CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1592—A BILL TO CLARIFY THE DESCRIPTION OF CERTAIN FEDERAL LAND UNDER THE NORTHERN ARIZONA LAND EXCHANGE AND VERDE RIVER BASIN PARTNERSHIP ACT OF 2005 TO INCLUDE ADDITIONAL LAND IN THE KAIBAB NATIONAL FOREST

(December 22, 2015)

S. 1592 would amend current law to clarify that the Secretary of Agriculture is authorized to convey about 238 acres of federal land to a summer camp in Arizona. Under current law, the Secretary is authorized to convey 212 acres to the camp.

Based on information provided by the Forest Service, CBO estimates that implementing the legislation would not affect the federal budget. Because CBO expects that the acreage that could be conveyed under the bill would not generate any income over the next 10 years, enacting S. 1592 would not affect direct spending. Enacting the bill also would not affect revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1592 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2026.

S. 1592 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 business, which would have a small incidental effect on property taxes collected by the state and local governments in Arizona. That effect, however, would not result from an intergovernmental mandate as defined in UMRA.

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CBO COST ESTIMATE—S. 2069

Ms. MURKOWSKI. Mr. President, in compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources has obtained from the Congressional Budget Office an estimate of the costs of S. 2069, Mount Hood Cooper Spur Land Exchange Clarification Act, as reported from the committee. The full estimate is available on CBO's Web site, www.cbo.gov.

Mr. President, I ask unanimous consent that the summary of the estimate be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2069—A BILL 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

(January 5, 2016)

S. 2069 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 bill would reduce the amount of land the agency would be authorized to convey to the ski area from 120 acres to 107 acres. The bill 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 the bill would not affect whether the exchange would occur or when it would take place, we estimate that enacting the bill would not affect direct spending. Enacting the bill also would not affect revenues. Therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 2069 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2026.

S. 2069 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANAGEMENT OF PUBLIC LANDS AND RESOURCES

Mr. BARRASSO. Mr. President, I wish to speak about a column written by Ms. Karen Budd-Falen, a Wyoming attorney, entitled ''Major Regulatory Expansion of ESA Listing and Critical Habitat Designation.'' The article was published in the Wyoming Livestock Roundup on March 19, 2016.

Through a variety of rules, regulations, and seemingly innocuous proposals, agencies under this administration have gone outside their congressionally given authorities and willfully ignored the intent of the very statutes that authorize Federal management of public lands and resources.

In the article, Karen raises a series of concerns, concerns I share, about the United States Fish and Wildlife Service's calculated efforts to change key parts of the Endangered Species Act. Through a series of administrative revisions, the Service has substantially changed the way critical habitat is designated for species listed for protection under the act. Critical habitat, as Karen recognizes in her article, is ''. . . generally habitat upon which the species depends for survival. Importantly critical habitat can include both private and/or federal land and water.'' Karen outlines that, through piecemeal revisions, the Service has effectively removed all limitations of this definition.

No longer will the Service be limited to enact Federal policy on a precise area where a species lives. Now a Federal agency may implement any number of restrictions on a ''significant portion'' of the range a species may or may not inhabit, for an undetermined period of time. The Service has made it clear that even ''potential habitat'' can be controlled, even if it is unclear whether the species will ever use that area.

Karen also raises concerns about notification of private landowners, consideration of economic impacts, and the undeniable link between changes the Service has made and an increase in Federal permitting. The link between these changes and the intent of this administration is clear: any action taken on any land, no matter whether private or public, can now be considered under Federal jurisdiction if the Service so chooses. Not only is this arbitrary, but it is a clear case of Federal overreach.

In Wyoming, we know that the most successful habitat conservation efforts are conducted by people on the ground who have a vested interest in the health of wildlife and the landscape they inhabit. These people are local business owners, local landowners, ranchers, and State experts. These people understand both the needs of the landscape and the scope of appropriate conservation efforts, things that Washington officials seemingly fail to grasp or willfully ignore.

Unfortunately, the alarm that Karen has sounded is one of many currently deafening the American people. Karen has likened the Service's critical habitat reforms to the Environmental Protection Agency's controversial waters of the United States campaign. The comparison is apt. This administration has perpetuated a culture of Big Government by ignoring the biological, economic, and social realities of its irresponsible policies.

Federal actions such as this dilute the effectiveness of successful conservation efforts and create limitless uncertainty for private landowners. I urge my colleagues to continue to stand with rural Americans who must not bear the brunt of irresponsible Federal overreach.

