

## Calendar No. 403

104TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 104-268

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### ARKANSAS-OKLAHOMA LAND EXCHANGE ACT OF 1996

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MAY 13, 1996.—Ordered to be printed

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

### REPORT

[To accompany S. 1025]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1025) to provide for the exchange of certain federally-owned lands and mineral interests therein, 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:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that:

(1) the Weyerhaeuser Company has offered to the United States Government an exchange of lands under which Weyerhaeuser would receive approximately 48,000 acres of Federal land in Arkansas and Oklahoma and all mineral interests and oil and gas interests pertaining to these exchanged lands in which the United States Government has an interest in return for conveying to the United States lands owned by Weyerhaeuser consisting of approximately 181,000 acres of forested wetlands and other forest land of public interest in Arkansas and Oklahoma and all mineral interests and all oil and gas interests pertaining to 48,000 acres of these 181,000 acres of exchanged lands in which Weyerhaeuser has an interest, consisting of:

(A) certain lands in Arkansas (Arkansas Ouachita lands) located near Poteau Mountain, Caney Creek Wilderness, Lake Ouachita, Little Missouri Wild and Scenic River, Flatside Wilderness, and the Ouachita National Forest;

(B) certain lands in Oklahoma (Oklahoma lands) located near the McCurtain County Wilderness, the Broken Bow Reservoir, and Glover River, and the Ouachita National Forest; and

(C) certain lands in Arkansas (Arkansas Cossatot lands) located on the Little and Cossatot Rivers and identified as the “Pond Creek Bottoms” in the Lower Mississippi River Delta section of the North American Waterfowl Management Plan;

(2) acquisition of the Arkansas Cossatot lands by the United States will remove the lands in the heart of a critical wetland ecosystem from sustained timber production and other development;

(3) the acquisition of the Arkansas Ouachita lands and the Oklahoma lands by the United States for administration by the Forest Service will provide an opportunity for enhancement of ecosystem management of the National Forest System lands and resources;

(4) the Arkansas Ouachita lands and the Oklahoma lands have outstanding wildlife habitat and important recreational values and should continue to be made available for activities such as public hunting, fishing, trapping, nature observation, enjoyment, education, and timber management whenever these activities are consistent with applicable Federal laws and land and resource management plans; these lands, especially in the riparian zones, also harbor endangered, threatened, and sensitive plants and animals and the conservation of these areas are important to the recreational and educational public uses and will represent a valuable ecological resource which should be conserved;

(5) the private use of the lands the United States will convey to Weyerhaeuser will not conflict with established management objectives on adjacent Federal lands;

(6) the lands the United States will convey to Weyerhaeuser as part of the exchange described in paragraph (1) do not contain comparable fish, wildlife, or wetland values;

(7) the values of all lands, mineral interests, and oil and gas interests to be exchanged between the United States and Weyerhaeuser are approximately equal in value; and

(8) the exchange of lands, mineral interests, and oil and gas interest between Weyerhaeuser and the United States is in the public interest.

(b) PURPOSE.—The purpose of this Act is to authorize and direct the Secretary of the Interior and the Secretary of Agriculture, subject to the terms of this Act, to complete, as expeditiously as possible, an exchange of lands, mineral interests, and oil and gas interests with Weyerhaeuser that will provide environmental, land management, recreational, and economic benefits to the States of Arkansas and Oklahoma and to the United States.

#### SEC. 2. DEFINITIONS.

As used in this Act:

(a) LAND.—The terms “land” or “lands” mean the surface estate and any other interests therein except for mineral interests and oil and gas interests.

(b) MINERAL INTERESTS.—The term “mineral interests” means geothermal steam and heat and all metals, ores, and minerals of any nature whatsoever, except oil and gas interests, in or upon lands subject to this Act including, but not limited to, coal, lignite, peat, rock, sand, gravel, and quartz.

(c) OIL AND GAS INTERESTS.—The term “oil and gas interests” means all oil and gas of any nature, including carbon dioxide, helium, and gas taken from coal seams (collectively “oil and gas”).

(d) SECRETARIES.—The term “Secretaries” means the Secretary of the Interior and the Secretary of Agriculture.

(e) WEYERHAEUSER.—The term “Weyerhaeuser” means Weyerhaeuser Company, a company incorporated in the State of Washington.

#### SEC. 3. EXCHANGE.

(a) EXCHANGE OF LANDS AND MINERAL INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (a)(2) and notwithstanding any other provision of law, within 90 days after the date of the enactment of this Act, the Secretaries shall convey to Weyerhaeuser, subject to any valid existing rights, approximately 20,000 acres of Federal lands and mineral interests in the State of Arkansas and approximately 28,000 acres of Federal lands and mineral interests in the State of Oklahoma as depicted on maps entitled “Arkansas-Oklahoma Land Exchange—Federal Arkansas and Oklahoma Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries.

(2) OFFER AND ACCEPTANCE OF LANDS.—The Secretary of Agriculture shall make the conveyance to Weyerhaeuser if Weyerhaeuser conveys deeds of title to the United States, subject to limitations and the reservation described in subsection (b) and which are acceptable to and approved by the Secretary of Agriculture to the following:

(A) approximately 120,000 acres of lands and mineral interests in the State of Oklahoma, as depicted on a map entitled “Arkansas-Oklahoma

Land Exchange—Weyerhaeuser Oklahoma Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries;

(B) approximately 41,000 acres of lands and mineral interests in the State of Arkansas, as depicted on a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Ouachita Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries; and

(C) approximately 25,000 acres of lands and mineral interests in the State of Arkansas, as depicted on a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Cossatot Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries.

