

MONTANA MINERAL CONVEYANCE ACT

DECEMBER 1, 2011.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1158]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1158) to authorize the conveyance of mineral rights by the Secretary of the Interior in the State of Montana, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Montana Mineral Conveyance Act”.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) under section 503(a)(2) of the Department of the Interior and Related Agencies Appropriations Act, 1998 (Public Law 105–83; 111 Stat. 1617), the Secretary of the Interior has conveyed mineral rights in certain very large tracts of coal to the State of Montana, the tracts of which lie as near as 3 or 4 miles east of the Northern Cheyenne Indian Reservation;

(2) development of the coal tracts and other existing and proposed major developments of Federal, State, and private energy resources in areas surrounding the Northern Cheyenne Indian Reservation yield substantial public revenues to the State (including political subdivisions of the State), thereby assisting the State (including political subdivisions of the State) in addressing the impacts of the development;

(3) although the Northern Cheyenne tribal community chronically suffers harsh economic conditions and severe deficits in public services and facilities, the community does not share in any significant portion of the public revenues generated by surrounding energy development;

(4) the Northern Cheyenne Tribe has few, if any, sources of revenue available to address development impacts;

(5) in 2002, the Tribe brought suit against the Secretary, asserting that the proposed conveyances of the extensive Federal coal tracts to the State under the Department of the Interior and Related Agencies Appropriations Act, 1998 (Public Law 105-83; 111 Stat. 1543) would violate—

(A) several Federal laws (including regulations); and

(B) the Federal trust responsibility to the Tribe;

(6) subsequently, the Tribe withdrew the suit described in paragraph (5) with prejudice, based in substantial part on commitments that legislation substantially in the form of this Act (and further legislation providing funding to the Tribe to address the impacts of coal development in areas adjoining the Reservation) would be introduced and pursued with support from the State, Great Northern Properties, and others;

(7) the Tribe asserts that the Tribe retains claims against the United States arising from the failure of the United States to acquire mineral rights underlying approximately 5,000 acres of Reservation land when the Reservation, at the direction of Congress, was expanded eastward to the Tongue River in 1900, the mineral rights of which, as of the date of enactment of this Act, are owned by Great Northern Properties; and

(8) if the conveyances of mineral rights are carried out under this Act, the Tribe will waive all legal claims against the United States arising from the longstanding and continuing loss of the Tribe of mineral rights relating to the Reservation land.

### SEC. 3. DEFINITIONS.

In this Act:

(1) **CHEYENNE TRACTS.**—The term “Cheyenne tracts” means the aggregate tract of land that—

(A) is located in the eastern portion of the State within the boundaries of the Reservation;

(B) comprises approximately 5,000 acres;

(C) is generally depicted on the map entitled “Cheyenne Coal Land Conveyance” and dated April 7, 2010; and

(D) is comprised of land located in—

(i) T. 2 S., R. 44 E., sec. 17;

(ii) T. 2 S., R. 44 E., sec. 19, E $\frac{1}{2}$  and E $\frac{1}{2}$ W $\frac{1}{2}$ , Lots 1-4;

(iii) T. 3 S., R. 44 E., sec. 5, S $\frac{1}{2}$  and S $\frac{1}{2}$ N $\frac{1}{2}$ , Lots 1-4;

(iv) T. 3 S., R. 44 E., sec. 7, E $\frac{1}{2}$  and E $\frac{1}{2}$ W $\frac{1}{2}$ , Lots 1-4;

(v) T. 3 S., R. 44 E., sec. 9, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ , Lots 2-4;

(vi) T. 3 S., R. 44 E., sec. 17;

(vii) T. 3 S., R. 44 E., sec. 19, E $\frac{1}{2}$  and E $\frac{1}{2}$ W $\frac{1}{2}$ , Lots 1-4; and

(viii) T. 3 S., R. 44 E., sec. 21, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , and SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Lots 1 and 2.

