

## Calendar No. 572

105TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 105-329

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### GALLATIN LAND CONSOLIDATION ACT OF 1998

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SEPTEMBER 14, 1998.—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. 1719]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1719) to direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co., having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Gallatin Land Consolidation Act of 1998".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the land north of Yellowstone National Park possesses outstanding natural characteristics and wildlife habitats that make the land a valuable addition to the National Forest System;

(2) it is in the interest of the United States to establish a logical and effective ownership pattern for the Gallatin National Forest, reducing long-term costs for taxpayers and increasing and improving public access to the forest;

(3) it is in the interest of the United States for the Secretary of Agriculture to enter into an Option Agreement for the acquisition of land owned by Big Sky Lumber Co. to accomplish the purposes of this Act;

(4) other private property owners are willing to enter into exchanges that further improve the ownership pattern of the Gallatin National Forest; and

(5) BSL, acting in good faith, has shouldered many aspects of the financial burden of the appraisal and subsequent option and exchange process.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) **BLM LAND.**—The term "BLM land" means approximately 2,000 acres of Bureau of Land Management land (including all appurtenances to the land)

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that is proposed to be acquired by BSL, as depicted in Exhibit B to the Option Agreement.

(2) BSL.—The term “BSL” means Big Sky Lumber Co., an Oregon joint venture, and its successors and assigns, and any other entities having a property interest in the BSL land.

(3) BSL LAND.—The term “BSL land” means approximately 54,000 acres of land (including all appurtenances to the land except as provided in section 4(e)(1)(D)(i)) owned by BSL that is proposed to be acquired by the Secretary of Agriculture, as depicted in Exhibit A to the Option Agreement.

(4) EASTSIDE NATIONAL FORESTS.—The term “Eastside National Forests” means national forests east of the Continental Divide in the State of Montana, including the Beaver Head National Forest, Deer Lodge National Forest, Helena National Forest, Custer National Forest, and Lewis and Clark National Forest.

(5) NATIONAL FOREST SYSTEM LAND.—The term “National Forest System land” means approximately 29,000 acres of land (including all appurtenances to the land) owned by the United States in the Gallatin National Forest, Flathead National Forest, Deer Lodge National Forest, Helena National Forest, Lolo National Forest, and Lewis and Clark National Forest that is proposed to be acquired by BSL, as depicted in Exhibit B to the Option Agreement.

(6) OPTION AGREEMENT.—The term “Option Agreement” means—

(A) the document signed by BSL, dated July 29, 1998 and entitled “Option Agreement for the Acquisition of Big Sky Lumber Co. Lands Pursuant to the Gallatin Range Consolidation and Protection Act of 1993”;

(B) the exhibits and maps attached to the document described in subparagraph (A); and

(C) an exchange agreement to be entered into between the Secretary and BSL and made part of the document described in subparagraph (A).

(7) SECRETARY.—The “Secretary” means the Secretary of Agriculture.

#### SEC. 4. GALLATIN LAND CONSOLIDATION COMPLETION.

(a) IN GENERAL.—Notwithstanding any other provision of law, and subject to the terms and conditions of the Option Agreement—

(1) if BSL offers title acceptable to the Secretary to the BSL land—

(A) the Secretary shall accept a warranty deed to the BSL land and a quit claim deed to agreed to mineral interests in the BSL land;

(B) the Secretary shall convey to BSL, subject to valid existing rights and to other terms, conditions, reservations, and exceptions as may be agreed to by the Secretary and BSL, fee title to the National Forest System land; and

(C) the Secretary of the Interior shall convey to BSL, by patent or otherwise, subject to valid existing rights and other terms, conditions, reservations, and exceptions as may be agreed to by the Secretary of the Interior and BSL, fee title to the BLM land;

(2) if BSL places title in escrow acceptable to the Secretary to 11½ sections of the BSL land in the Taylor Fork area as set forth in the Option Agreement—

(A) the Secretary shall place Federal land in the Bangtail and Doe Creek areas of the Gallatin National Forest, as identified in the Option Agreement, in escrow pending conveyance to the Secretary of the Taylor Fork land, as identified in the Option Agreement in escrow;

(B) the Secretary, subject to the availability of appropriations, shall purchase 7½ sections of BSL land in the Taylor Fork area held in escrow and identified in the Option Agreement at a purchase price of \$4,150,000 plus interest at a rate acceptable to the Secretary; and

(C) the Secretary shall acquire the 4 Taylor Fork sections identified in the Option Agreement remaining in escrow, and any of the 6 sections referred to in subparagraph (B) for which appropriations are not available, by providing BSL with timber sale receipts from timber sales on the Gallatin National Forest and other eastside national forests in the State of Montana in accordance with subsection (c); and

(3)(A) as appropriated funds or timber sale receipts are received by BSL—

(i) the deeds to an equivalent value of BSL Taylor Fork land held in escrow shall be released and conveyed to the Secretary; and

(ii) the escrow of deeds to an equivalent value of Federal land shall be released to the Secretary in accordance with the terms of the Option Agreement; or

(B) if appropriated funds or timber sale receipts are not provided to BSL as provided in the Option Agreement, BSL shall be entitled to receive patents and deeds to an equivalent value of the Federal land held in escrow.

