

ARAPAHO AND ROOSEVELT NATIONAL FORESTS LAND
EXCHANGE ACT OF 2003

OCTOBER 28, 2003.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 2766]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2766) to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado, having considered the same, report favorably thereon with an amendment and recommend 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 “Arapaho and Roosevelt National Forests Land Exchange Act of 2003”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Certain National Forest System lands near Empire, Colorado, are needed by the city of Golden, Colorado, to facilitate the construction of a water pipeline to transport domestic water supplies into storage for the city and its residents.

(2) Such National Forest System lands, comprising approximately 9.84 acres in total, are of limited utility for public administration or recreation and other use by virtue of their largely steep terrain, irregular boundary, and lack of easy public access.

(3) The city of Golden owns, or has an option to purchase, several parcels of non-Federal land comprising a total of approximately 141 acres near Evergreen and Argentine Pass, Colorado, which it is willing to convey to the United States for addition to the Arapaho and Roosevelt National Forests.

(4) The non-Federal lands owned or optioned by the city of Golden, if conveyed to the United States, will eliminate inholdings in the National Forest System, result in administrative cost savings to the United States by reducing costs of forest boundary administration, and provide the United States with environmental and public recreational use benefits (including enhanced Federal

land ownership along the Continental Divide National Scenic Trail) that greatly exceed the benefits of the Federal land the United States will convey in exchange.

(5) It is in the public interest to authorize, direct, expedite, and facilitate completion of a land exchange involving these Federal and non-Federal lands to assist the city of Golden in providing additional water to its residents and to acquire valuable non-Federal lands for permanent public use and enjoyment.

SEC. 3. LAND EXCHANGE, ARAPAHO AND ROOSEVELT NATIONAL FORESTS, COLORADO.

(a) CONVEYANCE BY THE CITY OF GOLDEN.—

(1) **LANDS DESCRIBED.**—The land exchange directed by this section shall proceed if, within 30 days after the date of the enactment of this Act, the city of Golden, Colorado (in the section referred to as the “City”), offers to convey title acceptable to the United States to the following non-Federal lands:

(A) Certain lands located near the community of Evergreen in Park County, Colorado, comprising approximately 80 acres, as generally depicted on a map entitled “Non-Federal Lands—Cub Creek Parcel”, dated June, 2003.

(B) Certain lands located near Argentine Pass in Clear Creek and Summit Counties, Colorado, comprising approximately 55.909 acres in 14 patented mining claims, as generally depicted on a map entitled “Argentine Pass/Continental Divide Trail Lands”, dated September 2003.

(2) **CONDITIONS OF CONVEYANCE.**—The conveyance of lands under paragraph (1) to the United States shall be subject to the absolute right of the City to permanently enter upon, utilize, and occupy so much of the surface and subsurface of the lands as may be reasonably necessary to access, maintain, repair, modify, make improvements in, or otherwise utilize the Vidler Tunnel to the same extent that the City would have had such right if the lands had not been conveyed to the United States and remained in City ownership. The exercise of such right shall not require the City to secure any permit or other advance approval from the United States. Upon acquisition by the United States, such lands are hereby permanently withdrawn from all forms of entry and appropriation under the public land laws, including the mining and mineral leasing laws, and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et. seq.).

(b) **CONVEYANCE BY UNITED STATES.**—Upon receipt of acceptable title to the non-Federal lands identified in subsection (a), the Secretary of Agriculture shall simultaneously convey to the City all right, title and interest of the United States in and to certain Federal lands, comprising approximately 9.84 acres, as generally depicted on a map entitled “Empire Federal Lands—Parcel 12”, dated June 2003.

(c) EQUAL VALUE EXCHANGE.—

(1) **APPRAISAL.**—The values of the Federal lands identified in subsection (b) and the non-Federal lands identified in subsection (a)(1)(A) shall be determined by the Secretary through appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (December 20, 2000) and the Uniform Standards of Professional Appraisal Practice. Except as provided in paragraph (3), the conveyance of the non-Federal lands identified in subsection (a)(1)(B) shall be considered a donation for all purposes of law.

(2) **SURPLUS OF NON-FEDERAL VALUE.**—If the final appraised value, as approved by the Secretary, of the non-Federal lands identified in subsection (a)(1)(A) exceeds the final appraised value, as approved by the Secretary, of the Federal land identified in subsection (b), the values may be equalized—

(A) by reducing the acreage of the non-Federal lands identified in subsection (a) to be conveyed, as determined appropriate and acceptable by the Secretary and the City;

(B) the making of a cash equalization payment to the City, including a cash equalization payment in excess of the amount authorized by section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or

(C) a combination of acreage reduction and cash equalization.

(3) **SURPLUS OF FEDERAL VALUE.**—If the final appraised value, as approved by the Secretary, of the Federal land identified in subsection (b) exceeds the final appraised value, as approved by the Secretary, of the non-Federal lands identified in subsection (a)(1)(A), the Secretary shall prepare a statement of value for the non-Federal lands identified in subsection (a)(1)(B) and utilize such value to the extent necessary to equalize the values of the non-Federal lands identified in subsection (a)(1)(A) and the Federal land identified in subsection (b). If the Secretary declines to accept the non-Federal lands identified in subsection (a)(1)(B) for any reason, the City shall make a cash equalization payment to the Secretary as necessary to equalize the values of the non-Federal lands identified in subsection (a)(1)(A) and the Federal land identified in subsection (b).