(2) **FEDERAL TRACTS.**—The term “Federal tracts” means the unleased tracts of land that—

(A) are located in the State;

(B) are located outside of the boundaries of the Reservation;

(C) consist of approximately 5,000 acres;

(D) are generally depicted on the map entitled “Federal Coal Land Conveyance” and dated March 18, 2011; and

(E) are comprised of land located in—

(i) T. 3 S., R. 44 E., sec. 26, S $\frac{1}{2}$ ;

(ii) T. 3 S., R. 44 E., sec. 34;

(iii) T. 3 S., R. 45 E., sec. 30, E $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ , Lots 1-4;

(iv) T. 4 S., R. 44 E., sec. 2, S $\frac{1}{2}$ N $\frac{1}{2}$  and S $\frac{1}{2}$ , Lots 1-4;

(v) T. 6 N., R. 27 E., sec. 4, S $\frac{1}{2}$ N $\frac{1}{2}$  and S $\frac{1}{2}$ , Lots 1-4;

(vi) T. 6 N., R. 27 E., sec. 8;

(vii) T. 6 N., R. 27 E., sec. 10;

(viii) T. 6 N., R. 27 E., sec. 14; and

(ix) T. 6 N., R. 27 E., sec. 22.

(3) **GREAT NORTHERN PROPERTIES.**—The term “Great Northern Properties” means—

(A) the Great Northern Properties Limited Partnership, which is a Delaware limited partnership; and

(B) any successor to the ownership interest of Great Northern Properties in any coal or iron that underlies the Cheyenne tracts.

(4) RESERVATION.—The term “Reservation” means the Northern Cheyenne Reservation.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(6) STATE.—The term “State” means the State of Montana.

(7) TRIBE.—The term “Tribe” means the Northern Cheyenne Tribe.

#### SEC. 4. MINERAL RIGHTS CONVEYANCES.

(a) IN GENERAL.—Notwithstanding any other Federal law (including regulations) that otherwise applies to the conveyance of any Federal coal right, title, or interest, if Great Northern Properties conveys to the Tribe all mineral interests of Great Northern Properties underlying the Cheyenne tracts in accordance with this Act, the Secretary shall convey to Great Northern Properties all right, title, and interest of the United States in and to the coal underlying the Federal tracts.

(b) IMMUNITIES.—The mineral interests underlying the Cheyenne tracts conveyed to the Tribe under subsection (a) shall not be subject to taxation by the State (including any political subdivision of the State).

#### SEC. 5. TERMS AND CONDITIONS OF MINERAL CONVEYANCES.

(a) WAIVER OF LEGAL CLAIMS.—In return for the mineral conveyances under section 4(a), the Tribe shall waive any and all claims arising from the continuing failure of the United States to acquire in trust for the Tribe as part of the Reservation the mineral rights underlying approximately 5,000 acres of Reservation land (the Cheyenne Tracts) as directed by Congress in 1900.

(b) CONDITION.—As a condition of the mineral conveyances by the Secretary under section 4(a), the Tribe and Great Northern Properties shall jointly notify the Secretary in writing that the Tribe and Great Northern Properties have agreed on a formula for the sharing of revenue from coal produced from any portion of the Federal tracts.

(c) COMPLETION OF MINERAL CONVEYANCES.—Notwithstanding any other Federal law (including regulations) that otherwise applies to the conveyance of any Federal coal right, title, or interest, after satisfaction of the condition described in subsection (b) and not later than 90 days after the date on which the Secretary receives written notification under subsection (b), the mineral conveyances under section 4(a) shall be completed in a single transaction.

(d) RESCISSION OF MINERAL CONVEYANCES.—

(1) IN GENERAL.—If any portion of the mineral conveyances under section 4(a) is invalidated by a Federal district court, and the judgment of the Federal district court is not vacated or reversed on appeal, the Secretary or Great Northern Properties may rescind completely each mineral conveyance under section 4(a).

(2) EFFECT.—If the Secretary or Great Northern Properties carries out a rescission under paragraph (1), the waiver of the Tribe under subsection (a) shall be considered to be rescinded.