Mr. President, I ask unanimous consent to have printed in the RECORD the article written by Karen Budd-Falen.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wyoming Livestock Roundup; Mar. 19, 2016]

MAJOR REGULATORY EXPANSION OF ESA LISTING AND CRITICAL HABITAT DESIGNATION

(By Karen Budd-Falen)

While private property owners were vehemently protesting the EPA's expansion of jurisdiction under the Clean Water Act, the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries, collectively FWS, were bit-by-bit expanding the federal government's overreach on private property rights and federal grazing permits through the Endangered Species Act (ESA). This expansion is embodied in the release of four separate final rules and two final policies that the FWS admits will result in listing more species and expanding designated critical habitat.

To understand the expansiveness of the new policies and regulations, a short discussion of the previous regulations may help. Prior to the Obama changes, a species was listed as threatened or endangered based upon the ''best scientific and commercial data available.'' With regard to species that are potentially threatened or endangered ''throughout a significant portion of its range'' but not all of the species'' range, only those species within that ''significant portion of the range'' are listed not all species throughout the entire range.

Once the listing is completed, FWS is mandated to designate critical habitat. Critical habitat is generally habitat upon which the species depends for survival. Importantly critical habitat can include both private and/or federal land and water. Critical habitat is

to be based upon the ''best scientific and commercial data available'' and is to include the ''primary constituent elements'' (PCEs) for the species. PCEs are the elements the species needs for breeding, feeding and sheltering. Final critical habitat designations are to be published with legal descriptions so private landowners would know whether their private property or water was within or outside designated boundaries. Critical habitat designations are also made with consideration of the economic impacts. Under the ESA, although the FWS cannot consider the economic impacts of listing a species, all other economic impacts are to be considered when designating critical habitat, and if the economic impacts in an area are too great, the area could be excluded as critical habitat as long as the exclusion did not cause extinction of the species.

With regard to the critical habitat designation itself, critical habitat determinations are made in two stages. First, the FWS considers the currently occupied habitat and determines if that habitat (1) contains the PCEs for the species and (2) is sufficient for protection of the species. Second, the FWS looks at the unoccupied habitat for the species and makes the same determinations, i.e., (1) whether areas of unoccupied habitat contain the necessary PCEs and (2) if including this additional land or water as critical habitat was necessary for protection of the species. The FWS then considers whether the economic costs of including some of the areas are so high that the areas should be excluded from the critical habitat designation. In simplest terms, FWS would weigh or balance the benefits of designation of certain areas of critical habitat against the regulatory burdens and economic costs of designation and could exclude discreet areas from a critical habitat designation so long as exclusion did not cause species extinction. This was called the ''exclusion analysis.''

Starting with a new 2012 rule and extending to the 2015 rules and policy, those considerations have all changed, and in fact, FWS has admitted that the new rules will result in more land and water being included in critical habitat designations.

The first major change is the inclusion of ''the principals of conservation biology'' as part of the ''best scientific and commercial data available.'' Conservation biology was not created until the 1980s and has been described by some scientists as ''agenda-driven'' or ''goal-oriented'' biology.

Second, the new Obama policy has changed regarding a listing species ''throughout a significant portion of its range.'' Now, rather than listing species within the range where the problem lies, all species throughout the entire range will be listed as threatened or endangered.

Third, based upon the principals of conservation biology, including indirect or circumstantial information, critical habitat designations will be greatly expanded. Under the new regulations, FWS will initially consider designation of both occupied and unoccupied habitat, including habitat with potential PCEs. In other words, not only is FWS considering habitat that is or may be used by the species, FWS will consider habitat that may develop PCBs sometime in the future. There is no time limit on when such future development of PCEs will occur, or what types of events have to occur so that the habitat will develop PCEs. FWS will then look outside occupied and unoccupied habitat to decide if the habitat will develop PCEs in the future and should be designated as critical habitat now. FWS has determined that critical habitat can include temporary or periodic habitat, ephemeral habitat, potential habitat and migratory habitat, even if that habitat is currently unusable by the species.

Fourth, FWS has also determined that it will no longer publish the text or legal descriptions or GIS coordinates for critical habitat. Rather it will only publish maps of the critical habitat designation. Given the small size of the Federal Register, I do not think this will adequately notify landowners whether their private property is included or excluded from a critical habitat designation.

