

112TH CONGRESS
2D SESSION

S. 2110

To settle claims of the Northern Cheyenne Tribe by authorizing the Secretary of the Interior to convey mineral rights in the State of Montana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2012

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To settle claims of the Northern Cheyenne Tribe by authorizing the Secretary of the Interior to convey mineral rights in the State of Montana, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Northern Cheyenne
5 Land Consolidation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) in 1877, the United States forcibly relo-
2 cated members of the Northern Cheyenne Tribe
3 from the Montana Territory to Oklahoma;

4 (2) soon thereafter, in the face of great hard-
5 ship and suffering significant loss of life, the Tribe
6 walked back to the Montana Territory to reclaim the
7 ancestral homeland of the Tribe;

8 (3) in 1884, President Arthur established a
9 371,200-acre reservation for the Tribe extending
10 eastward from the eastern boundary of the Crow In-
11 dian Reservation to approximately 12 miles east of
12 Rosebud Creek in Montana;

13 (4) the Tongue River Indian Reservation, as
14 the reservation was known as at the time of estab-
15 lishment, included within the boundaries of the Res-
16 ervation—

17 (A) tracts occupied legally and illegally by
18 non-Indian settlers; and

19 (B) tracts (including the subsurface rights)
20 owned by the Northern Pacific Railway;

21 (5) in addition to the Northern Cheyenne indi-
22 viduals living on the Tongue River Indian Reserva-
23 tion, Northern Cheyenne families, with encourage-
24 ment and assistance from the United States mili-

1 tary, settled on land to the east of the Reservation
2 and on both sides of the Tongue River;

3 (6) in 1898, at the direction of Congress, the
4 Secretary of the Interior dispatched Indian Inspector
5 James McLaughlin to southeastern Montana to re-
6 port on opportunities for reducing hostilities between
7 the Northern Cheyenne and non-Indian settlers;

8 (7) in 1900, in accordance with the rec-
9 ommendations of McLaughlin—

10 (A) President McKinley expanded the
11 Tongue River Indian Reservation from the
12 Crow Indian Reservation on the west to the
13 middle of the Tongue River on the east; and

14 (B) Congress appropriated funds—

15 (i) to purchase settler land and claims
16 and the Northern Pacific Railway land
17 within the expanded Reservation; and

18 (ii) to relocate to the expanded res-
19 ervation 46 Northern Cheyenne families
20 who had settled on land to the east of the
21 Tongue River;

22 (8) however, when McLaughlin negotiated to
23 purchase the tracts held by the Northern Pacific
24 Railway within the expanded Northern Cheyenne
25 Reservation, McLaughlin neglected to purchase the

1 subsurface rights of the Railway in 8 sections total-
2 ing approximately 5,000 acres;

3 (9) the subsurface rights described in para-
4 graph (8)—

5 (A) are currently owned by Great Northern
6 Properties; and

7 (B) constitute the only subsurface within
8 the Reservation not owned by the Tribe;

9 (10) the Tribe asserts that the Tribe retains
10 claims against the United States arising from the
11 continuing failure of the United States to acquire
12 the subsurface rights described in paragraph (8) as
13 directed by Congress;

14 (11) in 2002, the Tribe brought suit against
15 the Secretary, asserting that the proposed convey-
16 ances of the extensive Federal coal tracts to the
17 State under the Department of the Interior and Re-
18 lated Agencies Appropriations Act, 1998 (Public
19 Law 105–83; 111 Stat. 1543) would violate—

20 (A) the Federal trust responsibility to the
21 Tribe; and

22 (B) several Federal laws;

23 (12) although the Northern Cheyenne tribal
24 community chronically suffers harsh economic condi-
25 tions and severe deficits in public services and facili-

1 ties, the community does not share in any significant
2 portion of the public revenues generated by sur-
3 rounding energy development;

4 (13) subsequently, the Tribe withdrew the 2002
5 suit against the United States, with prejudice, based
6 in large part on commitments that legislation sub-
7 stantially in the form of this Act (and further legis-
8 lation providing funding to the Tribe to address the
9 impacts of coal development in areas adjoining the
10 Reservation) would be introduced and pursued with
11 support from the State, Great Northern Properties,
12 and others; and

13 (14) if the conveyances of mineral rights au-
14 thorized by this Act are carried out, the Tribe will
15 waive all legal claims against the United States aris-
16 ing from the longstanding and continuing loss to the
17 Tribe of the Reservation mineral rights owned by
18 Great Northern Properties.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) CHEYENNE TRACTS.—The term “Cheyenne
22 tracts” means the aggregate tract of land that—

23 (A) is located in the eastern portion of the

24 State within the boundaries of the Reservation;

25 (B) comprises approximately 5,000 acres;