(d) EXCHANGE COSTS.—To expedite the land exchange under this section and save administrative costs to the United States, the City shall be required to pay for—

(1) any necessary land surveys; and

(2) the costs of the appraisals, which shall be performed in accordance with Forest Service policy on approval of the appraiser and the issuance of appraisal instructions.

(e) TIMING AND INTERIM AUTHORIZATION.—It is the intent of Congress that the land exchange directed by this Act should be completed no later than 120 days after the date of the enactment of this Act. Pending completion of the land exchange, the City is authorized, effective on the date of the enactment of this Act, to construct a water pipeline on or near the existing course of the Lindstrom ditch through the Federal land identified in subsection (b) without further action or authorization by the Secretary, except that, prior to initiating any such construction, the City shall execute and convey to the Secretary a legal document that permanently holds the United States harmless for any and all liability arising from the construction of such water pipeline and indemnifies the United States against all costs arising from the United States' ownership of the Federal land, and any actions, operations or other acts of the City or its licensees, employees, or agents in constructing such water pipeline or engaging in other acts on the Federal land prior to its transfer to the City. Such encumbrance on the Federal land prior to conveyance shall not be considered for purposes of the appraisal.

(f) ALTERNATIVE SALE AUTHORITY.—If the land exchange is not completed for any reason, the Secretary is hereby authorized and directed to sell the Federal land identified in subsection (b) to the City at its final appraised value, as approved by the Secretary. Any money received by the United States in such sale shall be considered money received and deposited pursuant to Public Law 90-171 (16 U.S.C. 484(a); commonly known as the "Sisk Act", and may be used, without further appropriation, for the acquisition of lands for addition to the National Forest System in the State of Colorado.

(g) INCORPORATION, MANAGEMENT, AND STATUS OF ACQUIRED LANDS.—Land acquired by the United States under the land exchange shall become part of the Arapaho and Roosevelt National Forests, and the exterior boundary of such forest is hereby modified, without further action by the Secretary, as necessary to incorporate the non-Federal lands identified in subsection (a) and an additional 40 acres as depicted on a map entitled "Arapaho and Roosevelt National Forest Boundary Adjustment—Cub Creek", dated June 2003. Upon their acquisition, lands or interests in land acquired under the authority of this Act shall be administered in accordance with the laws, rules and regulations generally applicable to the National Forest System. For purposes of Section 7 of the of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-9), the boundaries of the Arapaho and Roosevelt National Forests, as adjusted by this subsection shall be deemed to be the boundaries of such forest as of January 1, 1965.

(h) TECHNICAL CORRECTIONS.—The Secretary, with the agreement of the City, may make technical corrections or correct clerical errors in the maps referred to in this section or adjust the boundaries of the Federal lands to leave the United States with a manageable post-exchange or sale boundary. In the event of any discrepancy between a map, acreage estimate, or legal description, the map shall prevail unless the Secretary and the City agree otherwise.

(i) REVOCATION OF ORDERS AND WITHDRAWAL.—Any public orders withdrawing any of the Federal lands identified in subsection (b) from appropriation or disposal under the public land laws are hereby revoked to the extent necessary to permit disposal of the Federal lands. Upon the enactment of this Act, if not already withdrawn or segregated from the entry and appropriation under the public land laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et. seq.), the Federal lands are hereby withdrawn until the date of their conveyance to the City.

PURPOSE OF THE BILL

The purpose of H.R. 2766 is to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2766 would facilitate the exchange of approximately 9.84 acres of Arapaho and Roosevelt National Forests to the City of Golden, Colorado. The City needs the land to construct a water

pipeline to transfer domestic water supplies into storage for the city and its residents. The City of Golden currently owns or has the option of purchasing several parcels (141 acres total) of non-federal land near Evergreen and Argentine Pass, Colorado. The City would convey the land to the Forest Service while eliminating inholdings in the National Forest System.

The bill provides for prompt transfer of the 9.84 acres of specified Arapaho and Roosevelt Forests lands, in exchange for the City-owned parcels or a combination of payment equal to the fair market value of these lands and/or conveyance of non-federal lands according to federal appraisal standards. The bill also authorizes the City to construct the water pipeline. The City will pay the direct costs of the transfer including the survey and appraisal. Any payments received by the United States will be deposited in the Treasury fund established by Public Law 90-171, known as the Sisk Act, and may be used to acquire land in the National Forest System for the State of Colorado.

COMMITTEE ACTION

H.R. 2766 was introduced on July 17, 2003, by Congressman Bob Beauprez (R-CO). The bill was referred to the Committee on Resources and within the Committee to the Subcommittee on Forests and Forest Health. On July 24, 2003, the Subcommittee held a hearing on the bill. On October 1, 2003, the Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of the bill by unanimous consent. Congressman Tom Tancredo (R-CO) offered an amendment in the nature of a substitute. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the short title of the bill—the Arapaho and Roosevelt National Forests Land Exchange Act of 2003.