(b) EXCHANGE OF OIL AND GAS INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (b)(2) and notwithstanding any other provision of law, at the same time as the exchange for land and mineral interests is carried out pursuant to this section, the Secretary of Agriculture shall exchange all Federal oil and gas interests, including existing leases and other agreements, in the lands described in paragraph (a)(1) for equivalent oil and gas interests, including existing leases and other agreements, owned by Weyerhaeuser in the lands described in paragraph (a)(2).

(2) RESERVATION.—In addition to the exchange of oil and gas interests pursuant to paragraph (b)(1), Weyerhaeuser shall reserve oil and gas interests in and under the lands depicted for reservation upon a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oil and Gas Interest Reservation Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries. Such reservation shall be subject to the provisions of this Act and the form of such reservation shall comply with the jointly agreed to Memorandum of Understanding between the Forest Service and Weyerhaeuser dated March 27, 1996 and on file with the Office of the Chief of the Forest Service in Washington, D.C.

(c) GENERAL PROVISIONS.—

(1) MAPS CONTROLLING.—The acreage cited in this Act is approximate. In the case of a discrepancy between the description of lands, mineral interests, or oil and gas interests to be exchanged pursuant to subsection (a) and (b) and the lands, mineral interests, or oil and gas interests depicted on a map referred to in such subsection, the map shall control. Subject to the notification required by paragraph (3), the maps referenced in this Act shall be subject to such minor corrections as may be agreed upon by the Secretaries and Weyerhaeuser.

(2) FINAL MAPS.—Not later than 180 days after the conclusion of the exchange required by subsections (a) and (b), the Secretaries shall transmit maps accurately depicting the lands and mineral interests conveyed and transferred pursuant to this Act and the acreage and boundary descriptions of such lands and mineral interests to the Committees on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(3) CANCELLATION.—If, before the exchange has been carried out pursuant to subsections (a) and (b), Weyerhaeuser provides written notification to the Secretaries that Weyerhaeuser no longer intends to complete the exchange, with respect to the lands, mineral interests, and oil and gas interests that would otherwise be subject to the exchange, the status of such lands, mineral interests, and oil and gas interests shall revert to the status of such lands, mineral interests, and oil and gas interests as of the day before the date of enactment of this Act and shall be managed in accordance with applicable law and management plans.

(4) WITHDRAWAL.—Subject to valid existing rights, the lands and interests therein depicted for conveyance to Weyerhaeuser on the maps referenced in subsection (a) and (b) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws) and from the operation of mineral leasing and geothermal steam leasing laws effective upon the date of the enactment of this Act. Such withdrawal shall terminate 45 days after completion of the exchange provided for in subsections (a) and (b) or on the date of notification by Weyerhaeuser of a decision not to complete the exchange.

**SEC. 4. DESIGNATION AND USE OF LANDS ACQUIRED BY THE UNITED STATES.**

(a) NATIONAL FOREST SYSTEM.—

(1) ADDITION TO THE SYSTEM.—Upon approval and acceptance of title by the Secretary of Agriculture, the 155,000 acres of land conveyed to the United States pursuant to section 3(a)(2)(A) and (B) of this Act shall be subject to the Act of March 1, 1911 (commonly known as the “Weeks Law”) (36 Stat. 961, as

amended), and shall be administered by the Secretary of Agriculture in accordance with the laws and regulations pertaining to the National Forest System.

(2) **PLAN AMENDMENTS.**—No later than 12 months after the completion of the exchange required by the Act, the Secretary of Agriculture shall begin the process to amend applicable land and resource management plans with public involvement pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1604).

(b) **OTHER.**—

(1) **ADDITION TO THE NATIONAL WILDLIFE REFUGE SYSTEM.**—Once acquired by the United States, the 25,000 acres of land identified in section 3(a)(2)(C), the Arkansas Cossatot lands, shall be managed by the Secretary of the Interior as a component of the Cossatot National Wildlife Refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee).

(2) **PLAN PREPARATION.**—Within 24 months after the completion of the exchange required by this Act, the Secretary of the Interior shall prepare and implement a single refuge management plan for the Cossatot National Wildlife Refuge, as expanded by this Act. Such plan shall recognize the important public purposes served by the nonconsumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, compatible uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws. Any regulations promulgated by the Secretary of the Interior with respect to hunting, fishing, and trapping on those lands shall, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary of the Interior shall consult with the Arkansas Game and Fish Commission.

(3) **INTERIM USE OF LANDS.**—

(A) **IN GENERAL.**—Except as provided in paragraph (2), during the period beginning on the date of the completion of the exchange of lands required by this Act and ending on the first date of the implementation of the plan prepared under paragraph (2), the Secretary of the Interior shall administer all lands added to the Cossatot National Wildlife Refuge pursuant to this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws.

(B) **HUNTING SEASONS.**—During the period described in subparagraph (A), the duration of any hunting season on the lands described in subsection (1) shall comport with the applicable State law.

#### **SEC. 5. OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT.**

(a) **IN GENERAL.**—Upon acceptance of title by the Secretary of Agriculture of the lands conveyed to the United States pursuant to Section 3(a)(2) (A) and (B), the boundaries of the Ouachita National Forest shall be adjusted to encompass those lands conveyed to the United States generally depicted on the appropriate maps referred to in Section 3(a). Nothing in this section shall limit the authority of the Secretary of Agriculture to adjust the boundary pursuant to section 11 of the Weeks Law of March 1, 1911. For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Ouachita National Forest, as adjusted by this Act, shall be considered to be the boundaries of the Forest as of January 1, 1965.

