

TO: DEMOCRATIC MEMBERS AND STAFF

FROM: NATURAL RESOURCES COMMITTEE DEMOCRATIC STAFF (5-6065)

RE: RULES CHANGE FOR VALUATION OF FEDERAL LAND SALES

Summary

The rules proposed by House Republicans for the 115th Congress include a new provision dictating that transfers of federal land shall be treated as having no cost to the federal government. This is a significant change to budget and scoring rules and would allow House Republicans to pursue their long-stated goal of giving away National Parks, Forests, Public Lands, Wildlife Refuges and other federal areas currently owned and enjoyed by the American people by pretending that such giveaways have no cost.

Proposed Rule Change

Section 3(q)(1) of H.Res. 5 (p. 35) states in part:

A provision . . . requiring or authorizing a conveyance of Federal land to a State, local government, or tribal entity *shall not be considered* as providing new budget authority, decreasing revenues, increasing mandatory spending, or increasing outlays. (italics added).

Section 3(q)(2)(A) defines “conveyance” as “any method, including sale, donation, or exchange,” while section 3(q)(2)(B) defines “federal land” as “any land owned by the United States, including the surface estate, the subsurface estate, or any improvements thereon.”

Current Scoring

Current scoring rules used by the Congressional Budget Office (CBO) already significantly undervalue federal land conveyances. In 2014 correspondence to Speaker Ryan (attached), CBO Director Elmendorf explained, “the value of the land involved affects the budget estimates only to the extent that it affects the projected cash flows,” meaning that the underlying real estate value or fair market value of the land itself is already excluded from the cost estimate of legislation transferring the land out of federal ownership.

Impacts of New Rule

If enacted, the proposed rule would ignore even this meager accounting, abolishing any Budget Act point of order for legislation giving away invaluable federal properties and allowing the Congress to pretend such transfers have no cost to the American people.

The definition of “federal land” is stunningly broad. Congress could give away beloved public recreation areas, refuge lands used by hunters and anglers, valuable timber stands, or mineral interests while claiming those conveyances have no impact on the federal budget.

Beyond that, thanks to the definition of federal lands, a bill to transfer ownership of Yellowstone National Park to the city of West Yellowstone or Grand Teton National Park to the City of Jackson, or Grand Canyon National Park to the city of Flagstaff would officially have no cost to the American people.

What's more, it appears that a bill transferring ownership of the Pentagon, or every post office in America, or every navy base on Earth to state or local government ownership would count as costing exactly \$0.

States, Tribes, and units of local government are unlikely to have the budget or staffing resources to actually own and manage large units of federal land; unless the legislation prohibits it, states and localities would sell the federal parcels to the highest bidder, which is likely to be a developer.

This proposal is outrageous and absurd.

This is fiscally irresponsible, not to mention a flagrant attack on places and resources valued and beloved by the American people.

This proposal would allow the federal government to give away every single piece of property it owns, for free, and pretend we have lost nothing of any value.

The proposal is one more instance of the Trump plan to use federal resources to enrich wealthy friends and donors by letting them get their hands on invaluable federal lands currently owned by, and open to, all Americans.

When House Republicans – who claim to be fiscal conservatives – find a scoring or budget rule preventing them from bankrupting this country, they don't reconsider their outrageous giveaway plans, they just change the rules.

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January 15, 2016

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Honorable Mike Enzi
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Senate Committee on the Budget

Honorable Chris Van Hollen
Ranking Member
House Committee on the Budget

Honorable Bernie Sanders
Ranking Member
Senate Committee on the Budget

Dear Colleagues:

I write to request a change in the scorekeeping rules that control the Congressional Budget Office's ("CBO") cost estimates for legislation authorizing or mandating the sale, exchange, or transfer of federal lands. CBO cost estimates should provide Congress all relevant information regarding the budget consequences of enacting proposed legislation. Under current scoring rules, cost estimates for disposing of public lands fail to capture the full impact.

In 2014, then-Chairman Ryan requested information about CBO's "general approach to estimating the budgetary impacts of legislation authorizing or requiring the federal government to dispose of land and associated natural resources through sale, exchange, or transfer."¹ In response, CBO explained that under current scoring rules,² legislation authorizing the sale, exchange, or transfer of federal lands currently generating net receipts in excess of any net cash proceeds from the sale, exchange, or transfer would be considered a cost, or loss, to the government.³ Receipts are generated through extraction of resources, the sale of leases or permits for use of the land, or if the land management agency plans to sell the land under existing authority. The CBO will take into consideration the existing management plan and whether receipts may be generated within the next ten years.

¹ Congressional Budget Office, *Letter to the Honorable Paul Ryan Regarding Estimating the Budgetary Effects of Disposing of Land and Associated Natural Resources*, December 2, 2014, p. 1.