Fifth, FWS has significantly limited what economic impacts are considered as part of the critical habitat designation. According to a Tenth Circuit Court of Appeals decision, although the economic impacts are not to be considered as part of the listing process, once a species was listed, if FWS could not determine whether the economic impact came from listing or critical habitat, the cost should be included in the economic analysis. In other words, only those costs that were solely based on listing were excluded from the economic analysis. In contrast, the Ninth Circuit Court took the opposite view and determined that only economic costs that were solely attributable to critical habitat designations were to be included. Rather than requesting the U.S. Supreme Court make a consistent ruling among the courts, FWS simply recognized this circuit split for almost 15 years. However, on Aug. 28, 2013, FWS issued a final rule that determined that the Ninth Circuit Court was ''correct'' and regulatorily determined that only economic costs attributable solely to the critical habitat designation would be analyzed. This rule substantially reduces the determination of the cost of critical habitat designation because FWS can claim that almost all costs are based on the listing of the species because if not for the listing, there would be no need for critical habitat.

Sixth, FWS has determined that while completing the economic analysis is mandatory, the consideration of whether habitat should be excluded based on economic considerations is discretionary. In other words, under the new policy, FWS is no longer required to consider whether areas should be excluded from critical habitat designation based upon economic costs and burdens.

The problem with these new rules is what it means if private property or federal lands are designated as critical habitat or the designated habitat only has the potential to develop PCEs. Even if the species is not present in the designated critical habitat, a ''take'' of a species can occur through ''adverse modification of critical habitat.'' For private land, that may include stopping stream diversions because the water is needed in downstream critical habitat for a fish species or that haying practices, such as cutting of invasive species to protect hay fields, are stopped because it will prevent the area from developing PCEs in the future that may support a species. It could include stopping someone from putting on fertilizer or doing other crop management on a farm field because of a concern with runoff into downstream designated habitat. Designation of an area as critical habitat—even if that area does not contain PCEs now—will absolutely require more federal permitting, i.e. Section 7 consultation, for things like crop plans or conservation plans or anything else requiring a federal permit. In fact, one of the new regulations issued by Obama concludes that ''adverse modification of critical habitat'' can include ''alteration of the quantity or quality'' of habitat that precludes or ''significantly delays'' the capacity of the habitat to develop PCEs over time.

While the agriculture community raised a huge alarm over the waters of the U.S., FWS was quietly implementing these new rules, in a piecemeal manner, without a lot of fanfare. Honestly, I think these new habitat rules will have as great or greater impact on the private lands and federal land permits as does the Ditch Rule, and I would hope that the outcry from the agriculture community, private property advocates, and our Congressional delegations would be as great.

ADDITIONAL STATEMENTS

TRIBUTE TO JENNIFER WAITES

● Mr. DAINES. Mr. President, I wish to recognize Jennifer Waites, a 911 emergency dispatcher from Helena, MT, who was named the 2016 911 Dispatcher of the Year by the Montana Department of Public Health and Human Services. Waites has been with Helena's 911 center for the past 7 years, working the 3 a.m. to 11 p.m. shift as the ''first, first responder'' for the medical emergencies in Helena.

Many refer to Waites as a ''silent hero,'' going about her work day-in and day-out performing a wide variety of tasks that are largely completed under the radar. Whether it is responding to multiple calls at once or relaying information to responding units as efficiently as possible, she knows that serving the people who call in is her top priority and is what motivates her to carry out all tasks with timeliness and care.

Waites is humble enough to admit that her job could not be made possible without the joint efforts from the rest of her team. Waites said, ''Just knowing that you're here and you can make someone else's day a little bit better and get the help that they need is really beneficial for everyone involved.''

It is my honor to recognize Jennifer Waites today. And I thank you on behalf of Montana for your exceptional service and responsibility you have undertaken to the people in our great State.●

65TH ANNIVERSARY OF BUENO FOODS

● Mr. HEINRICH. Mr. President, today I wish to recognize the 65th anniversary of Bueno Foods, a New Mexico family-owned business and one of the Southwest's premier producers of New Mexican foods, including our State's iconic chile from Hatch, NM, and the surrounding Rio Grande Valley.

In 1946, when several brothers from the Baca family returned home from serving in World War II, they scraped together enough money to start a small grocery business. Although the business started off successfully, the Bacas soon learned how difficult it was for a small community market to compete with larger grocery store chains, so they decided to specialize, manufacturing corn and flour tortillas and traditional holiday favorites like tamales and posole. The Baca brothers also noticed that more households owned freezers, and they asked themselves around the family dinner table: Why don't we take our heritage and preserve it?