(b) **MAPS AND BOUNDARY DESCRIPTIONS.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall prepare a boundary description of the lands depicted on the map(s) referred to in section 3(a)(2) (A) and (B). Such map(s) and boundary description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture may correct clerical and typographical errors.

#### **PURPOSE OF THE MEASURE**

The purpose of S. 1025 is to authorize and direct the Secretary of the Interior and the Secretary of Agriculture to complete an equal value exchange of approximately 48,000 acres of Federal lands and mineral interests in the States of Arkansas and Oklahoma for approximately 181,000 acres of private lands and mineral

interests owned by Weyerhaeuser Company in the States of Arkansas and Oklahoma.

#### BACKGROUND AND NEED

##### *A. Background*

S. 1025 provides a mechanism to achieve important public and private goals. The proposed exchange presents an opportunity to increase greatly the net value of upland forest, wildlife, riverine, and watershed resources and recreational opportunities on the Ouachita National Forest; secure public ownership with management by the U.S. Fish and Wildlife Service for an extensive area of bottomland hardwood forest in southwestern Arkansas; and consolidate public and private ownership patterns in both Arkansas and Oklahoma.

The lands proposed for the exchange, both coming into public ownership and going from public ownership to private ownership have a higher value for recreational, wildlife, and scenic purposes than for commercial timber production. On the other hand, the lands leaving public ownership are more valuable for commercial timber production. Notwithstanding these differences, the Forest Service has supplied the Committee with an analysis that shows the exchange will not negatively affect the allowable sales quantity of timber from the Ouachita National Forest.

Most of the lands that the Forest Service will transfer to Weyerhaeuser pursuant to the proposed exchange have been scheduled for disposal in Forest Resource Management Plans since the mid-1980s. S. 1025 provides a mechanism for the public to acquire important natural and recreational resources that, in times of tightening agency budgets, could not otherwise be acquired.

##### *B. Equal value exchange*

S. 1025 provides for an equal value exchange of lands, mineral interests, and oil and gas interests. Weyerhaeuser will convey approximately 181,000 acres of lands and mineral interests to the United States. In return, the United States will convey approximately 48,000 acres of lands and mineral interests to Weyerhaeuser. In addition, S. 1025 provides for an exchange of equivalent oil and gas interests between Weyerhaeuser and the United States—i.e., an equal exchange of oil & gas interests pertaining to 48,000 acres. The assets to be exchanged are summarized in the following table:

<b>Weyerhaeuser Company</b>	<b>United States</b>
	115,000 acres of lands and mineral interests in Oklahoma.
	41,000 acres of lands and mineral interests in Arkansas.
	25,000 acres of lands and mineral interests in Arkansas (for wildlife refuge).
20,000 acres of federal lands and mineral interests in Arkansas.	
28,000 acres of federal lands and mineral interests in Oklahoma.	
<b>Equivalent exchange between Weyerhaeuser and the United States of oil &amp; gas interests pertaining to the exchanged lands (<i>i.e.</i>, equal exchange of oil &amp; gas interests pertaining to 48,000 acres).</b>	

The lands that the public would receive would be managed by the Forest Service and the Fish and Wildlife Service. These lands would provide outdoor recreation related opportunities and significant opportunities for wildlife habitat improvements.

In Arkansas, the Fish and Wildlife Service will gain approximately 25,000 acres of lands to add to the Cossatot National Wildlife Refuge. This unique bottomland forest—called Pond Creek—is located in the floodplain between the Cassatot River and the Little River. These lands, which include a large functioning forested wetland with deep swamps and cypress-lined oxbow lakes, are extremely rich and diverse in wetland habitat for wading birds, resident and migratory waterfowl, small mammals, deer, fish, alligators, and other wildlife. In short, this exchange will provide protection for an important wetland habitat for resident wildlife species and migratory waterfowl.

Also in Arkansas, the Forest Service will acquire lands that will complement Lake Ouachita, the Little Missouri Wild and Scenic River, Flatside Wilderness, and parts of the Ouachita National Forest. The exchange also will protect lands adjacent to and through which the Ouachita National Recreation Trail passes. Accordingly, the land exchange will enhance recreational opportunities for hiking, rock climbing, mountain biking, and other activities.

In addition, part of Forked Mountain and several large tracts that surround the mountain will be transferred to the Forest Service, placing this prominent natural feature on the west end of the

Flatside Wilderness Area entirely under Forest Service stewardship. Similarly, several thousand acres within view of or on Lake Ouachita and several of its large tributaries will also come under Forest Service ecosystem management. The land exchange will transfer lands within the Lake Winner watershed—the city of Little Rock’s water supply—to Forest Service management and thereby protect this watershed.

In Oklahoma, the exchange will add more than 100,000 acres to the Ouachita National Forest near Lake Broken Bow. This will provide greater protection for the Broken Bow Lake area ecosystem, McCurtain County Wilderness Area (which is managed by the Oklahoma Department of Wildlife Conservation), Beech and Cucumber Creeks, and the Glover River.

The land exchange also will help block up ownership that currently is intermingled between Weyerhaeuser Company and the Forest Service so that both parties can manage their lands more effectively.

