

114TH CONGRESS
2D SESSION

S. 3430

To establish the Bureau of Land Management Foundation to encourage, obtain, and use gifts, devises, and bequests for projects for the benefit of, or in connection with, activities and services of the Bureau of Land Management, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mr. HEINRICH (for himself, Mr. WYDEN, and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish the Bureau of Land Management Foundation to encourage, obtain, and use gifts, devises, and bequests for projects for the benefit of, or in connection with, activities and services of the Bureau of Land Management, 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 “Bureau of Land Man-
5 agement Foundation Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) BOARD.—The term “Board” means the
2 Board of Directors of the Foundation.

3 (2) BLM.—The term “BLM” means the Bu-
4 reau of Land Management.

5 (3) CHAIRMAN.—The term “Chairman” means
6 the Chairman of the Board.

7 (4) DIRECTOR.—The term “Director” means
8 an individual member of the Board.

9 (5) FOUNDATION.—The term “Foundation”
10 means the Bureau of Land Management Foundation
11 established by this Act.

12 (6) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (7) NATIONAL CONSERVATION LANDS.—The
15 term “National Conservation Lands” means the sys-
16 tem of lands established by section 2002 of the Om-
17 nibus Public Lands Management Act of 2009 (16
18 U.S.C. 7202).

19 (8) WILD FREE-ROAMING HORSES AND BUR-
20 ROS.—The term “wild free-roaming horses and bur-
21 ros” has the same meaning that term has under sec-
22 tion 2(b) of the Wild Free-Roaming Horses and
23 Burros Act of 1971 (16 U.S.C. 1332(b)).

24 (9) ORPHANED OIL AND GAS WELL SITES.—
25 The term “orphaned oil and gas well sites” means

1 all onshore oil and gas wells in the United States
2 that have no responsible or liable parties and that—

3 (A) are located on federally managed
4 lands;

5 (B) are located on lands or minerals that
6 were federally managed at the time oil and gas
7 operations were initiated; or

8 (C) adversely impact the health or produc-
9 tivity of Federal lands.

10 (10) ABANDONED MINE LANDS.—The term
11 “abandoned mine lands” means all hard rock mines
12 in the United States that were abandoned before
13 January 1, 1981, and all coal mines in the United
14 States that were abandoned before August 3, 1977,
15 and that—

16 (A) are located on federally managed
17 lands;

18 (B) are located on lands or minerals that
19 were federally managed at the time mining op-
20 erations were initiated; or

21 (C) adversely impact the health or produc-
22 tivity of Federal lands.

1 **SEC. 3. ESTABLISHMENT AND PURPOSES OF THE BUREAU**
2 **OF LAND MANAGEMENT FOUNDATION.**

3 (a) ESTABLISHMENT.—There is established the Bu-
4 reau of Land Management Foundation as a charitable and
5 nonprofit corporation that shall not be considered an agen-
6 cy or establishment of the United States.

7 (b) PURPOSES.—

8 (1) IN GENERAL.—The purposes of the Foun-
9 dation are to—

10 (A) encourage, accept, obtain, administer,
11 and use private gifts of money, devises, and be-
12 quests of real and personal property for the
13 benefit of, or in connection with, the activities
14 and services of the BLM described in subpara-
15 graph (B);

16 (B) undertake, conduct, and encourage
17 programs and activities that support—

18 (i) educational, technical, scientific,
19 and other assistance or activities that sup-
20 port the management of BLM lands in re-
21 gard to—

22 (I) wild free-roaming horses and
23 burros;

24 (II) fish and wildlife and their
25 habitats;

1 (III) National Conservation
2 Lands;

3 (IV) recreation resources; and

4 (V) cultural and historic re-
5 sources; and

6 (ii) activities that support the rec-
7 lamation and remediation of—

8 (I) abandoned mine lands;

9 (II) orphaned oil and gas well
10 sites; or

11 (III) public lands impacted by
12 development connected to mineral ex-
13 ploration and development activities.

14 (2) INCLUDED RECLAMATION ACTIVITIES.—

15 Reclamation activities under paragraph (1)(B)
16 should include, but not be limited to, the remedi-
17 ation of soil and water contamination, the restora-
18 tion of wildlife habitat in order to restore the nat-
19 ural, scenic, historic, cultural, and ecological values
20 of such areas, or the promotion of the economic po-
21 tential of such areas.

22 (c) ACTIVITIES OF THE FOUNDATION AND THE BU-
23 REAU OF LAND MANAGEMENT.—The activities of the
24 Foundation authorized under this Act shall be supple-

1 mental to and shall not preempt any authority or responsi-
 2 bility of the BLM under any other provision of law.