#### SEC. 6. ELIGIBILITY FOR OTHER FEDERAL BENEFITS.

No benefits provided to the Tribe under this Act shall result in the reduction or denial of any Federal services, benefits, or programs to the Tribe or to any member of the Tribe to which the Tribe or member is entitled or eligible because of—

- (1) the status of the Tribe as a federally recognized Indian tribe; or
- (2) the status of the member as a member of the Tribe.

#### PURPOSE OF THE BILL

The purpose of H.R. 1158, as ordered reported, is to authorize the conveyance of mineral rights by the Secretary of the Interior in the State of Montana.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1900, President William McKinley and Congress expanded the Northern Cheyenne Reservation, located in the State of Montana. At the time, the federal government purchased the eight sections of land from the Northern Pacific Railway Company within the Northern Cheyenne Reservation extension area, but failed to also buy the railway company’s underlying subsurface rights. Those eight tracts of subsurface land (5,120 acres) are now owned by Great Northern Properties (GNP) and are the only subsurface

tracts not held in trust for the Tribe by the United States. Securing into tribal ownership those eight sections of land has been a priority of the Northern Cheyenne Tribe for decades, and H.R. 1158 would finally accomplish that goal.

If enacted, this bill would fulfill an obligation by the U. S. Government to correct an error that has gone on for 111 years. The enactment would consolidate the ownership of mineral estate on the Northern Cheyenne Reservation, allowing the Tribe to control the development of its resources at its discretion.

H.R. 1158 would provide for a land exchange; in return the Northern Cheyenne Reservation would waive its legal claims relating to the failure of the United States to acquire subsurface mineral rights on the Tribe's reservation for the Tribe. Under the exchange, the Secretary of the Interior would transfer to GNP the subsurface ownership rights to eight sections of federal coal tracts. These federal coal tracts are located several miles from the Northern Cheyenne Tribe. GNP would transfer to the Northern Cheyenne Tribe ownership of the eight sections of surface rights that GNP owns on the Tribe's Reservation.

In addition to the transferring of the lands, the bill would require the Northern Cheyenne Tribe to waive each legal claim relating to the failure of the United States to acquire in trust for the Tribe the private mineral interests underlying the Cheyenne Reservation. Additionally, GNP and the Tribe would jointly notify the Secretary of the Interior when they agree on a revenue sharing formula from the coal produced from the federal tracts. As it currently stands, the Tribe would receive 40% interest in GNP's royalties.

#### COMMITTEE ACTION

H.R. 1158 was introduced on March 17, 2011, by Congressman Denny Rehberg (R-MT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Indian and Alaska Native Affairs, and Energy and Mineral Resources. On June 22, 2011, the Subcommittee on Indian and Alaska Native Affairs held a hearing on the bill. On July 20, 2011, the Full Resources Committee met to consider the bill. The Subcommittees on Indian and Alaska Native Affairs, and Energy and Mineral Resources were discharged by unanimous consent. Congressman Don Young (R-AK) offered an amendment; the amendment was adopted by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides

that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1158—Montana Mineral Conveyance Act*

Summary: H.R. 1158 would require the Bureau of Land Management (BLM) to convey 5,000 acres of land containing coal deposits to Great Northern Properties, a private company, if the company conveys certain mineral rights to the Northern Cheyenne Tribe. The land conveyances would not be finalized unless the tribe waived all claims related to the failure of the United States to acquire certain mineral rights underlying reservation land.

Based on information provided by BLM, the tribe, and firms operating in the coal industry, CBO estimates that implementing the legislation would reduce net offsetting receipts (thus increasing direct spending) by \$17 million over the 2012–2021 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues and would have no significant impact on discretionary spending.

H.R. 1158 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1158 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											2011– 2016	2011– 2021
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021			
CHANGES IN DIRECT SPENDING													
Forgone Receipts from Bonus Bids:													
Estimated Budget Authority .....	1	3	0	0	0	0	0	0	0	0	0	4	4
Estimated Outlays .....	1	3	0	0	0	0	0	0	0	0	0	4	4
Forgone Receipts from Royalties:													
Estimated Budget Authority .....	0	0	0	1	2	3	3	4	1	0	0	3	13
Estimated Outlays .....	0	0	0	1	2	3	3	4	1	0	0	3	13
Total Changes:													
Estimated Budget Authority ....	1	3	0	1	2	3	3	4	1	0	0	7	17
Estimated Outlays .....	1	3	0	1	2	3	3	4	1	0	0	7	17

Note: Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2011.