(b) VALUATION.—

(1) IN GENERAL.—The property and other assets exchanged or conveyed by BSL and the United States under subsection (a) shall be approximately equal in value, as determined by the Secretary.

(2) DIFFERENCE IN VALUE.—To the extent that the property and other assets exchanged or conveyed by BSL or the United States under subsection (a) are not approximately equal in value, as determined by the Secretary, the values shall be equalized in accordance with methods identified in the Option Agreement.

(c) TIMBER SALE PROGRAM.—

(1) IN GENERAL.—The Secretary shall implement a timber sale program, according to the terms and conditions identified in the Option Agreement and subject to compliance with applicable environmental laws, judicial decisions, and acts beyond the control of the Secretary, to generate sufficient timber receipts to purchase the portions of the BSL land in Taylor Fork identified in the Option Agreement.

(2) IMPLEMENTATION.—In implementing the timber sale program—

(A) the Secretary shall provide BSL with a proposed annual schedule of timber sales;

(B) as set forth in the Option Agreement, receipts generated from the timber sale program shall be deposited by the Secretary in a special account established by the Secretary and paid by the Secretary to BSL;

(C) receipts from the Gallatin National Forest shall not be subject to the Act of May 23, 1908 (16 U.S.C. 500); and

(D) the Secretary shall fund the timber sale program at levels determined by the Secretary to be commensurate with the preparation and administration of the identified timber sale program.

(d) RIGHTS-OF-WAY.—As specified in the Option Agreement—

(1) the Secretary, under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), shall convey to BSL such easements in or other rights-of-way over National Forest System land for access to the land acquired by BSL under this Act for all lawful purposes; and

(2) BSL shall convey to the United States such easements in or other rights-of-way over land owned by BSL for all lawful purposes, as may be agreed to by the Secretary and BSL.

(e) QUALITY OF TITLE.—

(1) DETERMINATION.—The Secretary shall review the title for the BSL land described in subsection (a) and, within 45 days after receipt of all applicable title documents from BSL, determine whether—

(A) the applicable title standards for Federal land acquisition have been satisfied and the quality of the title is otherwise acceptable to the Secretary of Agriculture;

(B) all draft conveyances and closing documents have been received and approved;

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary; and

(D) the title includes both the surface and subsurface estates without reservation or exception (except as specifically provided in this Act), including—

(i) minerals, mineral rights, and mineral interests (including severed oil and gas surface rights), subject to and excepting other outstanding or reserved oil and gas rights;

(ii) timber, timber rights, and timber interests (except those reserved subject to section 251.14 of title 36, Code of Federal Regulations, by BSL and agreed to by the Secretary);

(iii) water, water rights, ditch, and ditch rights;

(iv) geothermal rights; and

(v) any other interest in the property.

(2) CONVEYANCE OF TITLE.—

(A) IN GENERAL.—If the quality of title does not meet Federal standards or is otherwise determined to be unacceptable to the Secretary of Agriculture, the Secretary shall advise BSL regarding corrective actions necessary to make an affirmative determination under paragraph (1).

(B) TITLE TO SUBSURFACE ESTATE.—Title to the subsurface estate shall be conveyed by BSL to the Secretary in the same form and content as that es-

tate is received by BSL from Burlington Resources Oil & Gas Company Inc. and Glacier Park Company.

(f) **TIMING OF IMPLEMENTATION.**—

(1) **LAND-FOR-LAND EXCHANGE.**—The Secretary shall accept the conveyance of land described in subsection (a) not later than 45 days after the Secretary has made an affirmative determination of quality of title.

(2) **LAND-FOR-TIMBER SALE RECEIPT EXCHANGE.**—As provided in subsection (c) and the Option Agreement, the Secretary shall make timber receipts described in subsection (a)(3) available not later than December 31 of the fifth full calendar year that begins after the date of enactment of this Act.

(3) **PURCHASE.**—The Secretary shall complete the purchase of BSL land under subsection (a)(4) not later than 30 days after the date on which appropriated funds are made available and an affirmative determination of quality of title is made with respect to the BSL land.

**SEC. 5. OTHER FACILITATED EXCHANGES.**

(a) **AUTHORIZED EXCHANGES.**—

(1) **IN GENERAL.**—The Secretary shall enter into the following land exchanges if the landowners are willing:

(A) Wapiti land exchange, as outlined in the documents entitled “Non-Federal Lands in Facilitated Exchanges” and “Federal Lands in Facilitated Exchanges” and dated July 1998.

(B) Eightmile/West Pine land exchange as outlined in the documents entitled “Non-Federal Lands in Facilitated Exchanges” and “Federal Lands in Facilitated Exchanges” and dated July 1998.

(2) **EQUAL VALUE.**—Before entering into an exchange under paragraph (1), the Secretary shall determine that the parcels of land to be exchanged are of approximately equal value, based on an appraisal.

(b) **SECTION 1 OF THE TAYLOR FORK LAND.**—

(1) **IN GENERAL.**—The Secretary is encouraged to pursue a land exchange with the owner of section 1 of the Taylor Fork land after completing a full public process and an appraisal.