3 (d) RANGE OF FOUNDATION ACTIVITIES.—The ac-
 4 tivities and grants made by the Foundation under sub-
 5 section (b)(1)(B) that are not subject to limitations under
 6 section 5(d)(4) shall be undertaken in equal proportion
 7 under clauses (i) and (ii) of subsection (b)(1)(B).

8 **SEC. 4. BOARD OF DIRECTORS.**

9 (a) ESTABLISHMENT AND MEMBERSHIP.—

10 (1) IN GENERAL.—The Foundation shall have a
 11 governing Board of Directors, which shall consist of
 12 no more than nine members, each of whom shall be
 13 a United States citizen.

14 (2) REQUIREMENTS OF MEMBERS.—Of the ap-
 15 pointed members of the Board—

16 (A) at least three shall have education or
 17 experience in natural, cultural, conservation, or
 18 other resource management, law, research, or
 19 advocacy;

20 (B) at least three shall have education or
 21 experience in energy and minerals development,
 22 reclamation, or remediation; and

23 (C) up to three shall be appointed as at-
 24 large members.

1 (3) EX OFFICIO MEMBER.—The Director of the
 2 Bureau of Land Management, or a designee of the
 3 Director of the Bureau of Land Management, shall
 4 be an ex officio nonvoting member of the Board.

5 (b) APPOINTMENT AND TERMS.—

6 (1) INITIAL APPOINTMENT.—Not later than 1
 7 year after the date of the enactment of this Act, the
 8 Secretary shall appoint the members of the Board in
 9 accordance with paragraph (6) who, except as other-
 10 wise provided in paragraph (2), shall be appointed
 11 for terms of 6 years.

12 (2) STAGGERED APPOINTMENTS.—In appoint-
 13 ing the initial members of the Board, the Secretary
 14 shall appoint, as determined to be appropriate by the
 15 Secretary—

16 (A) one-third of the members to serve an
 17 initial term of 2 years;

18 (B) one-third of the members to serve an
 19 initial term of 4 years; and

20 (C) one-third of the members to serve an
 21 initial term of 6 years.

22 (3) VACANCY.—A vacancy on the Board shall
 23 be—

1 (A) filled not later than 60 days after the
2 vacancy occurs, in the manner of which the
3 original appointment was made; and

4 (B) for the balance of the term of the indi-
5 vidual who was replaced.

6 (4) REMOVAL.—A Director may be removed
7 from the Board by a majority vote of the Board if
8 the individual misses three consecutive regularly
9 scheduled meetings.

10 (5) TERM LIMIT.—In no case may an individual
11 serve more than 12 consecutive years on the Board.

12 (6) NOMINATIONS.—The Secretary shall pub-
13 lish a solicitation in the Federal Register seeking
14 nominations from the public of individuals for ap-
15 pointment to the Board. Such solicitation shall be
16 open for a period of 30 days. Nominations submitted
17 shall not be binding, but the Secretary shall give
18 consideration to the names received. Within 30 days
19 after the end of such period, the Secretary shall ap-
20 point members who comply with the requirements of
21 subsection (a)(2), and publish the names and back-
22 grounds of those appointed in the Federal Register.

23 (7) REPRESENTATION OF DIVERSE AREAS OF
24 EXPERTISE.—In appointing the members of the
25 Board the Secretary shall seek to appoint, and may

1 give preference to, individuals who have experience
2 with State or local government partnerships and rep-
3 resent diverse areas of expertise.

4 (c) CHAIRMAN.—The Chairman—

5 (1) shall be elected by the Board from its mem-
6 bers for a 2-year term; and

7 (2) may be reelected as Chairman while serving
8 as a Director.

9 (d) QUORUM.—A majority of the current voting
10 membership of the Board shall constitute a quorum for
11 the transaction of business.

12 (e) MEETINGS.—The Board shall meet at the call of
13 the Chairman at least once a year.

14 (f) REIMBURSEMENT OF EXPENSES.—Serving as a
15 Director shall not constitute employment by the United
16 States Government for any purpose. Members of the
17 Board shall serve without pay other than reimbursement
18 for the actual and necessary traveling and subsistence ex-
19 penses incurred in the performance of their duties for the
20 Foundation in accordance with section 5703 of title 5,
21 United States Code.

22 (g) GENERAL POWERS.—The Board may complete
23 the organization of the Foundation by appointing officers
24 and employees, adopting a constitution and bylaws con-
25 sistent with the purposes of the Foundation and this Act,

1 and undertaking other such acts as may be necessary to
 2 function and to carry out the provisions of this title.

