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SENATE

REPORT
111–316

NORTH FORK WATERSHED PROTECTION ACT

SEPTEMBER 27, 2010.—Ordered to be printed

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

R E P O R T

[To accompany S. 3075]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3075) to withdraw certain Federal land and interests in that land from location, entry, and patent under the mining laws and disposition under the mineral and geothermal leasing laws, 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 "North Fork Watershed Protection Act of 2010".

SEC. 2. DEFINITIONS.

In this Act:

(1) ELIGIBLE FEDERAL LAND.—The term "eligible Federal land" means—

(A) any federally owned land or interest in land depicted on the Map as within the North Fork Federal Lands Withdrawal Area; or

(B) any land or interest in land located within the North Fork Federal Lands Withdrawal Area that is acquired by the Federal Government after the date of enactment of this Act.

(2) MAP.—The term "Map" means the Bureau of Land Management map entitled "North Fork Federal Lands Withdrawal Area" and dated June 9, 2010.

SEC. 3. WITHDRAWAL.

(a) WITHDRAWAL.—Subject to valid existing rights, the eligible Federal land is withdrawn from—

(1) all forms of location, entry, and patent under the mining laws; and

(2) disposition under all laws relating to mineral leasing and geothermal leasing.

(b) AVAILABILITY OF MAP.—Not later than 30 days after the date of enactment of this Act, the Map shall be made available to the public at each appropriate office of the Bureau of Land Management.

89–010

PURPOSE

The purpose of S. 3075, as ordered reported, is to withdraw approximately 382,800 acres of Federal land located along the Flathead River in northwestern Montana from the mining laws and mineral and geothermal leasing laws.

BACKGROUND AND NEED

The North Fork of the Flathead River extends approximately 90 miles from its headwaters in southern British Columbia south into Montana, where it forms the western boundary of Glacier National Park. The Flathead River was designated as a component of the National Wild and Scenic Rivers System in 1976.

Although the North Fork itself is protected under the Wild and Scenic Rivers Act, the Canadian portion of the river and the river's watershed are not protected. There have been several mining or oil and gas development projects over the years which have raised concerns about the potential impact on the river's water quality.

In February 2010, the Province of British Columbia and the State of Montana signed a Memorandum of Understanding (MOU) to preclude mining, oil and gas development, and coalbed methane extraction in the Flathead. Under the agreement, mining, oil and gas, coalbed methane, and coal development would be prohibited within the basin. However, much of the North Fork's watershed in Montana is Federal land.

S. 3075 would withdraw the Federal acreage designated on the June 9, 2010 map referenced in the bill from all forms of location, entry, and patent under the mining laws of the United States; and disposition under all laws relating to mineral leasing and geothermal leasing. This action will prevent future mining, oil and gas, coal bed methane, coal, and geothermal development, as well as any other activities governed by these statutes.

In 1982 the Department of the Interior issued several oil and gas leases on national forest lands within the North Fork watershed. Those leases were later suspended in 1988 when the Ninth Circuit Court of Appeals ruled that the agency had failed to comply with applicable environmental laws prior to issuing the leases. The Federal agencies were enjoined from allowing any activity on the issued leases. Since that decision, no action has been taken on these leases, and there is presently no oil and gas development on federal land within the area proposed to be withdrawn by S. 3075. Since the introduction of S. 3075, several lease holders have voluntarily relinquished oil and gas leases covering approximately 200,000 acres of lands within the area withdrawn under S. 3075, although a significant number of outstanding leases remain.

LEGISLATIVE HISTORY

S. 3075 was introduced by Senators Baucus and Tester on March 4, 2010. The subcommittee on Public Lands and Forests held a hearing on S. 3075 on April 28, 2010.

The Committee on Energy and Natural Resources considered the bill at its business meeting on July 21, 2010, and by a vote of 13–10 adopted an amendment in the nature of a substitute. At its business meeting on August 5, 2010, the Committee ordered S. 3075 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on August 5, 2010, by a voice vote of a quorum present, recommends that the Senate pass S. 3075, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 3075, the Committee adopted an amendment in the nature of a substitute. The amendment provides an updated map reference reflecting new acreage in the withdrawal area. As introduced, S. 3075 also withdrew lands within Glacier National Park. The amendment deleted that provision since the lands within the park are already withdrawn. The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, the "North Fork Watershed Protection Act of 2010".

Section 2 defines key terms used in the bill.

Section 3 withdraws, subject to valid existing rights, the lands depicted on the map from all forms of location, entry, and patent under the mining laws and disposition under laws relating to mineral and geothermal leasing.