H.R. 1158 would authorize BLM to convey eight tracts of federal land totaling 5,000 acres and containing coal deposits to Great Northern Properties. Five of those tracts are located in the Bull Mountains area, and three of those tracts are located in the Bridge Creek area. Based on information from BLM and the coal industry, CBO estimates that conveying those tracts would reduce gross offsetting receipts by \$33 million over the 2012–2021 period because those properties would have otherwise been leased to the highest

bidder for coal production. Because the federal government distributes 50 percent of receipts from coal mining activities to the state where those activities occur, we estimate that enacting the bill would reduce net offsetting receipts by \$17 million over the 2012–2021 period.

*Bull Mountains tracts*

In April 2011, BLM issued a decision to lease the five tracts of federal land in the Bull Mountains area that would be conveyed to Great Northern Properties under the bill. Based on information from the agency, CBO expects that, under current law, BLM will conduct the lease sale early in fiscal year 2012 and that the company awarded the tracts will pay the full bonus bid within two years. We also expect that production—from underground mining—and receipts from associated royalty payments will begin within three years of the lease sale based on information from firms operating in the coal industry.

**Forgone Receipts from Bonus Bids.** Based on information from BLM and firms operating in the coal industry, CBO estimates that the Bull Mountains tracts contain about 35 million tons of recoverable coal. Under current law, we estimate that gross bonus bid payments for leasing those tracts will total about \$7 million (between 10 and 30 cents per ton). The bonus bid will probably be paid in two installments, an initial payment of 20 percent of the total amount and a subsequent payment of the remaining 80 percent of that amount. Because half of the total bonus bid receipts will be paid to Montana, the net amount of offsetting receipts deposited in the Treasury from the bonus bid will total roughly \$4 million over the 2012–2013 period under current law.

**Forgone Receipts from Royalties.** Based on information from firms operating in the coal industry, CBO expects that coal production from the Bull Mountains tracts will begin in 2015 and total about 14 million tons over the 2015–2021 period. Estimated annual production and royalty receipts (equal to 8 percent of the annual production) vary from year-to-year because the federal tracts are not contiguous and production will alternate between federal lands and private lands over that period. In total, CBO estimates that gross royalty receipts from coal production within the Bull Mountains tracts will total about \$26 million over the 2015–2021 period under current law. Of that amount, \$13 million will be paid to Montana and \$13 million will be deposited in the Treasury as offsetting receipts.

*Bridge Creek tracts*

H.R. 1158 would direct BLM to convey three tracts of federal land in the Bridge Creek area of Montana to Great Northern Properties. Based on information from BLM and firms operating in the coal industry, CBO expects that, under current law, those tracts would not be leased within the next 10 years and would not generate any receipts for the federal government over that period. Thus, we estimate that conveying the Bridge Creek tracts to Great Northern Properties would not affect direct spending over the 2012–2021 period.

### Waiver of claims

The Northern Cheyenne Tribe asserts claims against the federal government because the government did not acquire mineral rights on lands that were added to the reservation in 1900. Under the bill, the tribe would waive those claims. Because the tribe has not filed a lawsuit related to those claims, CBO expects that any litigation related to the claims would not be completed or settled within the next 10 years. Therefore, we estimate that the waiver of those claims would not affect direct spending during the next decade.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 1158 would reduce the amount of offsetting receipts that would be deposited in the Treasury from certain coal leases and related royalty payments; therefore, pay-as-you-go procedures apply. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU GO EFFECTS FOR H.R. 1158, THE MONTANA MINERAL CONVEYANCE ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JULY 20, 2011

	By fiscal year, in millions of dollars—												
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011–2016	2011–2021
	NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact ..	0	1	3	0	1	2	3	3	4	1	0	7	17

Intergovernmental and private-sector impact: H.R. 1158 contains no intergovernmental or private-sector mandates as defined in UMRRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Bureau of Land Management, the tribe, and firms operating in the coal industry, CBO estimates that implementing the legislation would reduce net offsetting receipts (thus increasing direct spending) by \$17 million over the 2012–2021 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues and would have no significant impact on discretionary spending.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to authorize the conveyance of mineral rights by the Secretary of the Interior in the State of Montana.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.



