

## Calendar No. 688

115TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
115-402

### YELLOWSTONE GATEWAY PROTECTION ACT

DECEMBER 4, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 941]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 941) to withdraw certain National Forest System land in the Emigrant Crevice area located in the Custer Gallatin National Forest, Park County, Montana, from the mining and mineral leasing laws of the United States, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 941 is to withdraw certain National Forest System land in the Emigrant Crevice area located in the Custer Gallatin National Forest, Park County, Montana, from the mining and mineral leasing laws of the United States.

#### BACKGROUND AND NEED

Paradise Valley is a major river valley of the Yellowstone River in Southwestern Montana just north of Yellowstone National Park in Park County, Montana. The valley is flanked by the Absaroka Range on the east and the Gallatin Range on the west. The Yellowstone River flows through the valley and is noted for world class fly fishing. The valley also contains several natural hot springs, including Chico Hot Springs near Emigrant, Montana.

In 2015, Lucky Minerals Inc., a Canadian company, applied for permits for exploratory drilling for gold and other minerals on both federal and private lands in the Emigrant Gulch area north of

Chico Hot Springs. Though it withdrew its federal application, Lucky Minerals still has applications pending on private land. Another company, Crevice Mining Group, is proposing to mine on private lands that are surrounded by the Custer Gallatin National Forest, within the view of the Roosevelt Arch at Yellowstone National Park's north entrance.

Environmental groups and local businesses have raised concerns that the exploration could lead to mining development, which they assert could harm wildlife, water quality and tourism. In June 2016, these groups asked the Obama Administration to issue an administrative mineral withdrawal of the Federal lands in the Emigrant Gulch area.

Mining organizations have raised concerns about the withdrawal of land known to be highly mineralized. They note that the region was removed from the Absaroka Wilderness Area in 1978, at the recommendation of the U.S. Bureau of Mines, due to its substantial mineral potential. They further highlight the industry's technological improvements and warn that such land withdrawal will increase the nation's dependence on foreign sources of critical and strategic minerals.

In November 2016, the U.S. Forest Service filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw, for a 20-year term, approximately 30,370 acres of National Forest System lands in the Paradise Valley and Gardiner Basin from location and entry under the United States mining laws, but not from leasing under mineral and geothermal laws. According to the Forest Service's application, the purpose of the withdrawal is to protect and preserve the scenic integrity, wildlife corridors, and recreation values of the Emigrant Crevice area located in the Custer Gallatin National Forest, Park County, Montana. The Federal Register publication temporarily segregates the lands for up to two years from location and entry under the United States mining laws while the withdrawal application is processed.

On October 12, 2018, BLM issued a public land order (PLO, 83 FR 51701) that withdrew the 30,370 acres of Forest Service land from location and entry under mining laws for 20 years, subject to valid existing laws. The PLO makes clear that the land is still open to leasing under mineral and geothermal leasing laws. While the segregation does not affect the claims of Lucky Minerals or Crevice, an extended or permanent withdrawal from mining could impact their claims' viability.

Pursuant to current law, the Department of the Interior can withdraw these lands for a maximum of 20 years but only Congress can legislate a permanent withdrawal. S. 941 permanently withdraws the approximately 30,370 acres of National Forest System lands in the Emigrant Crevice area located in the Custer Gallatin National Forest, Park County, Montana from mining and mineral and geothermal leasing laws.

#### LEGISLATIVE HISTORY

S. 941 was introduced by Senator Tester on April 25, 2017. The Subcommittee on Public Lands, Forests, and Mining, held a hearing on S. 941 on July 26, 2017.

Companion legislation, H.R. 4644, was introduced by Representative Gianforte in the House of Representatives on December 14, 2017. The Natural Resources Committee's Subcommittee on Energy and Mineral Resources held a hearing on H.R. 4644 on June 21, 2018. The Natural Resources Committee ordered the bill favorably reported by a vote of 28–4 on September 26, 2018 (H. Rept. 115–992).

The Senate Committee on Energy and Natural Resource met in open business session on October 2, 2018, and ordered S. 941 favorably reported.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 941. Senators Risch and Lee asked to be recorded as voting no.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec 1. Short title*

Section 1 provides a short title for the bill.