COST AND BUDGETARY CONSIDERATIONS

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

S. 3075—North Fork Watershed Protection Act of 2010

S. 3075 would withdraw about 300,000 acres of National Forest System lands in Montana from disposal, mining, and mineral leasing activities. The affected lands are jointly managed by the Forest Service and the Bureau of Land Management (BLM). Based on information from those agencies, CBO estimates that implementing the legislation would have no significant impact on the federal budget.

In 1985, a federal court ordered BLM to suspend all mineral leases on the affected lands. Based on information from the Forest Service and BLM, CBO expects that the suspension will remain in place over the next 10 years. Further, based on information from those agencies, CBO expects that those lands will not be sold or generate any receipts from mining activities over that period. Thus, CBO estimates that enacting S. 3075 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3075 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Peter H. Fontaine, 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. 3075.

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. 3075, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 3075, 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 Agriculture and the Department of the Interior at the April 28, 2010 Subcommittee hearing on S. 3075 follows.

STATEMENT OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Barrasso and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of Agriculture on S. 3075, the "North Fork Watershed Protection Act of 2010."

S. 3075 would, subject to valid existing rights, withdraw National Forest System (NFS) lands located in the North Fork of Flathead River watershed in Montana which are managed as part of the Flathead National Forest from location, entry, and patent under the mining laws and from disposition under the mineral and geothermal leasing laws. The Department supports S. 3075, however, I would like to clarify that although the Department has surface management authority concerning mineral operations, the management of the federal mineral estate falls within the jurisdiction of the Secretary of the Interior. We defer to the Department of the Interior on all issues related to the status of the existing claims and leases.

BACKGROUND

The Forest Service administers surface resources on nearly 193 million acres of NFS lands located in forty-two states and the Commonwealth of Puerto Rico. The Forest Plan for the Flathead National Forest blends areas of multiple uses in the North Fork with areas of specific or limited uses elsewhere on the Forest. Under current law, NFS lands reserved from the public domain pursuant to the Creative Act of 1891, including those in S. 3075, are open to location, entry and patent under the United States Mining Laws unless those lands have subsequently been withdrawn from the application of the mining laws. This bill

would withdraw approximately 291,000 acres of the Flathead NF from the operation of the locatable and leasable mineral laws subject to valid existing rights.

The North Fork of the Flathead has low to moderate potential for the occurrence of locatable and leasable minerals. Much of the North Fork was leased for oil and gas in the early 1980s. Subsequently, the Bureau of Land Management (BLM) and Forest Service were sued and BLM suspended the leases in 1985 to comply with a District Court ruling (*Conner* v. *Burford*, 605 F. Supp. 107 (D.Mont.1985)). Presently, there are no active locatable or leasable operations, including oil and gas, in the North Fork. There are 115 leases that have been suspended by the Secretary of the Interior since 1985.

COMMENTS ON S. 3075

We recognize the bill would not affect the existing oil and gas leases because they would constitute valid existing rights. We also recognize the bill would not change the court's order in *Conner* v. *Burford* requiring the BLM and Forest Service to prepare an environmental impact statement (EIS) under the National Environmental Policy Act before authorizing any surface disturbing activities on the affected leases.

We are pleased that this bill would not preclude the removal and use of mineral materials found on the NFS lands that would be subject to the bill. The Flathead National Forest and Flathead County rely on the close proximity of local sources of aggregate to maintain roads economically and as a source of building materials. Commensurate with the goal of S. 3075 to protect the North Fork watershed, the ability to continue using those mineral materials would allow us to adequately maintain local roads and reduce erosion related impacts to streams and lakes in the North Fork.

We appreciate Senators Baucus and Tester's strong commitment to protecting Montana's natural resources.

I would be happy to answer any questions from the committee. Thank you.

STATEMENT OF MARCILYNN A. BURKE, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the invitation to testify on S. 3075, the North Fork Watershed Protection Act of 2010. The Department of the Interior supports S. 3075, which would withdraw Federal lands within the North Fork watershed of Montana's Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. Enactment of S. 3075 would mark an important milestone in the work occurring across multiple jurisdictions to help preserve the remarkable resources in the Crown of the Continent ecosystem.

BACKGROUND

The Flathead River Basin, a key portion of an area known as the Crown of the Continent ecosystem, spans the boundaries of the United States and Canada. It includes part of the United States' Glacier National Park and borders Canada's Waterton Lakes National Park. These two parks comprise the world's first International Peace Park as well as a World Heritage Site. The U.S. Forest Service's Flathead National Forest is also located within the Flathead River watershed. The Bureau of Land Management manages the Federal mineral estate underlying the Flathead National Forest.