## ADDITIONAL VIEWS OF HON. EDWARD J. MARKEY

H.R. 1158 would restore complete ownership to the Northern Cheyenne Tribe of the surface and subsurface mineral estate within its Reservation borders. The Tribe was deprived of such ownership due to federal error for over 100 years. The bill as written would address this error by affecting a three way trade of mineral rights between the Tribe, the United States and Great Northern Properties, a privately held corporation.

While we support the aim of this legislation and the proposed trade as a means of achieving that aim, we have noteworthy concerns relating to key provisions of the bill. Majority and Minority Committee staffs continue to seek common ground on the following issues:

**Waiver of Liability.** H.R. 1158 requires the Northern Cheyenne Tribe to waive legal claims related to the failure of the United States to acquire in trust for the Tribe the subsurface mineral estate on specific tracts located on the reservation. The Administration testified at a hearing on the bill that this waiver should be in the text of the bill. The Administration also recommended that Great Northern Properties (GNP) waive its potential claims against the U.S.

**Language in Section 4(a) and 5(c) of the bill.** H.R. 1158 requires the conveyance be carried out “notwithstanding any other federal law (including regulations).” The Administration is concerned that the language is overly broad and as a result could affect a waiver of the National Environment Protection Act (NEPA).

**Language that requires the conveyance to be carried out within 90 days.** The bill requires the three way trade between the parties to be completed within 90 days of the Secretary receiving a revenue-sharing agreement between GNP and the Tribe.<sup>1</sup> The Administration is concerned not only that 90 days is not enough time to conduct its own internal processes, such as tribal consultation on sacred sites, but also that such a time period is too restrictive in light of pending litigation involving Signal Peak Energy, the current operators of an underground mine adjacent to one of the GNP-selected areas of federal land called Bull Mountains. Signal Peak Energy initiated a “lease by application” (LBA) process for the Bull Mountains area, which opened it up to competitive bidding from other entities. However, the Bureau of Land Management (BLM) has not awarded the lease to any entity as the LBA process is being challenged in federal court by various environmental groups. The bill would remove the possibility of any other entity from receiving a coal lease as a result of the LBA process because it would

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<sup>1</sup> The bill would also authorize a revenue sharing agreement between GNP and the Tribe under which GNP will pay the Tribe a percentage of the revenues it receives from the development of coal located on the federal tracts. It is anticipated that the federal tracts will produce revenue for the Tribe in the near and long term.

require conveyance of the Bull Mountains coal estate directly to GNP.

Accordingly, the Administration is concerned that the bill would not only thwart pending litigation but also provide an unfair advantage to Signal Peak Energy since it has already worked out an agreement with GNP for lease of the Bull Mountains area to continue its current underground mining operations.

Potential Budgetary Impacts. Testimony received from the Administration indicated that there could be pending coal leases on some of the tracts involved. Transferring those parcels out of federal ownership could have budgetary impacts. Another concern is that such a conveyance would prevent the government from receiving a "bonus payment" per its regulations governing the LBA process.

Lack of appraisal language. The bill does not require an appraisal of the GNP-selected federal lands and simply affects an acre-for-acre exchange of federal land for the Reservation tracts. The Administration estimated that the federal coal rights that the bill would require BLM convey to GNP may contain, based on preliminary estimates, "nearly twice as much coal" as the subsurface tracts on the Tribe's Reservation. As a result, BLM is concerned that the bill favors GNP over tribal interests. Moreover, for a subsurface mineral estate exchange, the Administration also noted that appraisals are a matter of course so any bill that would bypass this requirement would set a negative precedent.

EDWARD J. MARKEY.