<http://www.cbo.gov/sites/default/files/cbofiles/attachments/49811-FederalLands.pdf>

² Congressional Budget Office, *Compilation of Laws and Rules Relating to the Congressional Budget Process*, August 3, 2013, p. 317. <https://www.gpo.gov/fdsys/pkg/CPRT-112HPRT75001/pdf/CPRT-112HPRT75001.pdf>

³ Ref. 1, p. 1.

As CBO's letter clearly states, a proposed bill mandating the sale, exchange, or conveyance of land not currently generating receipts, or not expected to generate receipts over a ten-year period, is not considered a cost, or a loss, to the federal government, "regardless of the potential property value of the property or related resources." This rule means that CBO is not able to "score" the sale of public land as a loss to the American people unless the land is being leased, grazed upon, or mined for its natural resources. By failing to account for the value of land beyond what it generates in receipts, CBO is saying the land is worthless and its loss from the federal estate has no budgetary effect.

Requiring CBO to assume that all federal land not currently being developed is worthless is absurd. Legislation divesting taxpayers of their land is scored as a loss only if timber, coal, or oil are being extracted, but not if the sale of that same land means the loss of a sacred site, a serene and iconic view shed, critical habitat, or public access to historic landmarks. Perversely, legislation expanding protections for existing federal land would "score" as increasing spending, while a bill simply giving the land away for free would not. Rather than providing neutral information, current scoring rules incentivize divestiture and disincentivize conservation.

We can fix this. Both the Office of Valuation Services within the Department of Interior and the Forest Service conduct land appraisals whenever there is a legislative proposal for a land conveyance, sale, or transfer. Appraisers determine what the market value of the proposed parcel is and that information is provided to the CBO.⁴ CBO may take that value into consideration when assessing an exchange but, per their scorekeeping rules, CBO estimates only assign "cost" to the sale of land that generates receipts, regardless of its market or other values.

The way this rule is written is wrong and should be remedied. At the very least, directed scoring should be required for any land sale, exchange, or transfer to ensure that CBO estimates assign a cost to the sale of all public lands. Under CBO's current rules, land that provides unparalleled recreational opportunity or exceptional ecosystem services is held to be valueless. Even remote wilderness, the kind championed by Ansel Adams and John Muir, is only worth something if it is being harvested from or grazed upon. This is wrong but easily fixed. Let's fix it.

Peace,



Raul M. Grijalva
Ranking Member
Committee on Natural Resources

⁴ Ref. 1, p. 4.



December 2, 2014

Honorable Paul Ryan
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As you requested, this letter explains the Congressional Budget Office's (CBO's) general approach to estimating the budgetary effects of legislation that would authorize or require the federal government to dispose of land and associated natural resources through sale, exchange, or transfer.

One broad principle underlies all such estimates: Because the federal budget mostly records cash flows on a year-by-year basis, the estimated budgetary effects of proposed land sales, exchanges, or transfers are shown on a cash basis for the coming 10 years; the value of the land involved affects the budget estimates only to the extent that it affects the projected cash flows. Those flows are estimated on the basis of the specific characteristics of the land in question.

Under what circumstances would CBO estimate that legislation requiring the federal government to dispose of federal land and associated resources would result in a cost to the government?

In general, CBO estimates that legislation authorizing or mandating the disposal of federal land would have a cost when it expects that, in the absence of the legislation, that land will generate net receipts for the U.S. Treasury and that those receipts will exceed any net cash proceeds that would result from the sale, exchange, or transfer. Federal lands may generate receipts in a variety of ways. For example:

- Resources on the land—timber, geothermal, coal, oil, or other natural resources—may be developed by private parties who pay

bonus bids, rents, and royalties for use of the land and the resources they extract;

- Various activities such as grazing livestock or using a utility right-of-way may be allowed in exchange for certain payments; or
- The managing agency may plan to sell the land under its existing authority.

For instance, CBO estimated that enacting S. 2480, the Nevada Native Nations Lands Act, would result in a small cost because the lands that would be conveyed are expected to generate receipts for the federal government from grazing fees and leases under current law.¹

If CBO expects that the affected land will not generate receipts over the next 10 years, it estimates that disposing of the land would not result in a loss of receipts regardless of the potential value of the property or related resources. For example, for H.R. 5040, the Idaho County Shooting Range Land Conveyance Act, CBO estimated that conveying about 30 acres of federal land would not have a significant effect on the federal budget because the land does not currently generate receipts for the federal government and is not expected to generate them for the foreseeable future.²

Another situation that might result in projected costs to the federal government occurs when legislation would require an agency to conduct a land exchange with a nonfederal entity and the land being given to the federal government is more valuable than the federal land that would be conveyed. In such a case, the legislation might require the government to make a cash payment to the nonfederal entity (known as a cash equalization payment) to make up for the difference in the values of the affected lands. (The fact that the federal government would now have a more valuable parcel of land would be reflected in the budget only to the extent that it influenced future cash flows.)

1. Congressional Budget Office, cost estimate for S. 2480, the Nevada Native Nations Lands Act (August 29, 2014), www.cbo.gov/publication/45682.

