

Calendar No. 149

112TH CONGRESS }
1st Session }

SENATE

{ REPORT
112-69

FEDERAL LAND TRANSACTION FACILITATION ACT REAUTHORIZATION

SEPTEMBER 6, 2011.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 714]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 714) to reauthorize the Federal Land Transaction Facilitation Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended do pass.

The amendment is as follows:

1. On page 2, line 8, strike “2009” and insert “2011”.

PURPOSE

The purpose of S. 714, as ordered reported, is to reauthorize the Federal Land Transaction Facilitation Act for an additional 10-year period, through July 25, 2021.

BACKGROUND AND NEED

In July of 2000, Congress enacted the Federal Land Transaction and Facilitation Act (FLTFA) as Title II of the Valles Caldera Preservation Act (Public Law 106-248). FLTFA authorizes the Bureau of Land Management (BLM) to sell public lands identified for disposal through the land use planning process prior to July 2000 and to retain the proceeds from the sales in a special account set up in the Treasury, to be available without further appropriation. The funds in that account are used to buy inholdings within Federally-designated areas in the same State, including BLM, National Park Service, Fish and Wildlife Service, and Forest Service areas. FLTFA was initially authorized through July 2010. Public Law

111–168, the 2010 Supplemental Appropriations Act, extended the authorization for an additional year, through July 25, 2011.

Since enactment of FLTFA in 2000, the BLM has sold just under 27,000 acres of surplus lands and acquired approximately 18,000 acres of lands with high resource values.

Because the authority to sell and purchase lands under FLTFA sunset on July 25, 2011, S. 714 would extend the program’s authorization through 2021 and expand the pool of eligible lands to be sold to include any lands identified for disposal as of the date of enactment of S. 714. Furthermore, if the law is not reauthorized, proceeds from BLM land sales will not be available for future acquisitions but instead will be available for appropriation under the Land and Water Conservation Fund.

LEGISLATIVE HISTORY

S. 714 was introduced by Senators Bingaman, Udall of Colorado, Udall of New Mexico, and Wyden on April 4, 2011. Senator Tester is also a cosponsor. The Subcommittee on Public Lands and Forests held a hearing on S. 714 on May 25, 2011. At its business meeting on July 14, 2011, the Committee on Energy and Natural Resources ordered S. 714 favorably reported with an amendment.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 14, 2011, by voice vote of a quorum present, recommends that the Senate pass S. 714, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 714, the Committee adopted a technical amendment to correct a reference to the short title in section 2(2)(A).

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Federal Land Transaction Facilitation Act Reauthorization of 2011”.

Section 2(1) amends section 203(2) of FLTFA (Public Law 106–248) to make any federally designated area (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976) eligible for FLTFA funds, regardless of when the area was established.

Section 2(2) amends section 205 of FLTFA by allowing any Federal lands identified for disposal in approved land use plans as of the date of enactment of this Act to be eligible for sale under FLTFA. As originally enacted, only lands identified for disposal as of July 2000 were eligible for sale under FLTFA. The section extends the authorization for FLTFA through July 25, 2021.

Section 2(3) strikes subsection (f) of section 206 of FLTFA, which requires that any remaining balance in the FLTFA special account be available for appropriation under the Land and Water Conservation Fund when FLTFA’s authorization ends.

Section 2(4) makes technical and conforming changes to section 207(b) of FLTFA, and amends section 207(b) to include the White

Pine County Conservation, Recreation, and Development Act of 2006, the Lincoln County Conservation, Recreation, and Development Act of 2004, and several subtitles and sections from the Omnibus Public Land Management Act of 2009 to clarify that those lands remain eligible for sale under separate laws and that the FLTFA provisions will not apply.

