

Calendar No. 600

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-285

ARAPAHO AND ROOSEVELT NATIONAL FORESTS IN THE STATE OF COLORADO

JUNE 25, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 2180]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2180) 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, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arapaho and Roosevelt National Forests Land Exchange Act of 2004”.

SEC. 2. LAND EXCHANGE, ARAPAHO AND ROOSEVELT NATIONAL FORESTS, COLORADO.

(a) CONVEYANCE BY CITY OF GOLDEN.—

(1) NON-FEDERAL LAND DESCRIBED.—The land exchange directed by this section shall proceed if, not later than 30 days after the date of enactment of this Act, the City of Golden, Colorado (referred to in this section as the “City”), offers to convey title acceptable to the Secretary of Agriculture (referred to in this section as the “Secretary”) to the following non-Federal land:

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

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

(2) CONDITIONS OF CONVEYANCE.—

(A) VIDLER TUNNEL.—The conveyance of land under paragraph (1)(B) to the Secretary shall be subject to the continuing right of the City to perma-

nently enter on, use, and occupy so much of the surface and subsurface of the land as reasonably is necessary to access, maintain, modify, or otherwise use the Vidler Tunnel to the same extent that the City would have had that right if the land had not been conveyed to the Secretary and remained in City ownership.

(B) ADVANCE APPROVAL.—The exercise of that right shall not require the City to secure any permit or other advance approval from the United States except to the extent that the City would have been required had the land not been conveyed to the Secretary and remained in City ownership.

(C) WITHDRAWAL.—On acquisition by the Secretary, the land is 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) FEDERAL LAND DESCRIBED.—On receipt of title to the non-Federal land identified in subsection (a) that is acceptable to the Secretary, the Secretary shall simultaneously convey to the City all right, title, and interest of the United States in and to certain Federal land, comprising approximately 9.84 acres, as generally depicted on the map entitled “Empire Federal Lands—Parcel 12”, dated June 2003.

(c) EQUAL VALUE EXCHANGE.—

(1) APPRAISAL.—

(A) IN GENERAL.—The values of the Federal land identified in subsection (b) and the non-Federal land 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 and the Uniform Standards of Professional Appraisal Practice.

(B) DONATION.—Except as provided in paragraph (3), the conveyance of the non-Federal land 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 land 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 by—

(A) reducing the acreage of the non-Federal land identified in subsection (a)(1)(A) to be conveyed, as determined appropriate and acceptable by the Secretary and the City;

(B) making 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.—

(A) APPRAISAL.—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 land identified in subsection (a)(1)(A), the Secretary shall—

(i) conduct an appraisal in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice for the non-Federal land to be conveyed pursuant to subsection (a)(1)(B); and

(ii) use the value to the extent necessary to equalize the values of the non-Federal land identified in subsection (a)(1)(A) and the Federal land identified in subsection (b).

(B) CASH EQUALIZATION PAYMENT.—If the Secretary declines to accept the non-Federal land identified in subsection (a)(1)(B) for any reason or if the value of the Federal land described in subsection (b) exceeds the value of all of the non-Federal land described in subsection (a)(1), the City may make a cash equalization payment to the Secretary, 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)).

(d) EXCHANGE COSTS.—The City shall pay for—

(1) any necessary land surveys; and

(2) the costs of the appraisals, on approval of the appraiser and the issuance of appraisal instructions.

(e) TIMING AND INTERIM AUTHORIZATION.—

(1) TIMING.—It is the intent of Congress that the land exchange directed by this Act shall be completed not later than 180 days after the date of enactment of this Act.

- (2) INTERIM AUTHORIZATION.—Pending completion of the land exchange, not later than 45 days after the date of enactment of this Act, subject to applicable law, the Secretary shall authorize the City to construct approximately 140 feet of water pipeline on or near the existing course of the Lindstrom ditch through the Federal land identified in subsection (b).
- (f) ALTERNATIVE SALE AUTHORITY.—
- (1) IN GENERAL.—If the land exchange is not completed for any reason, the Secretary shall sell the Federal land identified in subsection (b) to the City at the final appraised value of the land, as approved by the Secretary.
- (2) SISK ACT.—Public Law 90–171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) shall, without further appropriation, apply to any cash equalization payment received by the United States under this section.
- (g) INCORPORATION, MANAGEMENT, AND STATUS OF ACQUIRED LAND.—
- (1) INCORPORATION.—Land acquired by the United States under the land exchange shall become part of the Arapaho and Roosevelt National Forests.
- (2) BOUNDARY.—The exterior boundary of the Forests is modified, without further action by the Secretary, as necessary to incorporate—
- (A) the non-Federal land identified in subsection (a); and
- (B) approximately an additional 80 acres as depicted on the map entitled “Arapaho and Roosevelt National Forest Boundary Adjustment—Cub Creek”, dated June 2003.
- (3) ADMINISTRATION.—On acquisition, land or interests in land acquired under this section shall be administered in accordance with the laws (including rules and regulations) generally applicable to the National Forest System.
- (4) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 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 the Forests 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.
- (i) REVOCATION OF ORDERS AND WITHDRAWAL.—
- (1) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land identified in subsection (b) from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.
- (2) WITHDRAWAL.—On the date of enactment of this Act, if not already withdrawn or segregated from 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 land identified in subsection (b) is withdrawn until the date of the conveyance of the Federal land to the City.