Finally, the Committee received substantial testimony that the exchange will benefit the tourism industry and local rural economies. Their protection could encourage growth in the second largest industry in Arkansas, creating new outdoor recreation and tourism related businesses and employment opportunities in nearby rural areas.

### *C. Ecological assessment*

In late 1995, the Arkansas Nature Conservancy completed a thirteen month independent Ecological Assessment of the Weyerhaeuser lands that will come into public ownership. This scientific assessment, which included field evaluations, concluded that the proposed exchange was environmentally sound and that the exchange would provide valuable environmental benefits to the public:

The Weyerhaeuser Company lands covered by this assessment contain the ecological values found in the Ouachitas; including rugged ridges with diverse plant communities and old forests; clear creeks and rivers that contain an endemic aquatic biota found nowhere else in the world; and habitat for 127 sensitive species of plants and animals. Also included is a large, functioning forested wetland on the Gulf Coastal Plain and its associated ecological values.

The significance of these lands is increased by the size and configuration of the contiguous forested areas and the concentration and patterns of the diversity of life found on them. More important in the long run is that the creation of new land ownership patterns will allow for the conservation and restoration of scale-dependent ecosystem processes and functions such as the large blocks of contiguous forested land needed by neotropical migratory birds; natural hydrologic regimes that continually create and maintain riparian and riverine habitats; and fire of an extent and pattern that imitates natural processes.

See The Nature Conservancy, "Ecological Assessment: Forest Lands In Arkansas and Oklahoma Proposed For Inclusion Into the Ouachita National Forest And Cossatot National Wildlife Refuge," at 1 (Aug. 1995).

In addition, at the request of Senator James Inhofe of Oklahoma and Representative Jay Dickey of Arkansas, an independent panel of forestry experts consisting of professors from Clemson University, Auburn University, and North Carolina State University conducted a review of the proposed exchange. The Independent Review Panel conducted on site visits of the lands proposed for exchange and analyzed the proposed exchange.

The Independent Review Panel unanimously concluded that, based on economic considerations, the proposed exchange is an equal value transaction. The Independent Review Panel also unanimously concluded that, if the other intangible and ecological benefits of the exchange are considered, the proposed exchange is "hugely in favor of the American public."

The exchange of lands includes numerous values and amenities not covered or considered in the market valuation of land and timber. The Panel finds that the exchange furthers the mission of all organizations and agencies involved by transferring to public ownership areas containing unique biotic communities, areas supporting critical or sensitive species, and areas that can, because of consolidated ownership, be managed on a landscape scale basis. Recreational opportunities will also be enhanced for the future by more acres coming to government ownership than are leaving it.

Considering the nature of the respective properties and the 3.8-to-1 acreage exchange ratio in favor of the Forest Service, the Panel believes that the balance of intangible benefits the proposed "value-for-value" exchange is hugely in favor of the American public.

See Edwin J. Jones, Charles F. Raper, & William A. Shain, "Proposed Weyerhaeuser Company, USDA Forest Service, USDI Fish and Wildlife Service, Two-State Land Exchange: A Report From the Independent Reviews Panel" at 1 (executive summary) (November 19, 1995).

The Ouachita National Forest are prepared a review of the proposed land exchange (See Ouachita National Forest, "Proposed Land Exchange Between USDA Forest Service and USDI Fish and Wildlife Service and Weyerhaeuser Company in Arkansas and Oklahoma" (August 1995)). The Ouachita National Forest's analysis, which was made available for public review and comment, provided a detailed consideration and examination of various environmental, economic, and social factors pertaining to the proposed exchange.

The Ouachita National Forest's analysis concluded that the proposed exchange would achieve several public purposes, including, among other benefits: (1) protecting a significant area of bottomland hardwood forests and wetlands; (2) securing additional protection for water quality and scenic quality; (3) enhancing tourism and recreation related economic opportunities; (4) complementing and

enhancing the values of McCurtain County Wilderness Area, Broken Bow Lake, Hochatown State Park, and Beavers Bend State Park; (5) reducing fragmented National Forests (and watershed) patterns and associated management conflicts resulting in significant cost savings for the public; and (6) securing additional protection for numerous sensitive, threatened, and endangered species as well as increasing chances for long-term reduction of threats to such species.

Finally, there has been an additional opportunity for public reviews and comment. Pursuant to the Endangered Species Act, Weyerhaeuser has applied for an incidental take permit from the Fish and Wildlife Service. The permit would authorize the take of the American Burying Beetle (*Nicrophorus americanus*) in Little River County, Arkansas, and McCurtain County, Oklahoma, resulting from normal forestry and other operational and management practices performed on Weyerhaeuser's lands. Weyerhaeuser has prepared and, under the terms of the Endangered Species Act, made available for public review and comment, a habitat conservation plan (HCP) for the American Burying Beetle. In addition, the Fish and Wildlife Service has prepared and made available for public review and comment an environmental assessment (See 60 Federal Register 63,054 (Dec. 8, 1995)).

*D. S. 1025 is widely supported*

Over the past year, there have been opportunities for public comment on the reports pertaining to the proposed exchange as well as in the hearings conducted on S. 1025 and all concerns have had an opportunity to be heard. The Committee has received statements of support from, among others, the Forest Service, the Fish and Wildlife Service, and the States of Arkansas and Oklahoma, the National Wildlife Federation, the Arkansas Nature Conservancy, the Oklahoma Wildlife Federation, and the International Association of Machinists and Aerospace Workers.