COST AND BUDGETARY CONSIDERATIONS

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

S. 714—Federal Land Transaction Facilitation Act Reauthorization of 2011

Summary: S. 714 would reauthorize the Federal Land Transaction Facilitation Act (FLTFA) to allow certain federal agencies to spend, without further appropriation, proceeds from the sale of land administered by the Bureau of Land Management (BLM) to purchase inholdings (privately held land surrounded by federal land). Based on information provided by BLM, CBO estimates that enacting the legislation would increase both the proceeds from sale of federal property and the spending of sale proceeds. On balance, CBO estimates that enacting the legislation would yield a small net reduction in direct spending of \$5 million over the 2012–2021 period—primarily because the spending of sale proceeds would lag behind such collections over the next 10 years. Because S. 714 would affect direct spending, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues.

S. 714 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 S. 714 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—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021	
CHANGES IN DIRECT SPENDING													
Proceeds from Sale of Property: ^a													
Estimated Budget Authority	-2	-3	-4	-5	-6	-8	-10	-12	-14	-16	-20	-80	
Estimated Outlays	-2	-3	-4	-5	-6	-8	-10	-12	-14	-16	-20	-80	
Spending of Sales Proceeds:													
Estimated Budget Authority	3	4	5	6	7	9	11	13	15	17	25	90	
Estimated Outlays	2	3	4	5	6	7	9	11	13	15	20	75	
Total Changes:													
Estimated Budget Authority	1	1	1	1	1	1	1	1	1	1	5	10	
Estimated Outlays	0	0	0	0	0	-1	-1	-1	-1	-1	0	-5	

^aThe amounts of sale proceeds shown in the table reflect expected increases in collections under S. 714. In addition, CBO estimates that the Bureau of Land Management will collect \$10 million over the 2012–2021 period for such sales under current law.

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

Under current law, proceeds from the sale of BLM land are deposited in the Treasury as offsetting receipts (a credit against direct spending). CBO estimates that such proceeds will total \$10 million over the 2012–2021 period. Because, under the bill, BLM could spend proceeds from the sale of land to pay for administrative costs associated with future land sales, CBO estimates that implementing the legislation would increase such proceeds (relative to current law) by \$80 million over the next 10 years. Overall, we estimate that gross proceeds from the sale of BLM land would increase to \$90 million over 2012–2021 period, including the \$10 million in collections expected under current law.

CBO estimates that, under the bill, annual proceeds from the sale of BLM land over the next 10 years would be lower (on average) than the historical average under FLTFA. Over the 2001–2011 period, proceeds from the sale of BLM land under the program totaled about \$120 million, with most of that amount generated by sales of land near urban areas in Nevada and Arizona in 2006 and 2007. Because the amount of future proceeds from such land sales is related to prevailing housing market and economic conditions in those areas, we expect that gross proceeds would be lower than in recent years and would increase over the 10-year period as additional sales would take place in those urban areas.

Because the bill would authorize four land-management agencies (BLM, the U.S. Fish and Wildlife Service, the National Park Service, and the Forest Service) to spend, without further appropriation, proceeds from the sale of BLM land, including amounts expected to be collected under current law, CBO also estimates that implementing the legislation would increase direct spending over the 2012–2021 period. Based on the historical rate of spending for the FLTFA program and for other federal land acquisition activities, CBO expects that those agencies would not spend all of the proceeds (\$90 million) generated from BLM land sales over the next 10 years. We estimate that direct spending of such proceeds would total \$75 million over the 2012–2021 period, resulting in a net reduction in direct spending of \$5 million over that period.

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. S. 714 would reduce direct spending; therefore, pay-as-you-go procedures apply. The budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 714, THE FEDERAL LAND TRANSACTION FACILITATION REAUTHORIZATION ACT OF 2011, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JULY 14, 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	0	0	0	0	0	–1	–1	–1	–1	–1	0	–5

Intergovernmental and private-sector impact: S. 714 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

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

Estimate approved by: Peter H. Fontaine, 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. 714.

