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MOUNT HOOD COOPER SPUR LAND EXCHANGE CLARIFICATION ACT

MAY 9, 2017.—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. 225]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 225) to amend the Omnibus Public Land Management Act of 2009 to modify provisions relating to certain land exchanges in the Mt. Hood Wilderness in the State of Oregon, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 225 is to amend the Omnibus Public Land Management Act of 2009 to modify provisions relating to certain land exchanges in the Mt. Hood Wilderness in the State of Oregon.

BACKGROUND AND NEED

Section 1206 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11) included authorization for a land exchange to guide where future development would take place around Mount Hood. The land exchange would allow Federal land in Government Camp (120 acres) to be made available for development while protecting the larger parcel of non-Federal land at Cooper Spur (770 acres) under Federal ownership.

Although the 2009 authority included language stating that it was the intent of Congress that the exchange be completed within 16 months after the date of enactment, over six years have passed without completion of the exchange. The long delay, which has

been primarily due to an inability to agree on conservation easement terms to protect wetlands on the properties to be exchanged, has frustrated the local communities, Mt. Hood Meadows, and other interested parties.

On September 30, 2015, the Forest Service and Mt. Hood Meadows engaged in a mediation session in an attempt to resolve the easement terms that were in dispute. Subsequently the parties released a joint statement that they were able to arrive at mutually satisfactory terms during the mediation session.

S. 225 updates the details and process for the land exchange to clarify issues relating to land appraisals and the parameters of a wetland conservation easement on the Federal land to be conveyed.

LEGISLATIVE HISTORY

Senators Wyden and Merkley introduced S. 225 on January 24, 2017.

An identical bill, H.R. 699, sponsored by Representative Walden, was introduced in the House of Representatives on January 24, 2017 and passed the House by a vote of 415–1 on February 27, 2017.

In the 114th Congress, similar legislation, S. 2069, was introduced by Senators Wyden and Merkley on September 22, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing on the bill on October 8, 2015. At its business meeting on November 19, 2015, the Committee on Energy and Natural Resources, on a voice vote, ordered S. 2069 favorably reported as amended.

Similar legislation, H.R. 3826, was introduced in the House of Representatives in the 114th Congress by Rep. Walden on October 23, 2015, and was referred to the Committee on Natural Resources. H.R. 3826 passed in the House on June 8, 2016.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 225 and H.R. 699 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 225.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title, “Mount Hood Cooper Spur Land Exchange Clarification Act.”

Section 2 amends section 1206(a) of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1018) to update the acreage of Forest Service land to be conveyed and add “improvements” to the definition of non-Federal land. The Secretary of Agriculture (Secretary) and Mt. Hood Meadows are given up to 120 days following the enactment of S. 225 to jointly select an appraiser to conduct appraisals of the Federal and non-Federal parcels of land. Separate values should be assigned to each tax lot, and these values will remain in effect for up to three years following their acceptance by the Secretary unless the condition of the Federal or non-Federal land changes significantly due to fire, windstorms, or other events. The Secretary is directed to make the ap-

praisals available to the public prior to completing the land exchange.

The section includes conveyance conditions to allow the Secretary and Mt. Hood Meadows to mutually agree on the reservation of a conservation easement to protect a wetland located on the Federal land in accordance with the terms of the September 30, 2015, mediation between the parties. The conservation easement is required to be finalized within 120 days following enactment of S. 225. The updated conveyance conditions also direct the Secretary to reserve a 24-foot-wide, nonexclusive trail easement on the Federal land to be conveyed.

If the appraised values of the Federal and non-Federal lands are not equal, monetary compensation may be made or an adjusted land area may be conveyed to equalize the values of the properties. If the value of the non-Federal land exceeds the value of the Federal land after payment of compensation or adjustment of the land area, it will be considered a donation by Mt. Hood Meadows to the United States.

COST AND BUDGETARY CONSIDERATIONS

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

S. 225—Mount Hood Cooper Spur Land Exchange Clarification Act

S. 225 would amend current law to modify the terms of a land exchange between the Forest Service and the Mt. Hood Meadows ski area in Oregon. The legislation would reduce the amount of land the agency would be authorized to convey to the ski area from 120 acres to 107 acres. The legislation also contains provisions aimed at expediting the exchange.