3 (h) OFFICERS AND EMPLOYEES.—Officers and em-
 4 ployees of the Foundation may not be appointed until the
 5 Foundation has sufficient funds to pay them for their
 6 service. Appointment as an officer or employee of the
 7 Foundation shall not constitute employment by the United
 8 States.

9 (i) LIMITATION AND CONFLICTS OF INTEREST.—

10 (1) PROHIBITION ON POLITICAL CAMPAIGN AC-
 11 TIVITY.—The Foundation shall not participate or in-
 12 tervene in a political campaign on behalf of any can-
 13 didate for public office.

14 (2) CONFLICT OF INTEREST.—No Director, of-
 15 ficer, or employee of the Foundation shall partici-
 16 pate, directly or indirectly, in the consideration or
 17 determination of any particular matter before the
 18 Foundation affecting—

19 (A) the financial interests of that Director,
 20 officer, employee, or an immediate family mem-
 21 ber of such Director, officer, or employee; or

22 (B) the interests of any corporation, part-
 23 nership, entity, or organization in which such
 24 Director, officer, employee, or an immediate

1 family member of such Director, officer, or em-
2 ployee—

3 (i) is an officer, director, or trustee;

4 or

5 (ii) has any direct financial interest.

6 (3) LIMITATION ON ADMINISTRATIVE EXPENDI-
7 TURE.—Starting in the fifth fiscal year beginning
8 after the date of the enactment of this Act, of the
9 amounts available to the Foundation for expenditure
10 each fiscal year, not more than 15 percent may be
11 used for administrative expenses.

12 **SEC. 5. POWERS AND OBLIGATIONS.**

13 (a) IN GENERAL.—The Foundation—

14 (1) shall have perpetual succession; and

15 (2) may conduct business throughout the sev-
16 eral States, territories, and possessions of the
17 United States.

18 (b) NOTICE AND SERVICE OF PROCESS.—The Foun-
19 dation shall at all times maintain a designated agent in
20 the District of Columbia authorized to accept service of
21 process for the Foundation. The serving of notice to, or
22 service of process upon, the agent required under this sub-
23 section, or mailed to the business address of such agent,
24 shall be treated as service upon or notice to the Founda-
25 tion.

1 (c) SEAL.—The Foundation shall have an official seal
2 selected by the Board, which shall be judicially noticed.

3 (d) POWERS.—In addition to powers otherwise au-
4 thorized under this Act, to carry out its purposes the
5 Foundation shall have the usual powers of a not-for-profit
6 corporation in the District of Columbia, including the
7 power to—

8 (1) accept, receive, solicit, hold, administer, and
9 use any gift, devise, or bequest, either absolutely or
10 in trust, of real or personal property or any income
11 therefrom or other interest therein;

12 (2) acquire by donation, gift, devise, purchase,
13 or exchange, and dispose of, any real or personal
14 property or interest therein;

15 (3) sell, donate, lease, invest, reinvest, retain, or
16 otherwise dispose of any property or income there-
17 from unless limited by the instrument of transfer;

18 (4) accept, receive, solicit, hold, administer, and
19 use any gift, devise, or bequest, at the request of the
20 donor thereof, strictly and exclusively for any pur-
21 pose set forth in section 3(b), and such use shall in-
22 clude the expenditure of funds or use of property for
23 reasonable administrative expenses related to actions
24 to carry out the bequest;

1 (5) borrow money and issue bonds, debentures,
2 or other debt instruments;

3 (6) sue and be sued, and complain and defend
4 itself in any court of competent jurisdiction, except
5 that the Directors of the Board shall not be person-
6 ally liable, except for gross negligence;

7 (7) enter into contracts or other arrangements
8 with public agencies, private organizations, and per-
9 sons and to make such payments as may be nec-
10 essary to carry out the purposes thereof; and

11 (8) do any and all acts necessary and proper to
12 carry out the purposes of the Foundation.

13 (e) PROPERTY.—

14 (1) ACCEPTANCE OF PROPERTY.—A gift, de-
15 vise, or bequest of real property may be accepted by
16 the Foundation even though it is encumbered, re-
17 stricted, or subject to beneficial interests of private
18 persons if any current or future interest therein is
19 for the benefit of the Foundation.

20 (2) REFUSAL OF PROPERTY.—The Foundation
21 may, in its discretion, decline any gift, devise, or be-
22 quest of real or personal property.