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. 714, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 714, 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 Bureau of Land Management at the May 25, 2011 Subcommittee hearing on S. 714 follows:

STATEMENT OF MARCILYNN BURKE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 714, the Federal Land Transaction Facilitation Act (FLTFA) Reauthorization of 2011. The Administration strongly supports S. 714 and encourages the Congress to move swiftly to reauthorize the FLTFA. Over the past decade, the Department of the Interior has made a number of important acquisitions using the FLTFA's provisions. Reauthorization of the FLTFA will allow us to continue to use this critical tool for enhancing our Nation's treasured landscapes.

BACKGROUND

Congress enacted the FLTFA in July of 2000 as Title II of Public Law 106-248 (formerly referred to as the "Baca Bill"). FLTFA expired on July 25, 2010. At that time, the balance in the FLTFA account (approximately \$50 million) was transferred to the Land and Water Conservation Fund. FLTFA was reauthorized through July 25, 2011, by the 2010 Supplemental Appropriations Act (P.L. 111-212). Since the one-year extension became law, approximately \$3 million from the sale of 800 acres of public lands has been deposited into the FLTFA account.

Under the FLTFA, the Bureau of Land Management (BLM) may sell public lands identified for disposal through

the land use planning process prior to July 2000, and retain the proceeds from those sales in a special account in the Treasury. The BLM may then use those funds to acquire, from willing sellers, inholdings within certain Federally designated areas and lands that are adjacent to those areas that contain exceptional resources. Lands may be acquired within and/or adjacent to areas managed by the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), and the BLM. To date, approximately 26,600 acres have been sold under this authority and approximately 18,000 acres of high resource value lands have been acquired.

The 2012 Budget includes a proposal to eliminate FLTFA's July 2011 sunset date and allow lands identified as suitable for disposal in recent land use plans to be sold using the FLTFA authority. FLTFA sales revenues would continue to be used to fund the acquisition of environmentally sensitive lands and the administrative costs associated with conducting sales.

The 1976 Federal Land Policy and Management Act (FLPMA) provides clear policy direction to the BLM that public lands should generally be retained in public ownership. However, section 203 of FLPMA allows the BLM to identify lands as potentially available for disposal if they meet one or more of the following criteria:

- Lands consisting of scattered, isolated tracts that are difficult or uneconomic to manage; or
- Lands that were acquired for a specific purpose and are no longer needed for that purpose; or
- Lands that could serve important public objectives, such as community expansion and economic development, which outweigh other public objectives and values that could be served by retaining the land in Federal ownership.

The BLM identifies lands that may be suitable for disposal through its land use planning process, which involves full public participation. Before the BLM can sell, exchange, or otherwise dispose of these lands, however, it must undertake extensive environmental impact analyses, clearances, surveys, and appraisals for the individual parcels.

Before the enactment of the FLTFA, the BLM had the authority under FLPMA to sell lands identified for disposal. The proceeds from those sales were deposited into the General Fund of the Treasury. However, because of the costs associated with those sales (including environmental and cultural clearances, appraisals, and surveys), few sales were undertaken. Rather, the BLM relied largely on land exchanges to adjust land tenure. This can often be a less efficient process.

Once the FLTFA was enacted, the BLM developed guidance, processes, and tools to complete the FLTFA land sales. Working cooperatively, the BLM, NPS, FWS, and FS then developed guidance, processes, and tools for subsequent FLTFA land acquisitions. The BLM markedly in-

creased sales under the program over the last few years. Recent market conditions, however, have led to less robust sales than earlier in the life of the program.

Since it was enacted, the BLM utilized FLTFA to sell 327 parcels previously identified for disposal totaling 26,437 acres, with a total value of approximately \$116.3 million. Over the same time period, the Federal government acquired 36 parcels totaling 18,135 acres, with a total value of approximately \$49.2 million using FLTFA authority.

Some lands identified for disposal and sold through the FLTFA process are high-value lands in the urban interface. For example, in 2007 the BLM in Arizona sold at auction a 282-acre parcel in the suburban Phoenix area for \$7 million. However, many of the lands the BLM identified for disposal prior to July 2000 that are eligible under FLTFA are isolated or scattered parcels in remote areas with relatively low value. Frequently, there is limited interest in acquiring these lands, and the costs of preparing them for sale may exceed their market value.