Running along the west side of the Continental Divide, the North Fork of the Flathead River enters the United States at the Canadian border and forms the western border of Glacier National Park until its confluence with the Middle Fork of the Flathead River near the southern end of Glacier National Park. The North Fork watershed, a sub-basin of the Flathead River watershed, includes areas currently managed by the National Park Service, the State of Montana, the U.S. Forest Service, and some private landowners.

The Flathead River Basin is recognized for its natural resource values, including wildlife corridors for large and medium-sized carnivores, aquatic habitat, and plant species diversity. The area is rich in cultural heritage resources, with archeological evidence of human habitation starting 10,000 years ago. Several Indian tribes, including the Blackfeet, the Salish, and the Kootenai, have a well-established presence in the area. The area also has celebrated recreational opportunities, including hunting, fishing, and backcountry hiking and camping.

There has been interest in protecting the Crown of the Continent resources for some time. On February 18, 2010, the State of Montana and the Province of British Columbia executed a Memorandum of Understanding which addresses a myriad of issues related to the Flathead River Basin on both sides of the U.S.-Canada border. The intention of Part I.A. of that memorandum is to "[r]emove mining, oil and gas, and coal development as permissible land uses in the Flathead River Basin."

The Flathead River Basin contains Federally-owned subsurface mineral estate under National Forest System lands that the Federal government has leased for oil and gas development, including 115 oil and gas leases in the North Fork watershed that the BLM issued between 1982 and 1985. The leases, which cover over 225,000 acres, are inactive and under suspension as part of the 1985 court case *Conner* v. *Burford*. The BLM has not offered any other leases in the Flathead National Forest since the *Conner* v. *Burford* litigation suspended the existing leases in 1985.

The U.S. Forest Service is responsible for the surface management of National Forest System land; however, as noted earlier, the Secretary of the Interior and the BLM

are responsible for administering the Federal subsurface mineral estate under the Mining Law of 1872, the Mineral Leasing Act of 1920, and various mineral leasing acts. With respect to locatable minerals and oil and gas resources, the Forest Service has authority to regulate the effects of mineral operations upon National Forest System resources. The BLM only issues mineral leases for locatable minerals and oil and gas resources upon concurrence of the surface management agency and always works cooperatively with the agency to ensure that management goals and objectives for mineral exploration and development activities are achieved, that operations are conducted to minimize effects on natural resources, and that the land affected by operations is reclaimed.

S. 3075

S. 3075 withdraws all Federal lands or interest in lands, comprised of approximately 291,000 acres of the Flathead National Forest, within the North Fork watershed of the Flathead River from all forms of location, entry, and patent under the mining laws and from disposition under all laws related to mineral or geothermal leasing. We note that National Park acreage within the watershed is already unavailable for mineral entry. S. 3075 does not affect valid, existing rights, including the 115 leases in the North Fork watershed that are suspended under the *Conner* v. *Burford* litigation. The Department fully supports S. 3075 as it furthers the goal of preserving the important resources of this region.

The Waterton-Glacier International Peace Park, which extends from Canada into the United States, is one of the great protected ecosystems on the North American continent. A 2010 World Heritage Center/International Union for the Conservation of Nature Report noted that the International Peace Park is "one of the largest, most pristine, intact, and best protected expanses of natural terrain in North America. It provides the wide range of non-fragmented habitats and key ecological connections that are vital for the survival and security of wildlife and plants in the Waterton-Glacier property and the Flathead watershed." Retaining this expanse of natural landscape in the Crown of the Continent ecosystem is of vital importance for providing ecosystem connectivity, which is essential for the growth and survival of plants and animals in the region. S. 3075 will help accomplish this goal.

The Department of the Interior is also committed to maintaining the ecological integrity of Glacier National Park, one of the most noteworthy natural and cultural treasures of our Nation.

Preserving the region's and the park's water resources is also critical. The rich aquatic ecosystems provide breeding and feeding habitats for a variety of important species, and the Department recognizes the importance of maintaining critical habitat corridors when planning for resources uses. S. 3075 will help protect and preserve the important re-

sources of the greater Crown of the Continent ecosystem, including those within Glacier National Park.