(C) is generally depicted on the map entitled “Cheyenne Coal Land Conveyance” and dated April 7, 2010; and

(D) is comprised of land located in—

(i) T. 2 S., R. 44 E., sec. 17;

(ii) T. 2 S., R. 44 E., sec. 19, E¹/₂ and E¹/₂W¹/₂, Lots 1–4;

(iii) T. 3 S., R. 44 E., sec. 5, S¹/₂ and S¹/₂N¹/₂, Lots 1–4;

(iv) T. 3 S., R. 44 E., sec. 7, E¹/₂ and E¹/₂W¹/₂, Lots 1–4;

(v) T. 3 S., R. 44 E., sec. 9, N¹/₂, SW¹/₄, and W¹/₂SE¹/₄, Lots 2–4;

(vi) T. 3 S., R. 44 E., sec. 17;

(vii) T. 3 S., R. 44 E., sec. 19, E¹/₂ and E¹/₂W¹/₂, Lots 1–4; and

(viii) T. 3 S., R. 44 E., sec. 21, N¹/₂, SW¹/₄, and SW¹/₄ SE¹/₄, Lots 1 and 2.

(2) FEDERAL TRACTS.—The term “Federal tracts” means the tracts of land that—

(A) are located in the State;

(B) are located outside of the boundaries of the Reservation;

(C) consist of approximately 4,500 acres;

1 (D) are generally depicted on the map en-
 2 titled “Federal Coal Land Conveyance” and
 3 dated November 30, 2011; and

4 (E) are comprised of land located in the
 5 following 2 areas:

6 (i) The area commonly known as
 7 “Bridge Creek”, which is comprised of
 8 land located in—

9 (I) T. 3 S., R. 44 E., sec. 26,
 10 S¹/₂;

11 (II) T. 3 S., R. 44 E., sec. 34;

12 (III) T. 3 S., R. 45 E., sec. 30,
 13 E¹/₂SW¹/₄ and SE¹/₄, Lots 3–4; and

14 (IV) T. 4 S., R. 44 E., sec. 2,
 15 SE¹/₄NW¹/₄ , SW¹/₄NE¹/₄, Lots 2–4.

16 (ii) The area commonly known as the
 17 “Bull Mountains”, which is comprised of
 18 land located in—

19 (I) T. 6 N., R. 27 E., sec. 4,
 20 S¹/₂N¹/₂ and S¹/₂, Lots 1–4;

21 (II) T. 6 N., R. 27 E., sec. 8;

22 (III) T. 6 N., R. 27 E., sec. 10;

23 (IV) T. 6 N., R. 27 E., sec. 14;

24 and

1 (V) T. 6 N., R. 27 E., sec. 22,
 2 S¹/₂NW¹/₄.

3 (3) GREAT NORTHERN PROPERTIES.—The term
 4 “Great Northern Properties” means—

5 (A) the Great Northern Properties Limited
 6 Partnership, which is a Delaware limited part-
 7 nership; and

8 (B) any successor to the ownership interest
 9 of Great Northern Properties in any coal or
 10 iron that underlies the Cheyenne tracts.

11 (4) RESERVATION.—The term “Reservation”
 12 means the Northern Cheyenne Reservation.

13 (5) SECRETARY.—The term “Secretary” means
 14 the Secretary of the Interior.

15 (6) SIGNAL PEAK ENERGY.—The term “Signal
 16 Peak Energy” means Signal Peak Energy, LLC, a
 17 Delaware limited liability company.

18 (7) STATE.—The term “State” means the State
 19 of Montana.

20 (8) TRIBE.—The term “Tribe” means the
 21 Northern Cheyenne Tribe.

22 **SEC. 4. MINERAL RIGHTS CONVEYANCES.**

23 (a) IN GENERAL.—Not later than 60 days after the
 24 date on which the Secretary receives all notifications de-

1 scribed in subsection (b), the following shall be completed
2 in a single transaction:

3 (1) Great Northern Properties shall convey to
4 the Tribe all mineral interests of Great Northern
5 Properties underlying the Cheyenne tracts.

6 (2) The Secretary shall terminate any existing
7 Federal lease to Signal Peak Energy for the coal un-
8 derlying the Federal tracts described in section
9 3(2)(E)(ii).

10 (3) The Secretary shall convey to Great North-
11 ern Properties all right, title, and interest of the
12 United States in and to the coal underlying the Fed-
13 eral tracts.

14 (b) NOTIFICATIONS.—As a condition of the convey-
15 ances authorized under subsection (a)—

16 (1) Great Northern Properties and the Tribe
17 shall provide joint written notification to the Sec-
18 retary that Great Northern Properties and the Tribe
19 have agreed on a revenue sharing formula for all
20 coal produced from the Federal tracts; and

21 (2) Great Northern Properties and Signal Peak
22 Energy shall provide joint written notification to the
23 Secretary that Great Northern Properties and Sig-
24 nal Peak Energy have agreed on terms and condi-

1 tions for the lease of coal in the Federal tracts de-
2 scribed in section 3(2)(E)(ii).