Since the inception of the FLTFA, the BLM has deposited \$111.7 million into the Federal Land Disposal Account. That figure represents 96% of the total revenues from these sales. Approximately \$4.6 million has been transferred to the states in which the sales originated, as provided for in individual Statehood Acts (typically 4% of the sale price).

Using the FLTFA proceeds, the BLM, NPS, FWS, and FS have acquired significant inholdings and adjacent lands from willing sellers, consistent with the provisions of the Act. For example, in November 2009 the BLM used FLTFA funds to complete the acquisition of 4,573 acres within the BLM's Canyons of the Ancients National Monument in southwest Colorado. These inholdings encompass 25 documented cultural sites, and archaeologists expect to record an additional 700 significant finds. The acquisition also included two particularly important areas: "Jackson's Castle," which is archaeologically significant; and the "Skywatcher Site," a one-of-a-kind, 1,000-year-old solstice marker. The following are a few additional examples of important FLTFA acquisitions:

- *Elk Springs Area of Critical Environmental Concern (ACEC), New Mexico/BLM*—This 2,280-acre acquisition protects critical elk wintering habitat.
- *Hells Canyon Wilderness, Arizona/BLM*—A 640-acre parcel constituting the last inholding within the Hells Canyon Wilderness, located just 25 miles northwest of Phoenix.
- *Grand Teton National Park, Wyoming/NPS*—This small (1.38 acres), but critical inholding within the Park was acquired and protected from development.
- *Zion National Park, Utah/NPS*—A combination of FLTFA and Land and Water Conservation Fund monies were used to acquire two 5-acre inholdings that overlook

some of the Park's outstanding geologic formations. These areas were previously targeted for development.

- *Nestucca Bay National Wildlife Refuge, Oregon/FWS*—This 92-acre dairy farm on the outskirts of Pacific City, Oregon, was slated for residential development and was acquired to protect a significant portion of the world's population of the Semidi Islands Aleutian Cackling Goose.

- *Six Rivers National Forest, California/FS*—Over 4,400 acres were acquired within the Goose Creek National Wild and Scenic River corridor, preserving 4 miles of the river known for dense stands of Douglas fir, redwoods, and Port Orford cedar.

S. 714

S. 714 would both extend and enhance the original FLTFA through four major changes.

First, the bill extends the program for 10 years to July 2021. This change would enable the BLM to plan for and implement this program on a long-term basis.

Second, under the original FLTFA, only lands identified for disposal prior to July 25, 2000, were eligible to be sold. S. 714 modifies that restriction by allowing any lands identified for disposal through the BLM's land use planning process by the date of enactment of S. 714 to be sold through the FLTFA process. The Department supports this change, which recognizes the usefulness and importance of the BLM's land use planning process. However, we would recommend eliminating this restriction rather than simply moving the date forward.

The BLM currently oversees the public lands through 159 Resource Management Plans (RMPs). Since 2000, the BLM has completed 75 RMP revisions and major plan amendments. Additionally, the BLM is currently involved in planning efforts on 45 new RMPs, all of which the agency expects to complete within the next three to four years. Planning updates are an ongoing part of the BLM's mandate under FLPMA. In this process, the BLM often makes incremental modifications to the plans, and identifies lands that may be suitable for disposal. All of these planning modifications or revisions are made in compliance with the National Environmental Policy Act, and are undertaken through a process that invites full public participation. If the enactment date is again utilized as the cut-off date, the BLM may, in a few years, face the same challenges it does with the program today. Many of the high-valued lands have been sold and the remaining eligible lands are isolated or scattered parcels in remote areas with relatively low value. Eliminating the restriction to provide more flexibility on the lands eligible for FLTFA will allow the BLM to maintain a more consistent program over time.