PURPOSE OF THE MEASURE

The purpose of S. 2180 is to direct an exchange of certain National Forest System land for certain land owned by the city of Golden in the State of Colorado.

BACKGROUND AND NEED

The city of Golden, needs certain National Forest lands for the construction of a water pipeline to transport domestic water supplies into storage for the city and its residents. The land needed by the city, which consists of approximately 9.84 acres, are of limited public value because of their steep terrain, irregular boundaries, and lack of easy public access.

The city has offered to exchange approximately 136 acres of land owned by the city, or private lands it has the option to purchase, for the 9.84 acre parcel of National Forest System land. Acquisition of these lands by the Forest Service will eliminate in holdings in the National Forest System, reduce the cost of administering the forest boundary, and enhance environmental and public recreational use benefits by increasing federal land ownership along the Continental Divide National Scenic Trail.

S. 2180 is needed to authorize the Forest Service to execute the proposed exchange, which will assist the city of Golden in providing additional water to its residents, and will obtain valuable non-Federal lands for permanent public use and enjoyment.

LEGISLATIVE HISTORY

S. 2180 was introduced by Senator Campbell on March 9, 2004. The Subcommittee on Forest and Public Lands held a hearing on S. 2180 on March 24, 2004. The Committee on Energy and Natural Resources, on June 16, 2004, by a unanimous vote of a quorum present favorably reported S. 2180 with an amendment in the nature of a substitute. A similar bill, H.R. 2766, was introduced in the House of Representatives by Representatives Beauprez, Tancredo, and Udall on July 17, 2003. The Committee on Resources favorably reported H.R. 2766 with amendment on October 28, 2003 (H. Rept. 108–329). The House of Representatives passed H.R. 2766, as amended, by voice vote on November 4, 2003.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on June 16, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2180, if amended as described herein.

COMMITTEE AMENDMENT

The committee adopted an amendment in the nature of a substitute. The amendment extends the deadline for completion of the exchange from 120 days to 180 days, and permits, subject to applicable law, the Forest Service 45 days to provide the city of Golden with a special-use permit to facilitate the construction of 140 feet of pipeline while the exchange is being completed. Additionally, the amendment makes a number of technical corrections, including correcting the number of acres to be added to the Arapaho-Roosevelt National Forest as a result of the expansion of the boundary of the forest.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2(a) describes the non-Federal lands (approximately 80 acres in the Cub Creek parcel and 55.909 acres in the Argentine Pass/Continental Divide Trail area) to be exchanged. Paragraph 2 provides for the withdrawal of the land and reserves to the city of Golden the continuing right to use the surface and subsurface of the Argentine Pass parcel to access or use the transcontinental Vidler Tunnel to the same extent as if the city had not conveyed the parcel.

Section 2(b) describes the Federal lands to be exchanged (approximately 9.84 acres) and directs the Secretary of Agriculture to convey the Federal lands upon receipt of acceptable title to the non-Federal lands.

Section 2(c) directs the Secretary to use standard appraisal practices to value the lands to be exchanged, except that the Argentine Pass parcel is to be considered a donation unless additional value is needed to equalize the value of the Federal land. Paragraphs 2

and 3 direct a process using a cash payment equalization, or reduction in acreage of the non-Federal or Federal lands if the land values of the exchange are not equal, and exempts the exchange from the cash payment limitation in section 206(b) of the Federal Land Policy and Management Act of 1976.

Section 2(d) requires the city of Golden to pay for the costs of necessary land surveys and appraisals.

Section 2(e) establishes that Congress intends the exchange to be completed within 180 days of enactment of the Act. It requires, subject to applicable law, the Secretary to authorize the city of Golden to begin construction of the pipe across the federal land not later than 45 days after the date of enactment.

Section 2(f) provides alternative sale authority if the exchange is not completed for any reason and directs the Secretary to sell the Federal lands at their appraised value, with the proceeds deposited in the Sisk Act (Public Law 90-171; 16 U.S.C. 484a) fund.

Section 2(g) provides that the acquired non-Federal lands, along with an additional 80-acre parcel, become part of the Arapaho and Roosevelt National Forests and modifies the Forests' boundaries accordingly. It also directs that these additions be included in the January 1, 1965, boundary for purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-9).

Section 2(h) authorizes the Secretary, with the agreement of the city, to make technical corrections to maps of Federal and non-Federal lands in the land exchange.