2. Congressional Budget Office, cost estimate for H.R. 5040, the Idaho County Shooting Range Land Conveyance Act (October 10, 2014), www.cbo.gov/publication/49463.

Where does CBO get the information it uses to determine whether conveying land to another entity would have a cost?

Typically, the Bureau of Land Management, the Forest Service, or another federal agency responsible for managing the affected land provides information to CBO about any receipts being collected under current law and whether the agency plans to continue collecting such receipts in the future. CBO also seeks to gather information, including appraisal data or plans to acquire the affected land, from state or local governments or private parties that would be involved in those transactions. If, on the basis of such information, CBO expects the affected land to continue to generate receipts in the future, then it would estimate that giving the land away would result in a loss of income to the government.

If land being proposed for sale, exchange, or transfer is not currently generating receipts, CBO seeks to determine whether that land will generate receipts in the future under current law. As part of that process, CBO asks agencies how they plan to manage the affected land in the future, assuming no changes in law. If the agency indicates that it is actively conducting (or planning to conduct) certain activities that would generate receipts from the affected land in the future, CBO's estimate may reflect an expectation that selling, exchanging, or transferring that land would preclude the federal government from collecting those amounts. CBO's cost estimate for S. 2442, the Northern Cheyenne Lands Act, is an example of such an estimate. On the basis of information provided by the Bureau of Land Management and firms operating in the coal industry, CBO estimated that enacting that bill would reduce net receipts to the federal government because, under current law, much of the land that would be conveyed under the bill was to be leased to a private company to mine coal.³

Finally, if legislation would require the disposal of a large amount of federal land or gave agencies the discretion to choose parcels for disposal, CBO might not be able to estimate the budgetary effects of the legislation on a parcel-by-parcel basis. Instead, CBO would estimate the cost of the legislation by determining the expected receipts for a typical acre of federal land with attributes similar to those of the affected land and would use that amount as the basis for estimating any loss of receipts.

3. Congressional Budget Office, cost estimate for S. 2442, the Northern Cheyenne Lands Act (August 28, 2014), www.cbo.gov/publication/45674.

In preparing cost estimates for proposed legislation to dispose of federal land, does CBO need to know the land's market value?

If legislation would require an agency to sell, exchange, or transfer federal land, CBO sometimes needs to know the market value of the affected land, including, in the case of a land exchange, the value of nonfederal land. If the bill would require an agency to sell federal land to the highest bidder, CBO uses an estimate of the market value to estimate the proceeds the agency would receive from the sale. However, legislation may direct an agency to negotiate the sale of specific property to a specific party, in which case the market value of the property may not be relevant.

If a bill would require an exchange of properties between a federal agency and a local government or private party, CBO may compare estimates of the market values of the federal and nonfederal lands to determine whether a cash equalization payment would be required, whether the agency would make or receive that payment, and the size of the payment.

Finally, CBO must determine whether an agency would have the authority to spend any cash proceeds from a land sale or exchange. If an agency could use existing authorities or new authorities provided by the legislation to spend those proceeds, CBO typically estimates that enacting such a bill would have no significant net effect on the deficit because any cash receipts generated by the legislation would be spent.

How does CBO determine the fair market value of federal land if that amount is needed to estimate the budgetary effects of a transaction?

CBO uses a variety of approaches to estimate the market value of federal land that has been proposed for sale or exchange. Those approaches include calculating the net present value of the future cash flows expected to stem from the highest and best use of the affected land, reviewing real estate listings to find the values of comparable lands, or reviewing appraisal documents provided by agencies or other affected parties. For example, in preparing the cost estimate for H.R. 1170, a bill to convey certain federal land to the city of Fernley, Nevada, CBO used publicly available information about the market value of similar land in the area to estimate the additional receipts that would be collected from resulting sales.⁴ When possible, CBO uses multiple methods and sources to determine the market

4. Congressional Budget Office, cost estimate for H.R. 1170, a bill to direct the Secretary of the Interior, acting through the Bureau of Land Management and the Bureau of Reclamation, to convey, by quitclaim deed, to the city of Fernley, Nevada, all right, title, and interest of the United States, to any federal land within that city that is under the jurisdiction of either of those agencies (November 14, 2013), www.cbo.gov/publication/44859.

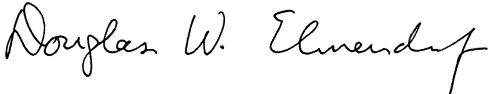
Honorable Paul Ryan

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value of the affected land to ensure that its estimate is as accurate as possible.

I hope this information is helpful to you. If you need further details on this subject, we would be pleased to provide them. The CBO staff contact is Jeff LaFave, who can be reached at 226-2860.

Sincerely,

A handwritten signature in black ink that reads "Douglas W. Elmendorf". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail on the 'f'.

Douglas W. Elmendorf
Director

cc: Honorable Chris Van Hollen
Ranking Member