the Buffalo Tract Protection Act, would, subject to valid existing rights, withdraw four tracts totaling approximately 4,200 acres of Federal mineral estate near Placitas, New Mexico, from all forms of mineral development under all laws pertaining to locatable minerals, mineral leasing, or mineral materials. The bill specifies that nothing in the act would prevent future conveyance of the surface of the withdrawn lands, although the mineral estate would be retained by the Federal government.

The BLM recognizes the importance of locally crafted recreation and conservation areas on public lands and waters and believes they can yield immense economic benefits. The BLM believes the most effective and enduring conservation strategies are those reflecting the priorities, needs, and perspectives of the families and communities

that know, live, work, and care for the lands and waters. The BLM is aware that local communities, including a Pueblo and residents from Placitas and unincorporated Sandoval County, support protection of these tracts from future mineral development. The BLM is in the process of updating the Rio Puerco Proposed Resource Management Plan that has jurisdiction over these covered lands, and is committed to ensuring Native American and Hispanic community voices are represented in the process.

*Conclusion*

The BLM appreciates the efforts of the sponsor and the Subcommittee in advancing this important conservation initiative. Thank you again for the opportunity to provide testimony in support of S. 180.

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 S.534 as ordered reported.