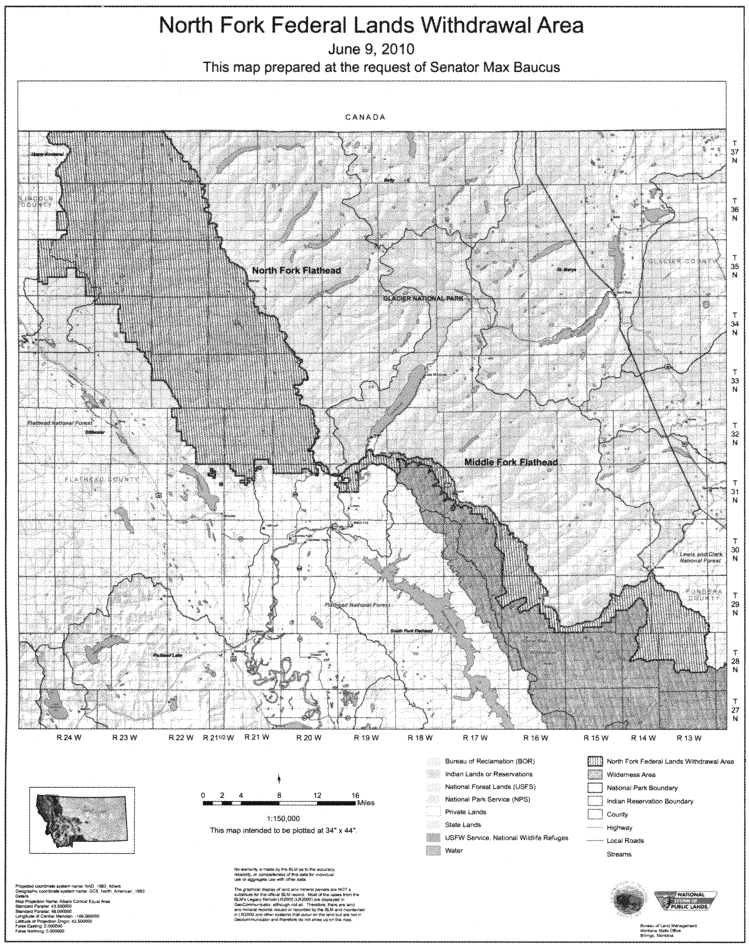
CONCLUSION

The Department supports S. 3075 and commends the many parties involved in protecting the North Fork of the Flathead River and the important resources shared by the United States and Canada. We hope that this legislation and the efforts of the federal and state/provincial governments add to the important legacy of conservation in the Glacier/Waterton Lakes area and Flathead River basin.

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. 3075, as ordered reported.

APPENDIX


North Fork Federal Lands Withdrawal Area
June 9, 2010
This map prepared at the request of Senator Max Baucus
CANADA
LINCOLN COUNTY
North Fork Flathead
GLACIER NATIONAL PARK
GLACIER COUNTY
Flathead National Forest
Kalispell
FLATHEAD COUNTY
Middle Fork Flathead
Lewis and Clark National Forest
TOOLE COUNTY
Flathead National Forest
South Fork Flathead
Flathead Lake
T 37 N
T 36 N
T 35 N
T 34 N
T 33 N
T 32 N
T 31 N
T 30 N
T 29 N
T 28 N
T 27 N
R 24 W
R 23 W
R 22 W
R 21 1/2 W
R 21 W
R 20 W
R 19 W
R 18 W
R 17 W
R 16 W
R 15 W
R 14 W
R 13 W
0 2 4 8 12 16 Miles
1:150,000
This map intended to be plotted at 34" x 44".
Bureau of Reclamation (BOR)
Indian Lands or Reservations
National Forest Lands (USFS)
National Park Service (NPS)
Private Lands
State Lands
USFW Service, National Wildlife Refuges
Water
North Fork Federal Lands Withdrawal Area
Wilderness Area
National Park Boundary
Indian Reservation Boundary
County
Highway
Local Roads
Streams
Projected coordinate system name: NAD. 1983. Albers
Geographic coordinate system name: GCS. North. American. 1983
Datum
Projection Name: Albers Conicor Equal Area
Standard Parallel: 43.500000
Standard Parallel: 48.000000
Longitude of Centre Meridian: -106.000000
Latitude of Projection Origin: 42.500000
False Easting: 0.000000
False Northing: 0.000000
No warranty is made by the BLM as to the accuracy, reliability, or completeness of this data for individual use or aggregate use with other data
The graphical depiction of land and mineral parcels are NOT a substitute for the official BLM records. Most of the cases from the BLM Serial Register Page (Master Title Plat) are in the GeoCommunitator, although not all. Therefore, there are land and mineral records issued or recorded by the BLM and maintained in LR2000 and other systems that exist on the land but are not in GeoCommunitator and therefore do not show up on the map.
NATIONAL SYSTEM OF PUBLIC LANDS
Bureau of Land Management
Montana State Office
Billings, Montana