Based on information provided by the Forest Service, CBO estimates that implementing the legislation would not affect the federal budget. Because CBO expects that enacting S. 225 would not affect whether the exchange would occur or when it would take place, we estimate that enacting the legislation would not affect direct spending. Enacting the legislation also would not affect revenues. Therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 225 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would modify the terms of a land exchange between the federal government and a private entity, which would have a small incidental effect on property taxes collected by local governments in Oregon. That effect, however, would not result from an intergovernmental mandate as defined in UMRA.

On April 7, 2017, CBO transmitted a cost estimate for H.R. 699, the Mount Hood Cooper Spur Land Exchange Clarification Act, as ordered reported by the Senate Committee on Energy and Natural Resources on March 30, 2017. S. 225 and H.R. 699 are similar and CBO's cost estimate for each piece of legislation is the same.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved 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. 225. 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. 225, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 225, 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

Because S. 225 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The testimony provided by the U.S. Forest Service at the hearing before the Subcommittee on Public Lands, Forests and Mining on October 8, 2015, follows:

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

S. 2069 concerns the Mount Hood Cooper Spur Land Exchange Clarification Act. We would like to work with the Committee and Sponsor to address several concerns. The Cooper Spur Land Exchange was initially authorized by the Omnibus Public Land Management Act of 2009. Clarifications are needed to move forward with the exchange.

The following issues concern the Forest Service:

- The bill would require the Forest Service to reserve a 24-foot wide trail easement. The width of the easement would restrict the ability of the Forest Service to appropriately address reconstruction and repair needs of the trail, the drainage and soil protection features that go beyond the normal 3–4 foot tread path, and the loss of buffer between the trail and any non-federally owned building or facility adjacent to the trail.

- The bill would eliminate the requirement that the Forest Service reserve a conservation easement on the Federal land to be conveyed. We understand there may be state-level protections under the bill; however, the Forest Service will have no legal right or obligation to monitor and enforce the status of any of the identified wetlands after conveyance because the United States will have no property interest, such as a conservation easement, protecting the property. In addition, without a reserved federal interest like a conservation easement, Executive Order 1990 will

become inapplicable to the lands once they leave federal ownership.

- The bill would require the joint selection of an appraiser by the Forest Service and Mount Hood Meadows within 60 days after enactment of this legislation. Selection of an appraiser is not attainable within a 60 day period. The process to hire a non-agency appraiser must follow federal contracting regulations. The contracting process typically takes 120 days for contract selection.

- The bill would require the land exchange be completed within 1 year after passage of the legislation. It typically takes the better part of a year to just obtain an approved appraisal. Realistically, it will take more than 18 months to complete the appraisal and all necessary analysis to complete the exchange.

We look forward to working with the Committee and the Sponsor to resolve these issues. This concludes my remarks.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

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SEC. 1206. LAND EXCHANGES.

(a) COOPER SPUR-GOVERNMENT CAMP LAND EXCHANGE.—

(1) DEFINITIONS.—In this subsection:

(A) COUNTY.—The term “County” means Hood River County, Oregon.

(B) EXCHANGE MAP.—The term “exchange map” means the map entitled “Cooper Spur/Government Camp Land Exchange”, dated June 2006.

(C) FEDERAL LAND.—The term “Federal land” means the approximately [120 acres] *107 acres* of National Forest System land in the Mount Hood National Forest in Government Camp, Clackamas County, Oregon, identified as “USFS Land to be Conveyed” on the exchange map.

(D) MT. HOOD MEADOWS.—The term “Mt. Hood Meadows” means the Mt. Hood Meadows Oregon, Limited Partnership.

(E) NON-FEDERAL LAND.—The term “non-Federal land” means—

(i) the parcel of approximately 770 acres of private land at Cooper Spur identified as “Land to be acquired by USFS” on the exchange map; and

(ii) any buildings, *improvements*, furniture, fixtures, and equipment at the Inn at Cooper Spur and the Cooper Spur Ski Area covered by an appraisal described in paragraph (2)(D).

(2) COOPER SPUR-GOVERNMENT CAMP LAND EXCHANGE.—

(A) CONVEYANCE OF LAND.—Subject to the provisions of this subsection, if Mt. Hood Meadows offers to convey to the United States all right, title, and interest of Mt. Hood Meadows in and to the non-Federal land, the Secretary shall convey to Mt. Hood Meadows all right, title, and interest of the United States in and to the Federal land (other than any easements reserved under subparagraph (G)), subject to valid existing rights.