Third, the original FLTFA allows acquisitions of in-holdings within, or special lands adjacent to Federal units only if those units existed prior to July 25, 2000. S. 714 eliminates this limitation as well, and we support this

change. In March of 2009, President Obama signed the Omnibus Public Land Management Act of 2009 (Public Law 111–11) into law, which designates or expands numerous wilderness areas, wild and scenic rivers, national park units, and other units of the BLM’s National Landscape Conservation System. S. 714 will allow the use of FLTFA funds to acquire inholdings within these areas and areas designated by other legislation enacted after July 2000.

Finally, S. 714 adds exceptions to the FLTFA in recognition of specific laws that modify the FLTFA with respect to some particular locations. The FLTFA does not apply to lands available for sale under the Santini-Burton Act (P.L. 96–586) and the Southern Nevada Public Land Management Act (P.L. 105–263). S. 714 additionally exempts lands included in the White Pine County Conservation, Recreation, and Development Act (P.L. 109–432) and the Lincoln County Conservation, Recreation and Development Act (P.L. 108–424). Finally, a number of provisions of the Omnibus Public Land Management Act of 2009 (P.L. 111–11) modify FLTFA at specific sites or for specific purposes. These exceptions are also captured by S. 714.

CONCLUSION

Thank you for the opportunity to testify in strong support of S. 714, the Federal Land Transaction Facilitation Act Reauthorization of 2011. By extending the FLTFA, the Congress will allow the BLM to continue a rational process of land disposal that is anchored in public participation and sound land use planning, while providing for land acquisitions to augment and strengthen our Nation’s treasured landscapes.

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 bill S. 714, as ordered 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):

VALLES CALDERA PRESERVATION ACT; FEDERAL LAND TRANSACTION FACILITATION ACT

(Public Law 106–248; Approved July 25, 2000)

AN ACT To authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

TITLE II—FEDERAL LAND TRANSACTION FACILITATION

* * * * *

SEC. 203. DEFINITIONS.

In this title:

(1) **EXCEPTIONAL RESOURCE.**—The term “exceptional resource” means a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

(2) **FEDERALLY DESIGNATED AREA.**—The term “federally designated area” means land in Alaska and the eleven contiguous Western States (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(o)) that [on the date of enactment of this Act was] *is* within the boundary of—

* * * * *

SEC. 205. DISPOSAL OF PUBLIC LAND.

(a) **IN GENERAL.**—The Secretary shall establish a program, using funds made available under section 206, to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans (as in effect on the date of enactment of [this Act] *the Federal Land Transaction Facilitation Act Reauthorization of 2009*) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

* * * * *

(d) **TERMINATION OF AUTHORITY.**—The authority provided under this section shall terminate [10] 20 years after the date of enactment of this Act.

SEC. 206. FEDERAL LAND DISPOSAL ACCOUNT.

* * * * *

[(f) **TERMINATION.**—On termination of activities under section 205—

[(1) the Federal Land Disposal Account shall be terminated; and

[(2) any remaining balance in the account shall become available for appropriation under section 3 of the Land and Water Conservation Fund Act (16 U.S.C. 4601–6).]

SEC. 207. SPECIAL PROVISIONS.

(a) **IN GENERAL.**—Nothing in this title provides an exemption from any limitation on the acquisition of land or interest in land under any Federal law in effect on the date of enactment of this Act.

(b) **OTHER LAW.**—This title shall not apply to land eligible for sale under—

(1) Public Law [96–568] *96–586* (commonly known as the “Santini-Burton Act”) (94 Stat. 3381)[; or];

(2) the Southern Nevada Public Land Management Act of 1998 (*Public Law 105–263*; 112 Stat. 2343)[.];

(3) *the White Pine County Conservation, Recreation, and Development Act of 200 (Public Law 109-432; 120 Stat. 3028);*

(4) *the Lincoln County Conservation, Recreation, and Development Act of 2004 (Public Law 108-424; 118 Stat. 2403);*

(5) *subtitle F of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1132 note; Public Law 111-11);*

(6) *subtitle O of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www note, 1132 note; Public Law 111-11);*

(7) *section 2601 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1108); or*

(8) *section 2606 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1121).*

* * * * *