23 (3) TITLE AND INTEREST IN REAL PROP-
24 ERTY.—For the purposes of this Act, an interest in
25 real property shall be treated as including mineral

1 and water rights, rights-of-way, and easements, ap-
 2 purtenant or in gross.

3 (4) CONDEMNATION OF REAL PROPERTY PRO-
 4 HIBITED.—No lands or waters, or interests therein,
 5 that are owned by the Foundation shall be subject
 6 to condemnation by any State or political subdivi-
 7 sion, or any agent of instrumentality thereof.

8 (5) LIMITATION ON THE ACQUISITION OF REAL
 9 PROPERTY.—The Foundation shall not use any
 10 funds to purchase real property, unless such prop-
 11 erty is to be used by the Foundation for administra-
 12 tive or other support purposes or is an easement for
 13 right-of-way access necessary to utilize, manage, or
 14 otherwise dispose of any bequest or gift of real prop-
 15 erty to the Foundation.

16 **SEC. 6. ADMINISTRATIVE SERVICES AND SUPPORT.**

17 (a) ESTABLISHMENT SUPPORT.—For fiscal years
 18 2017 through 2019, the Foundation may accept Federal
 19 funds from a Federal agency under any other Federal law
 20 for use by the Foundation for the purposes of assisting
 21 the Foundation in establishing an office and meeting ini-
 22 tial administrative, project, and other expenses in con-
 23 formance with this Act.

24 (b) ADMINISTRATIVE SERVICES.—The Secretary may
 25 provide personnel, facilities, equipment, and other admin-

1 istrative services to the Foundation with such limitations
2 and on such terms and conditions as the Secretary shall
3 establish. The Foundation may reimburse the Secretary
4 for any support provided under this subsection, in whole
5 or in part, and any reimbursement received by the Sec-
6 retary under this subsection shall be deposited into the
7 Treasury to the credit of the appropriations then current
8 and chargeable for the cost of providing the services.

9 **SEC. 7. VOLUNTEERS.**

10 The Secretary may accept, without regard to the civil
11 service classification laws, rules, and regulations, the serv-
12 ices of the Foundation, the Board, and the offices, employ-
13 ees, or agents of the Foundation, without compensation
14 from the Department of the Interior, as volunteers for the
15 performance of the functions under section 307(d) of the
16 Federal Land Policy and Management Act of 1976 (43
17 U.S.C. 1737(d)).

18 **SEC. 8. AUDITS AND REPORTS REQUIREMENTS.**

19 (a) AUDITS.—For purposes of section 10101 of title
20 36, United States Code, the Foundation shall be treated
21 as a corporation in part B of subtitle II of such title.

22 (b) ANNUAL REPORT.—The Foundation shall trans-
23 mit at the end of each fiscal year a report to Congress
24 of its proceedings and activities during that fiscal year,
25 including—

- 1 (1) a full and complete statement of its re-
2 ceipts, expenditures, and investments;
- 3 (2) a description of all acquisition and disposal
4 of real property by the Foundation;
- 5 (3) a detailed statement of the recipient,
6 amount, and purpose of each grant made by the
7 Foundation; and
- 8 (4) a copy of any audit prepared for the Foun-
9 dation in the previous fiscal year.

10 **SEC. 9. UNITED STATES RELEASE FROM LIABILITY.**

11 The United States shall not be liable for any debts,
12 defaults, acts, or omissions of the Foundation, nor shall
13 the full faith and credit of the United States extend to
14 any obligations of the Foundation.

15 **SEC. 10. RELIEF WITH RESPECT TO CERTAIN FOUNDATION**
16 **ACTS OR FAILURE TO ACT.**

17 The Attorney General may petition in the United
18 States District Court for the District of Columbia for such
19 equitable relief as may be necessary or appropriate if the
20 Foundation engages in any act, practice, or policy that
21 is inconsistent with this Act or the bylaws of the Founda-
22 tion.

1 **SEC. 11. LIMITATION ON AUTHORITY.**

2 Nothing in this Act authorizes the Foundation to per-
3 form any function the authority for which is exclusively
4 provided to the BLM under any other provision of law.

5 **SEC. 12. LIMITATIONS ON USE OF FUNDS.**

6 Amounts available to, or provided by, the Foundation
7 shall not be used for—

8 (1) any activity the purpose of which is to influ-
9 ence legislation pending before Congress; or

10 (2) any activity inconsistent with this Act.

11 **SEC. 13. CLARIFICATION ON FUNDING.**

12 No additional funds are authorized to carry out the
13 requirements of this Act. Such requirements shall be car-
14 ried out using amounts otherwise authorized.

○