LEGISLATIVE HISTORY

S. 1025, the Arkansas-Oklahoma Land Exchange Act, was introduced by Senator Bumpers on July 12, 1995. Senators Nickles, Pryor, and Inhofe joined Senator Bumpers as cosponsors.

The Subcommittee on Forests and Public Land Management held a field hearing on February 15, 1996, in Hot Springs, Arkansas.

At the business meeting on April 24, 1996, the Committee on Energy and Natural Resources ordered S. 1025, favorably reported as amended.

Representative Brewster introduced H.R. 3088, a companion measure to S. 1025, on March 14, 1996. Representatives Dickey and Hutchinson joined Representative Brewster as cosponsors. H.R. 3088 was referred jointly to the House Agriculture Committee and the House Resources Committee.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on April 24, 1996, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1025, if amended as described herein.

The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS—20	NAYS—0
Mr. Murkowski	
Mr. Hatfield <sup>1</sup>	
Mr. Domenici <sup>1</sup>	
Mr. Nickles	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl <sup>1</sup>	
Mr. Grams	
Mr. Jeffords <sup>1</sup>	
Mr. Burns <sup>1</sup>	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford <sup>1</sup>	
Mr. Bradley	
Mr. Bingaman	
Mr. Akaka	
Mr. Wellstone	
Mr. Heflin <sup>1</sup>	
Mr. Dorgan <sup>1</sup>	

<sup>1</sup> Indicates voted by proxy.

#### COMMITTEE AMENDMENTS

During consideration of S. 1025, the Committee on Energy and Natural Resources adopted an amendment in the nature of a substitute. In addition to several technical, clarifying, and conforming changes to S. 1025, the substitute amendment makes two substantive changes. First, the acreage transferred to the federal government was increased to ensure that the exchange would be one of equal value. Second, in light of a Memorandum of Understanding entered into between the United States Forest Service and Weyerhaeuser Company (attached to this Report as Appendix A) regarding disposition of oil and gas interests pertaining to the exchanged lands, the substitute amendment deletes language regarding oil and gas interests that was in S. 1025 as introduced.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Findings and purpose*

Section 1(a) sets forth eight findings.

Section 1(b) states the purpose of the bill, which is to authorize and direct the Secretary of the Interior and the Secretary of Agriculture to complete, as expeditiously as possible, an exchange of lands, mineral interests, and oil and gas interests that will provide environmental, land management, recreational, and economic benefit Arkansas and Oklahoma and the Nation.

##### *Section 2. Definitions*

Section 2 defines the following terms used in the bill: land, mineral interests, oil and gas interests, Secretaries, and Weyerhaeuser.

*Section 3. Exchange*

Section 3(a)(1) provides that, subject to Section 3(a)(3) and notwithstanding any other provision of law, within 90 days after the date of the enactment of this Act, the Secretaries shall convey to Weyerhaeuser, subject to any valid existing rights, approximately 20,000 acres of Federal lands and mineral interest in Arkansas and approximately 28,000 acres of Federal lands and mineral interest in Oklahoma as depicted on maps entitled “Arkansas-Oklahoma Land Exchange—Federal Arkansas and Oklahoma Lands,” dated February 1996 and available for public inspection in appropriation offices of the Secretaries.

Section 3(a)(2) provides that the Secretary of Agriculture shall make the conveyance of lands and mineral interests referenced in section 3(a)(1) to Weyerhaeuser if Weyerhaeuser conveys deeds of title to the United States subject to limitations and the reservation described in subsection (b) and which are acceptable to and approved by the Secretary of Agriculture to: (A) approximately 120,000 acres of lands and mineral interests in the State of Oklahoma, as depicted on a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oklahoma Lands,” dated February 1996; (B) approximately 41,000 acres of lands and mineral interests in the State of Arkansas, as depicted on a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Ouachita Lands,” dated February 1996; and (C) approximately 25,000 acres of lands and mineral interests in the State of Arkansas, as depicted on a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Cossatot Lands,” dated February 1996. All of the maps are available for public inspection in appropriation office of the Secretaries. It is the view of the Committee that the studies and analyses completed earlier (discussed in some detail in the “Background and Need” section of this report) provide sufficient information to meet the objectives of the National Environmental Policy Act with regard to the possible environmental impacts and effects.

Section 3(b)(1) provides that, subject to section 3(b)(2) and notwithstanding any other provision of law, at the same time as the exchange for land and mineral interests is carried out pursuant to section 3, the Secretary of Agriculture shall exchange all Federal oil and gas interests, including existing leases and other agreements, in the lands described in section 3(a)(1) for equivalent oil and gas interests, including existing leases and other agreements, owned by Weyerhaeuser in the lands described in section 3(a)(2).

Section 3(b)(2) provides that, in addition to the exchange of oil and gas interests pursuant to section 3(b)(1), Weyerhaeuser shall reserve oil and gas interests in and under the lands depicted for reservation upon a map entitled “Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oil and Gas Interest Reservation Lands,” dated February 1996 and available for public inspection in appropriate offices of the Secretaries. Such reservation shall be subject to the provisions of this Act and the form of such reservation shall comply with the jointly agreed to Memorandum of Understanding between the Forest Service and Weyerhaeuser dated March 27, 1996 and on file with the Office of the Chief of the Forest Service in Washington, D.C. (attached as Appendix A).