(B) COMPLIANCE WITH EXISTING LAW.—Except as otherwise provided in this subsection, the Secretary shall carry out the land exchange under this subsection in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(C) CONDITIONS ON ACCEPTANCE.—

(i) TITLE.—As a condition of the land exchange under this subsection, title to the non-Federal land to be acquired by the Secretary under this subsection shall be acceptable to the Secretary.

(ii) TERMS AND CONDITIONS.—The conveyance of the Federal land and non-Federal land shall be subject to such terms and conditions as the Secretary may require.

(D) APPRAISALS.—

(i) IN GENERAL.—[As soon as practicable after the date of enactment of this Act, the Secretary and Mt. Hood Meadows shall select] *Not later than 120 days after the date of the enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act, the Secretary and Mt. Hood Meadows shall jointly select an appraiser to conduct an appraisal of the Federal land and non-Federal land.*

(ii) REQUIREMENTS.—[An appraisal under clause (i) shall] *Except as provided under clause (iii), an appraisal under clause (i) shall assign a separate value to each tax lot to allow for the equalization of values and be conducted in accordance with nationally recognized appraisal standards, including—*

(I) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(II) the Uniform Standards of Professional Appraisal Practice.

(iii) FINAL APPRAISED VALUE.—

(I) IN GENERAL.—*Subject to subclause (II), after the final appraised value of the Federal land and the non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value for a period of up to 3 years, beginning on the date of the approval by the Secretary of the final appraised value.*

(II) EXCEPTION.—*Subclause (I) shall not apply if the condition of either the Federal land or the non-Federal land referred to in subclause (I) is signifi-*

cantly and substantially altered by fire, wind-storm, or other events.

(iv) PUBLIC REVIEW.—Before completing the land exchange under this Act, the Secretary shall make available for public review the complete appraisals of the land to be exchanged.

(E) SURVEYS.—

(i) IN GENERAL.—The exact acreage and legal description of the Federal land and non-Federal land shall be determined by surveys approved by the Secretary.

(ii) COSTS.—The responsibility for the costs of any surveys conducted under clause (i), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and Mt. Hood Meadows.

(F) DEADLINE FOR COMPLETION OF LAND EXCHANGE.—It is the intent of Congress that the land exchange under this subsection shall be completed not later than 16 months after the date of enactment of this Act.

[(G) RESERVATION OF EASEMENTS.—As a condition of the conveyance of the Federal land, the Secretary shall reserve—

[(i) a conservation easement to the Federal land to protect existing wetland, as identified by the Oregon Department of State Lands, that allows equivalent wetland mitigation measures to compensate for minor wetland encroachments necessary for the orderly development of the Federal land; and

[(ii) a trail easement to the Federal land that allows—

[(I) nonmotorized use by the public of existing trails;

[(II) roads, utilities, and infrastructure facilities to cross the trails; and

[(III) improvement or relocation of the trails to accommodate development of the Federal land.]

(G) REQUIRED CONVEYANCE CONDITIONS.—*Prior to the exchange of the Federal and non-Federal land—*

(i) the Secretary and Mt. Hood Meadows may mutually agree for the Secretary to reserve a conservation easement to protect the identified wetland in accordance with applicable law, subject to the requirements that—

(I) the conservation easement shall be consistent with the terms of the September 30, 2015, mediation between Secretary and Mt. Hood Meadows; and

(II) in order to take effect, the conservation easement shall be finalized not later than 120 days after the date of enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act; and

(ii) the Secretary shall reserve a 24-foot-wide non-exclusive trail easement at the existing trail locations

on the Federal land that retains for the United States existing rights to construct, reconstruct, maintain, and permit nonmotorized use by the public of existing trails subjects to the rights of the owner of the Federal land—

(I) to cross the trails with roads, utilities, and infrastructure facilities; and

(II) to improve or relocate the trails to accommodate development of the Federal land.

(H) EQUALIZATION OF VALUES.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), in addition to or in lieu of monetary compensation, a lesser area of Federal land or non-Federal land may be conveyed if necessary to equalize appraised values of the exchange properties, without limitation, consistent with the requirements of this Act and subject to the approval of the Secretary and Mt. Hood Meadows.

(ii) TREATMENT OF CERTAIN COMPENSATION OR CONVEYANCES AS DONATION.—If, after payment of compensation or adjustment of land area subject to exchange under this Act, the amount by which the appraised value of the land and other property conveyed by Mt. Hood Meadows under subparagraph (A) exceeds the appraised value of the land conveyed by the Secretary under subparagraph (A) shall be considered a donation by Mt. Hood Meadows to the United States.

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