3 (c) BONUS PAYMENTS.—All bonus payments re-
4 quired in a Federal lease sale for coal underlying the Fed-
5 eral tracts described in section 3(2)(E)(ii) shall be re-
6 tained by the United States and distributed in accordance
7 with the Mineral Leasing Act (30 U.S.C. 181 et seq.), re-
8 gardless of the termination of the lease under subsection
9 (a)(2).

10 (d) IMMUNITIES.—The mineral interests underlying
11 the Cheyenne tracts conveyed to the Tribe under sub-
12 section (a) shall not be subject to taxation by the State
13 (including any political subdivision of the State).

14 (e) WAIVER OF LEGAL CLAIMS.—In return for the
15 mineral conveyances and termination of Federal leases
16 under subsection (a)—

17 (1) the Tribe shall waive each claim relating to
18 the failure of the United States to acquire in trust
19 for the Tribe as part of the Reservation the private
20 mineral interests underlying the Cheyenne tracts;

21 (2) Great Northern Properties shall waive any
22 claim against the United States relating to the value
23 or completion of the conveyances under this section;
24 and

1 (3) Signal Peak Energy shall waive any claim
 2 against the United States relating to the terms or
 3 termination of the lease of coal in the Federal tracts
 4 described in section 3(2)(E)(ii).

5 (f) RESCISSION OF MINERAL CONVEYANCES.—If any
 6 portion of the mineral conveyances under subsection (a)
 7 is invalidated by a Federal district court, and the judg-
 8 ment of the Federal district court is not vacated or re-
 9 versed on appeal—

10 (1) not later than 1 year after the date on
 11 which there is a final judgment, the Secretary or
 12 Great Northern Properties may rescind completely
 13 each mineral conveyance under subsection (a); and

14 (2) if the Secretary or Great Northern Prop-
 15 erties carries out the rescission under paragraph (1),
 16 the waiver of the Tribe under subsection (e) shall be
 17 considered to be rescinded.

18 (g) PROHIBITION OF STRIP MINING IN THE BULL
 19 MOUNTAINS FEDERAL TRACTS.—On completion of the
 20 mineral conveyances authorized by subsection (a), the coal
 21 underlying the Bull Mountains Federal tracts described in
 22 section 3(2)(E)(ii) shall not be strip mined.

23 **SEC. 5. SYSTEMATIC SUBSIDENCE EVALUATION REPORT.**

24 (a) IN GENERAL.—After the completion of the min-
 25 eral conveyances authorized under section 4(a), but not

1 later than December 31, 2013, and every 2 years there-
 2 after, Signal Peak Energy shall, as a condition of the con-
 3 veyances, prepare a report on the effects of subsidence in
 4 the Federal tracts described in section 3(2)(E)(ii).

5 (b) REQUIREMENTS.—The report prepared under
 6 subsection (a) shall, with respect to the tracts described
 7 in subsection (a)—

8 (1) summarize subsidence monitoring data re-
 9 quired by the State pursuant to the regulatory pro-
 10 gram that implements an approved cooperative
 11 agreement, as described in section 740.4 of title 30,
 12 Code of Federal Regulations (or successor regula-
 13 tions);

14 (2) describe the occurrence and severity of
 15 cracking, fissure development, rock toppling, erosion,
 16 slope failure, sloughing, and landslide risks;

17 (3) describe the potential for subsidence-related
 18 surface hazards for humans, livestock, and wildlife;
 19 and

20 (4) evaluate the accuracy of the predictive sub-
 21 sidence model applied pursuant to the State regu-
 22 latory program that implements an approved cooper-
 23 ative agreement, as described in section 740.4 of
 24 title 30, Code of Federal Regulations (or successor
 25 regulations).

1 (c) PUBLIC AVAILABILITY.—Signal Peak Energy
2 shall submit to, and make available for public inspection
3 at, the Montana Department of Environmental Quality
4 the reports prepared under subsection (a).

5 **SEC. 6. ELIGIBILITY FOR OTHER FEDERAL BENEFITS.**

6 No sums or other benefits provided to the Tribe
7 under this Act shall result in the reduction or denial of
8 any Federal services, benefits, or programs to the Tribe
9 or to any member of the Tribe to which the Tribe or mem-
10 ber is entitled or eligible because of—

11 (1) the status of the Tribe as a federally recog-
12 nized Indian tribe; or

13 (2) the status of the member as a member of
14 the Tribe.

15 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as are necessary to carry out this Act.

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