Under this provision, and in accordance with the Memorandum of Understanding, Weyerhaeuser will retain a term reservation for oil and gas interests on a portion of its lands that are being transferred to the United States together with the right, subject to federal regulations promulgated by the Secretary of Agriculture, to enter upon these lands to remove oil and gas until December 31, 2041, and for so long thereafter that oil and gas is produced or capable of being produced in paying quantities therefrom. The United States will have the right to verify production capability. After December 31, 2041, the term reservation will expire as to all sections of the lands except those sections on which there is oil and gas production or drilling. The term reservation may be extended if there is an approved delay of more than 135 days or if an act of God causes a suspension for more than 30 days. Beginning January 1, 2042, Weyerhaeuser will retain a proportionately reduced 6.25% overriding royalty interest in any oil and gas produced from wells within any governmental section adjacent to or cornering a section in which oil and gas is being produced at the expiration of the term reservation. The overriding royalty will continue until either the producing well ceases production or until all federally leased wells to which the overriding royalty applies cease production, whichever is later.

Section 3(c)(1) provides that any conflict between acreage figures cited and the map(s) referenced shall be resolved in favor of the maps.

Section 3(c)(2) contains standard language with regard to filing of maps.

Section 3(c)(3) provides that prior to implementation of the exchange, if Weyerhaeuser notifies the Secretaries in writing that it no longer intends to complete the exchange, the lands, mineral interests, and oil and gas interests that would otherwise be subject to the exchange shall revert to their status as of the day before enactment of this measure and be managed in accordance with applicable management plans.

Section 3(c)(4) provides that, subject to valid existing rights, the lands depicted for conveyance to Weyerhaeuser (i.e., the Federal Arkansas and Oklahoma lands) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws) and from the operation of mineral leasing and geothermal steam leasing laws effective upon the date of the enactment of this measure. Such withdrawal shall terminate 45 days after completion of the exchange provided for in sections 3 (a) and (b) or on the date of notification by Weyerhaeuser of a decision not to complete the exchange.

#### *Section 4. Designation and use of lands acquired by the United States*

Section 4(a) provides that the 155,000 acres of lands conveyed to the United States by section 3(a)(2) (A) and (B) (i.e., the Arkansas Ouachita lands and the Oklahoma lands) will be subject to the Weeks Law and that the Secretary of Agriculture will administer these lands in accordance with the laws and regulations pertaining to the National Forest System.

Section 4(a)(2) provides that no later than twelve months after completion of the exchange, the Secretary of Agriculture shall begin a public process to amend applicable land and resource management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

Section 4(b)(1) provides that the Secretary of the Interior will add the 25,000 acres of land to be conveyed to the United States pursuant to section 3(a)(2)(C) (i.e., the Arkansas Cossatot lands) to the Cossatot National Wildlife Refuge and that the Secretary will manage the lands in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966.

Section 4(b)(2) provides that, within 24 months after the completion of the exchange, the Secretary of the Interior shall prepare and implement a single refuge management plan for the Cossatot National Wildlife Refuge, as expanded by this exchange. Such plan shall recognize the important public purposes served by the non-consumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, compatible uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 and other applicable laws. Any regulations promulgated by the Secretary of the Interior with respect to hunting, fishing, and trapping on those lands shall, to the extent practicable, be consistent with state fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary of the Interior shall consult with the Arkansas Game and Fish Commission.

Section 4(b)(3) provides that, prior to the implementation of the management plan, the duration of any hunting season on the lands added to the Cossatot Wildlife Refuge shall comport with state law. In all other respects, administration of the lands shall be in accordance with the National Wildlife Refuge System Administration Act of 1966 and other applicable laws.

#### *Section 5. Ouachita National Forest boundary adjustment*

Section 5 expands the boundaries of the Ouachita National Forest to encompass the lands conveyed to the United States for management by the Forest Service (i.e., the Arkansas Ouachita lands and the Oklahoma lands) and requires the Secretary of Agriculture to prepare a boundary description for such lands.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 10, 1996.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1025, a bill to provide for the exchange of certain federally owned lands and mineral interests therein, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on April 24, 1996. CBO estimates that enacting S. 1025 would increase discretionary outlays by less than \$100,000 a year, assuming appropriations of the necessary amounts. S. 1025 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply to the bill.

S. 1025 would direct the Secretary of Agriculture to convey to Weyerhaeuser Company, subject to any valid existing rights, about 48,000 acres of federal land and mineral interests in Arkansas and Oklahoma, in exchange for acquiring about 180,000 acres of land currently owned by Weyerhaeuser.

The bill provides that 155,000 acres of the land acquired from Weyerhaeuser would be administered by the Secretary of Agriculture as part of the Ouachita National Forest. Based on information from the U.S. Forest Service, we estimate that implementing this provision could increase administrative costs, but that any such costs would be negligible.

The bill provides that 25,000 acres of Arkansas Cossatot lands acquired from Weyerhaeuser would be managed by the U.S. Fish and Wildlife Service (USFWS) as part of the Cossatot National Wildlife Refuge. The USFWS would prepare a refuge management plan for the newly expanded refuge within two years of the exchange. Based on information provided by the agency, we estimate that the federal government would spend less than \$100,000 over the next two years to complete the required management plan and to carry out acquisition-related activities such as mapping. In addition, once the exchange is completed, the agency would spend about \$100,000 annually for ongoing expenses such as payments to local governments under the Refuge Revenue Sharing Act. For purposes of this estimate we assume that the entire amounts needed for upfront costs and annual expenses would be appropriated as needed.