##### *Sec 2. Withdrawal*

Section 2(a) defines “map” to be the map entitled “Emigrant Crevice Proposed Withdrawal Area,” and dated November 10, 2016.

Subsection (b) withdraws, subject to valid existing rights, 30,370 acres of Forest System land depicted on the map from location, entry, and patent under mining laws, and from disposition under mineral and geothermal leasing laws.

Subsection (c) makes clear that any land acquired by the Federal government after the Act's enactment that is within the boundaries of the land depicted on the map, is immediately withdrawn in accordance with this section.

Subsection (d) requires the Secretary of Agriculture to file the map with the Committees of jurisdiction; authorizes the Secretary of Agriculture to correct minor errors in the map; and requires the Forest Service and BLM to make the map publicly available.

Subsection (e) makes clear that nothing in this legislation impacts any recreational uses, including hunting and fishing, on the withdrawn land as depicted on the map that are authorized under applicable laws as of the date of the Act's enactment.

#### COST AND BUDGETARY CONSIDERATIONS

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

S. 941 would withdraw roughly 30,000 acres of land in the Custer Gallatin National Forest in Montana from mining laws and mineral and geothermal leasing, subject to valid existing rights. That is, the bill would not allow new mining or other related activities on those lands, which are adjacent to the northern boundary of Yellowstone National Park.

The Department of the Interior is reviewing a public land order to withdraw those lands from location and entry under mining laws for a period of 20 years. Through November 22, 2018, no new mining claims will be accepted on those lands. If the department choos-

es not to implement the order, the lands will be open to new mining claims after that date. Using information from the department, CBO estimates that implementing the order would produce no significant change in administrative costs; therefore, implementing the bill also would have no significant effect on spending subject to appropriation.

Because the affected lands currently produce no income from mineral or geothermal leasing (and are not expected to do so in the future), CBO estimates that enacting the bill would not affect offsetting receipts, which are treated as reductions in direct spending. Because enacting [Title] would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 941 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 941 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On October 19, 2018, CBO transmitted a cost estimate of H.R. 4644, the Yellowstone Gateway Protection Act, as ordered reported by the House Committee on Natural Resources on September 26, 2018. The two pieces of legislation are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, 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. 941. 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. 941, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 941, 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 at the July 26, 2017, hearing on S. 941 follows:

STATEMENT OF GLENN CASAMASSA, ASSOCIATE DEPUTY  
CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE,  
UNITED STATES DEPARTMENT OF AGRICULTURE

S. 941 would withdraw certain National Forest System land in the Emigrant Crevice area located in the Custer Gallatin National Forest, Montana, from the mining and

mineral leasing laws of the United States, subject to valid existing rights.

USDA supports domestic energy and mineral production as an important use of the National Forest System. Mining and energy development are an important source of jobs and can be a driver of local economies, especially in rural America. Employing modern technology, mineral and energy resources can be developed in many locations in ways that safeguard environmental protections. USDA seeks to manage these resources and activities in balance with the other natural resources, values, and economic drivers found on and around the national forests.

Toward that balancing effort, on November 22, 2016, the Bureau of Land Management (BLM) published a notice in the Federal Register announcing that the Forest Service had filed an application requesting that the Secretary of the Interior withdraw, for a 20-year term and subject to valid existing rights, approximately 30,370 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under mineral and geothermal laws.

Publication of the Federal Register notice temporarily segregated the lands for up to two years from location and entry under the United States mining laws while the withdrawal application is being processed. The lands have otherwise been and will remain open to such forms of disposition as may be allowed by law on National Forest System lands, including leasing under the mineral and geothermal leasing laws. This notice also began a 90 day public comment opportunity to provide input on the withdrawal application, and announced a public meeting, which was held on January 18, 2017, in Livingston, Montana. Thousands of comments were received. These comments were largely, though not universally, supportive of proceeding with the withdrawal application. On June 17, the Custer Gallatin National Forest released a scoping notice, the beginning of the formal environmental review process under the National Environmental Policy Act. The proposed action is to withdraw these areas from future mineral entry under the 1872 Mining Law, subject to valid existing rights, for 20 years. Passage of S. 941 would render this administrative withdrawal process moot.

#### 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 as ordered reported.