Section 2(i) revokes, to the extent necessary, all public withdrawals of the federal lands to be exchanged or sold, and withdraws the federal lands from mining entry between the date of enactment and conveyance.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

S. 2180—Arapaho and Roosevelt National Forests Land Exchange Act of 2004

S. 2180 would direct the Department of Agriculture to convey to the city of Golden, Colorado, about 10 acres of federal land 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. 2180 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 land, 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 the exchange cannot be completed.

Based on information from the Forest Service, CBO estimates that implementing S. 2180 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.

S. 2180 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.

On October 22, 2003, CBO transmitted a cost estimate for H.R. 2766, similar legislation, as ordered reported by the House Committee on Resources on October 1, 2003. The two bills are similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for 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. 2180:

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. 2180.

EXECUTIVE COMMUNICATIONS

On March 24, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on S. 2180. These reports had not been received at the time the report on S. 2180 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of Agriculture at the Subcommittee hearing follows:

STATEMENT OF DAVID TENNY, DEPUTY UNDERSECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman, thank you for the opportunity to appear before you today in order to provide the Department's views on S. 2180 to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado. I am accompanied today by, Marcus Phelps, Highlands Coordinator of the Forest Service Northeastern Area.

The Department does not object to S. 2180 but would like to recommend some changes to the bill for the Committee's consideration.

S. 2180 directs the Secretary of Agriculture to exchange to the city of Golden, Colorado all right, title and interest in 9.84 acres of Federal land within the Arapaho National Forest, upon receipt of acceptable title to 135.9 acres of non-Federal land. The 135.9 acres consist of two separate parcels, including 80 acres near Evergreen, Colorado known as Cub Creek and 55.9 acres near Argentine Pass, Colorado known as Argentine Pass. The 55.9 acre Argentine Pass property is made of 15 patented mining claims. The bill modifies the exterior boundary of the Arapaho National Forest to incorporate the Cub Creek parcel.

The bill requires the exchange values to be equalized. If the non-Federal parcel market value exceeds the approved market value of the Federal land, the values may be equalized by reducing the size of the Cub Creek non-Federal parcel or with a cash equalization payment without regard to the cash equalization limitation of 43 U.S.C. 1716(b), as amended.

If the Federal land market value exceeds the market value of the Cub Creek non-Federal parcel, the values shall be equalized by the Secretary preparing a statement of value for the Argentine Pass non-Federal parcel and utilizing as much of such contributory value as is necessary as a credit to equalize value. Argentine Pass lands not needed to balance the exchange values will be donated to the Forest Service. In the event the Secretary declines to accept the Argentine Pass lands for any reason, Golden shall make a cash equalization payment to the Secretary as necessary to equalize the values of the Federal land and the Cub Creek parcel. We recommend that any cash equalization funds received 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.

S. 2180 indicates Congress's intent that the land exchange be consummated no later than 120 days after enactment and authorizes the city of Golden to construct a water pipeline on the 9.84 acres of Federal land immediately upon enactment and prior to the consummation of the exchange. We are concerned that we may not be able to complete environmental consultation and clearances required for the disposal of the federal property in 120 days. We request extending this timeframe to 180 days. While we are appreciative of the inclusion of the timing and interim authorization clause as described in the bill, we do not support construction occurring prior to conveyance of this property to the city of Golden. At the very least, we would expect that the city would be required to operate under a special use permit as long as the property remains

in Federal ownership. Our preference is to delay construction of the pipeline until the conveyance is completed.

S. 2180 directs the city of Golden to pay for any necessary land surveys and appraisals. Further, the bill authorizes and directs the Secretary to sell the Federal land to Golden at its appraised value, if the land exchange cannot be consummated for any reason.

Public interest could also be served by the Arapaho National Forest acquisition of the 135.9 acres of non-Federal land. Specifically, the acquisition would eliminate a forest in-holding, and could: reduce cost of forest boundary administration, increase recreation opportunities, and ensure permanent public access to a portion of the Continental Divide National Scenic Trail. The Department supports the concept of the exchange identified in S. 2180 and would like to work with the Committee to see this exchange proceed with mutual benefit.

S. 2180 highlights how detailed legislation is often required to conduct land exchanges. The FY 2005 Budget includes a proposal to amend the Small Tracts Act, the Sisk Act, and the Townsite Act, which would provide the Secretary the authority to sell or exchange land, to promote more efficient real estate management of National Forest System lands and facilities. The Budget also includes a proposal for a Facilities Acquisition and Enhancement Fund that would enable the Secretary to sell facilities and appurtenant administrative land, excess to agency needs, and to use the proceeds for acquiring or developing land and improvements for administrative purposes. The Department will submit proposed legislation concerning these proposals in the upcoming weeks.

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 the bill S. 2180, as ordered reported.