S. 1025 contains no new private sector or intergovernmental mandates as defined in Public Law 104-4 and would impose no direct costs on state, local, or tribal governments.

If you wish further details on this estimates, we would be pleased to provide them. The CBO staff contacts for federal costs are Victoria V. Heid and Deborah Reis, and for the state and local impact, Majorie Miller.

Sincerely,

JUNE E. O'NEILL, *Director.*

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 our S. 1025. 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. 1025 as ordered reported.

#### EXECUTIVE COMMUNICATIONS

The Committee requested on February 15 legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth agency recommendations on S. 1025. The report of the Department of Agriculture follows:

DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY,  
*Washington, DC April 23, 1996.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 1025, a bill "to provide for the exchange of certain Federally owned lands and mineral interests therein, and for other purposes."

The Department of Agriculture (USDA) recommended that S. 1025 be enacted if amended as suggested herein. We have enclosed a version of S. 1025 that contains USDA's proposed amendments.

The purpose of this bill is to authorize and direct the Secretary of Agriculture and the Secretary of the Interior to enter into an exchange of lands, mineral interests, and oil and gas interests in Weyerhaeuser Company to provide environmental, land management, recreational, and economic benefits to the States of Arkansas and Oklahoma and to the United States.

USDA recognizes that land exchanges are an effective means of consolidating ownership patterns and improving management efficiency. Because existing authority does not provide for an administration exchange of land across State boundaries, legislation is necessary. The approximately equal value exchange authorized and directed by S. 1025 is in the public interest and is supported by USDA. This legislative exchange would consolidate land ownership holdings and bring additional acreage into both the National Forest System and the National Wildlife Refuge System.

Some technical amendments to the bill are needed to reflect the value of the lands to be exchanged, to correct the acreage of the particular tracts of land and related interests to be conveyed, and to clarify the bill's intent and the authorities of the Secretary over the lands to be acquired.

We also recommend amending section 3(b) of the bill relating to exchange of oil and gas interests. Since introduction of the bill, the Forest Service and Weyerhaeuser Company have entered into a memorandum, of understanding (MOU) that will govern the terms of the oil and gas reservation. Our proposed amendments reflect this MOU.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAN CLICKMAN, *Secretary*.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rule of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 1025 as reported.

# APPENDIX A

## MEMORANDUM OF UNDERSTANDING

### § I. Introduction

As part of the land exchange between the United States and Weyerhaeuser Company under consideration by the United States Congress, the United States Forest Service and Weyerhaeuser Company agree that Weyerhaeuser Company will reserve certain oil and gas interests. Such oil and gas interests shall be reserved through an Oil & Gas Interest Deed Reservation in the deeds pertaining to those lands for which such interests are reserved. The terms of the Oil & Gas Interest Deed Reservation are set forth below in Section II.

### § II. Form of oil & gas interest deed reservation

The following shall be used as the oil and gas interest deed reservation:

#### OIL & GAS INTEREST DEED RESERVATION

Weyerhaeuser Company (“Grantor”) reserves for itself, its successors and assigns, all oil and gas, including carbon dioxide, helium, and gas taken from coal seams (“oil or gas”), in and under the above-described property (“property”) until December 31, 2041 and for so long thereafter that oil or gas is produced from the property (“term reservation”), together with the right to (1) enter upon the property for the purpose of exploring, prospecting, drilling, producing, transporting, treating, owning and removing oil or gas, and (2) occupy and make use of as much of the surface as is reasonably necessary for such purposes, subject to the regulations of the Secretary of Agriculture set forth in 36 C.F.R. § 251.15, attached hereto and made a part hereof. Commencing January 1, 2042, Grantor reserves for itself, its successors and assigns, a proportionately reduced 6.25 percent of 8/8’s overriding royalty interest in all oil and gas produced from any well in any governmental section (“section”) adjacent to or cornering a section in which oil and gas is being produced from the property at the expiration of the term reservation (“overriding royalty”). Such overriding royalty shall be payable to Grantor under the same terms and conditions provided for in a federal oil and gas lease in effect at the time the production occurs; Provided that, subject to the cessation of operations provision in the following paragraph, the overriding royalty will expire either after the producing well (a well producing on December 31, 2041) ceases production or after all federally leased wells on the adjacent or cornering sections to which the overriding royalty applies cease production, whichever is later.

For the purposes of these reservations, any reference to oil or gas production means a well or wells which are producing or capable of producing oil or gas in paying quantities. The United States has the right to verify the production capability of any well at reasonable intervals to insure it has remained capable of production. After December 31, 2041, the term reservation will expire as to any portion of the property located within a section in which there is no oil or gas production; provided that if on December 31, 2041, a well is being drilled on the property, the term reservation shall remain in effect as to the property in said section containing the drilling well for so long as drilling operations are diligently pursued and for so long thereafter as oil or gas is produced therefrom. If, after December 31, 2041, any producing well ceases to produce, the term reservation will expire as to that portion of the property located within the section containing said well, unless within one hundred and eighty (180) days from the date said production ceased, operations are commenced for the drilling of a new well or wells or reworking of an existing well, in which case the term reservation shall remain in effect for so long as drilling or reworking operations are diligently pursued and for so long thereafter as oil or gas is produced therefrom. Also provided that with respect to the aforementioned regulations of the Secretary of Agriculture, in the event that more than one hundred and thirty-five (135) days are required to obtain approval for any proposed operation for the purposes set forth herein, the December 31, 2041 term reservation expiration date shall automatically be extended as to any portion of the property located within a section that is within eight (8) miles of the section boundary for which approval for any proposed operation has not been obtained for that amount of time exceeding the one hundred and thirty-five (135) day period. Furthermore, if, despite the exercise of due care and diligence, the operations of Grantor, its successors or assigns are suspended by an Act of God for more than thirty (30) days, the December 31, 2041 term reservation expiration date shall automatically be extended as to any portion of the property located within a section that is within eight (8) miles of the section boundary on which Grantor's operations have been suspended for that amount of time exceeding the thirty (30) day period.