Section 2. Findings

Section 2 sets forth certain findings as to why the bill is in the public interest.

Section 3. Land exchange, Arapaho and Roosevelt National Forests, Colorado

Section 3 specifies the details of the land exchange proposal as follows:

Subsection (a) provides that the land exchange shall proceed if within 30 days of enactment of H.R. 2766 the City of Golden offers to convey to the Forest Service non-federal land comprising: (1) up to 80 acres of land in the Cub Creek drainage near Evergreen, Colorado; and (2) 55.909 acres of land near Argentine Pass, Colorado which straddle the Continental Divide. Upon their acquisition by the United States, the Argentine Pass lands are withdrawn from the operation of the public land laws, including the mining, mineral leasing and geothermal steam laws.

Subsection (b) specifies that if the Secretary receives acceptable title to the non-federal lands identified in subsection (a), the United States shall convey a 9.84 acre parcel of specified federal land to the City of Golden near Empire, Colorado.

Subsection (c) specifies that the value of the federal land identified in subsection (b) and non-federal land identified in subsection (a)(1)(A) will be determined by standard appraisals in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice. To save costs to the United States, the value of the Argentine Pass non-federal land identified in subsection (a)(1)(B) will be considered a donation to the Forest Service, and therefore, that parcel will not be formally appraised. However, if the parcel's value is needed for cash equalization purposes, subsection (c)(3) allows the Secretary to prepare a statement of value for the property and utilize as much of the value as necessary to achieve cash equalization. Conversely, if the United States owes value to the City in the exchange, value equalization may be achieved by reducing the size of the Cub Creek parcel conveyance to the Forest Service and/or by the Forest Service making a cash equalization payment to the City.

Subsection (d) specifies that to save administrative costs to the United States and expedite the exchange, the City shall pay for any land surveys and appraisals necessary to complete the land exchange.

Subsection (e) states the intent of Congress that the land exchange be completed within 120 days after enactment of H.R. 2766. Pending completion of the exchange, the City is authorized to construct a water pipeline on the federal land, subject to the City holding the United States harmless from any activities conducted by the City on the federal land prior to its transfer to the City.

Subsection (f) states that if the land exchange directed by the bill cannot be completed for any reason, the Secretary will sell the 9.84 acre federal land parcel to the City of Golden at its final appraised fair market value. Any money received by the United States in such a sale will be considered money received pursuant to the Sisk Act, and will be available to the Secretary of Agriculture, without need of further appropriation, for the acquisition of lands for addition to the National Forest System in Colorado.

Subsection (g) states that lands acquired by the United States will be added to the Arapaho and Roosevelt National Forests, and modifies the existing boundaries of the Forests to allow the incorporation of certain lands in the Cub Creek drainage into the Forests. Any lands acquired will be administered in accordance with the laws, rules and regulations generally applicable to National Forest System lands.

Subsection (h) allows for the correction of technical and clerical errors and adjustment of the federal lands to leave the United States with manageable post-exchange boundaries.

Subsection (i) revokes any withdrawals of the federal land necessary to permit their exchange to the City of Golden and also withdraws the federal lands from appropriation or disposal under the public land laws prior to their disposal to the City.

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 Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill "could affect direct spending, including offsetting receipts, but we estimate that any net impact on the federal budget would be insignificant."

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 22, 2003.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2766, the Arapaho and Roosevelt National Forests Land Exchange Act of 2003.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2766—Arapaho and Roosevelt National Forests Land Exchange Act of 2003

H.R. 2766 would direct the Department of Agriculture to convey to the city of Golden, Colorado, about 10 acres of federal lands within the Arapaho National Forest in exchange for up to 80 acres of city-owned property (known as the Cub Creek parcel). CBO estimates that enacting H.R. 2766 could affect direct spending, including offsetting receipts, but we estimate that any net impact on the federal budget would be insignificant.

Under the bill, any property acquired through the exchange, plus an additional 40 acres of nearby private lands, would become part of the Arapaho and Roosevelt National Forests. The bill also would authorize the department to sell the 10 acres of federal property to the city—and spend the proceeds without further appropriation to purchase other property—if an exchange cannot be completed.

Based on information provided by the Forest Service, CBO estimates that implementing H.R. 2766 would have no significant impact on the federal budget. CBO expects that the 10 acres of federal land (which we estimate to be worth less than \$500,000) would be conveyed to the city within fiscal year 2004 in exchange for some or all of the Cub Creek land. We expect that the conveyance of that land would not result in any loss of federal receipts because the land does not generate any income from timber sales, mining, or other commercial activities. Finally, CBO expects that the 40 acres of private property to be added to the national forests would be acquired by a future exchange within the next five years at no significant cost to the federal government.

H.R. 2766 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The land exchange authorized by this bill would benefit the city of Golden, Colorado, and any expenditures made by the city to satisfy the conditions of the exchange would be voluntary.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

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