Dated this 27 day of March, 1996.

UNITED STATES FOREST SERVICE.  
WEYERHAEUSER COMPANY.

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UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE  
CONDITIONS, RULES AND REGULATIONS TO GOVERN EXERCISE OF  
MINERAL RIGHTS RESERVED IN CONVEYANCES TO THE UNITED STATES  
*Code of Federal Regulations—Title 36, chapter II, section 251.15*

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, in conveyances of lands to the United States under authorized programs of the Forest Service, where owners reserve the right to enter upon the conveyed lands and to prospect for, mine and remove minerals, oil, gas, or other inorganic substances, said

reservations shall be subject to the following conditions, rules and regulations which shall be expressed in and made a part of the deed of conveyance to the United States and such reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights shall give prior written notice to the Forest Service and shall submit satisfactory evidence of authority to exercise such rights. Only so much of the surface of the lands shall be occupied, used, or disturbed as is necessary in bona fide prospecting for, drilling, mining (including the milling or concentration of ores), and removal of the reserved minerals, oil, gas, or other inorganic substances.

(2)(i) None of the lands in which minerals are reserved shall be so used, occupied, or disturbed as to preclude their full use for authorized programs of the Forest Service until the record owner of the reserved rights, or the successors, assigns, or lessees thereof, shall have applied for and received a permit authorizing such use, occupancy, or disturbance of those specifically described parts of the lands as may reasonably be necessary to exercise the reserved rights.

(ii) Said permit shall be issued upon agreement as to conditions necessary to protect the interest of the United States including such conditions deemed necessary to provide for the safety of the public and other users of the land, and upon initial payment of the annual fee, which shall be at the rate of \$2 per acre or fraction of acre included in the permit.

(iii) The permit shall also provide that the record owner of the reserved right or the successors, assigns, or lessees thereof, will repair or replace any improvements damaged or destroyed by the mining operations and restore the land to a condition safe and reasonably serviceable for authorized programs of the Forest Service, and shall provide for a bond in sufficient amount as determined necessary by the Forest Service to guarantee such repair, replacement or restoration.

(iv) Failure to comply with the terms and conditions of the aforesaid permit shall be cause for termination of all rights to use, occupy, or disturb the surface of the lands covered thereby, but in event of such termination a new permit shall be issued upon application when the causes for termination of the preceding permit have been satisfactorily remedied and the United States reimbursed for any resultant damage to it.

(3) All structures, other improvements, and materials shall be removed from the lands within one year after date of termination of the aforementioned permit. Should the holder of the permit fail to do so within the specified time, the Forest Service may remove, destroy or otherwise dispose of said structures, other improvements, and materials at the permittee's expense, or in lieu thereof, may upon written notice to the permittee, assume title thereto in the name of the United States.

(4) Timber and/or young growth cut or destroyed in connection with exercise of the reserved right shall be paid for at rates determined by the Forest Service to be fair and equitable for comparable timber and/or young growth in the locality. All slash resulting from cutting or destruction of timber or young growth shall be disposed of as required by the Forest Service.

(5) In the prospecting for, mining, and removal of reserved minerals, oil, gas, or other inorganic substances all reasonable provisions shall be made for the disposal of tailings, dumpage, and other deleterious materials or substances in such manner as to prevent obstruction, pollution, or deterioration of water resources.

(6) Nothing herein contained shall be construed to exempt operators or the mining operations from any requirements of applicable State laws nor from compliance with or conformity to any requirement of any law which later may be enacted and which otherwise would be applicable.

(7) While any activities and/or operations incident to the exercise of the reserved rights are in progress, the operators, contractors, subcontractors, and any employees thereof shall use due diligence in the prevention and suppression of fires, and shall comply with all rules and regulations applicable to the land.

(b) The conditions, rules and regulations set forth in subparagraphs (1) through (7) of paragraph (a) of this section shall not apply to reservations contained in conveyances of lands to the United States under the Act of March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision thereof, reserves minerals, oil, gas, or other inorganic substances, in the conveyance of land to the United States under authorized programs of the Forest Service and there are provisions in the laws of such State or in conditions, rules and regulations promulgated by such State, agency, or political subdivision thereof, which the Chief, Forest Service, determines are adequate to protect the interest of the United States in the event of the exercise of such reservation, the Chief, Forest Service, is hereby authorized, in his discretion, to subject the exercise of the reservation to such statutory provisions or such conditions, rules and regulations in lieu of the conditions, rules and regulations set forth in subparagraph (1) through (7) of paragraph (a) of this section. In that event, such statutory provisions or such conditions, rules and regulations shall be expressed in and made a part of the deed of conveyance to the United States and the reservation shall be exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to govern the exercise of mineral rights reserved in conveyances of lands to the United States under authorized programs of the Forest Service shall continue to be effective in the cases to which they are applicable, but are hereby superseded as to mineral rights hereafter reserved in conveyances under such programs.