(2) **REPORT.**—The Secretary shall report to Congress on the implementation of paragraph (1) not later than 180 days after the date of enactment of this Act.

**SEC. 6. GENERAL PROVISIONS.**

(a) **MINOR CORRECTIONS.**—

(1) **IN GENERAL.**—The Option Agreement shall be subject to such minor corrections and supplemental provisions as may be agreed to by the Secretary and BSL.

(2) **NOTIFICATION.**—The Secretary shall notify the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and each member of the Montana congressional delegation of any changes made under this subsection.

(3) **BOUNDARY ADJUSTMENT.**—

(A) **IN GENERAL.**—The boundary of the Gallatin National Forest is adjusted in the Wineglass and North Bridger area, as described on maps dated July 1998, upon completion of the conveyances.

(B) **NO LIMITATION.**—Nothing in this subsection limits the authority of the Secretary to adjust the boundary pursuant to section 11 of the Act of March 1, 1911 (commonly known as the “Weeks Act”) (16 U.S.C. 521).

(C) **ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.**—For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), boundaries of the Gallatin National Forest shall be considered to be the boundaries of the National Forest as of January 1, 1965.

(b) **PUBLIC AVAILABILITY.**—The Option Agreement—

(1) shall be on file and available for public inspection in the office of the Supervisor of the Gallatin National Forest; and

(2) shall be filed with the county clerk of each of Gallatin County, Park County, Madison County, Granite County, Broadwater County, Meagher County, Flathead County, and Missoula County, Montana.

(c) **COMPLIANCE WITH OPTION AGREEMENT.**—The Secretary, the Secretary of the Interior, and BSL shall comply with the terms and conditions of the Option Agreement except to the extent that any provision of the Option Agreement conflicts with this Act.

(d) **CONVEYANCE OF TIMBER.**—After completion of the land-for-land exchange under section 4(a)(1), the Secretary shall convey to BSL 1,000,000 board feet of timber from roaded land in the Gallatin National Forest, which—

(1) shall be treated as reserved timber under section 251.14 of title 36, Code of Federal Regulations; and

(2) shall not be considered as part of the appraisal value of land exchanged under this Act.

(e) STATUS OF LAND.—All land conveyed to the United States under this Act shall be added to and administered as part of the Gallatin National Forest and Deerlodge National Forest, as appropriate, in accordance with the Act of March 1, 1911 (5 U.S.C. 515 et seq.), and other laws (including regulations) pertaining to the National Forest System.

(f) MANAGEMENT.—

(1) PUBLIC PROCESS.—Not later than 30 days after the date of completion of the land-for-land exchange under section 4(f)(1), the Secretary shall initiate a public process to amend the Gallatin National Forest Plan and the Deerlodge National Forest Plan to integrate the acquired land into the plans.

(2) PROCESS TIME.—The amendment process under paragraph (1) shall be completed as soon as practicable, and in no event later than 540 days after the date on which the amendment process is initiated.

(3) LIMITATION.—An amended management plan shall not permit surface occupancy on the acquired land for access to reserved or outstanding oil and gas rights or for exploration or development of oil and gas.

(4) INTERIM MANAGEMENT.—Pending completion of the forest plan amendment process under paragraph (1), the Secretary shall—

(A) manage the acquired land under the standards and guidelines in the applicable land and resource management plans for adjacent land managed by the Forest Service; and

(B) maintain all existing public access to the acquired land.

(g) RESTORATION.—

(1) IN GENERAL.—The Secretary shall implement a restoration program including reforestation and watershed enhancements to bring the acquired land and surrounding national forest land into compliance with Forest Service standards and guidelines.

(2) STATE AND LOCAL CONSERVATION CORPS.—In implementing the restoration program, the Secretary shall, when practicable, use partnerships with State and local conservation corps, including the Montana Conservation Corps, under the Public Lands Corps Act of 1993 (16 U.S.C. 1721 et seq.).

(h) IMPLEMENTATION.—The Secretary of Agriculture shall ensure that sufficient funds are made available to the Gallatin National Forest to carry out this Act.

(i) REVOCATIONS.—Notwithstanding any other provision of law, any public orders withdrawing lands identified in the Option Agreement from all forms of appropriation under the public land laws are revoked upon conveyance of the lands by the Secretary.

#### SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

2. Amend the title so as to read: “To direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co. and other entities.”.

#### PURPOSE

S. 1719, as ordered reported, would authorize the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with the Big Sky Lumber Company and other landowners.

#### BACKGROUND AND NEED

S. 1719 consolidates the checkerboard land ownership on the Gallatin National Forest in Montana. Consolidation with substantially reduce management costs on the Gallatin National Forest. By eliminating the checkerboard ownership pattern, the bill will also reduce disputes that currently arise over the location of property lines. The bill protects the Gallatin area from the threat of sprawling subdivisions. Checkerboard development, in which every other

section of land is subdivided, diminishes pristine vistas as well as wildlife and recreation values. By consolidating these lands, S. 1719 protects recreational opportunities, traditional historical uses, wildlife, fisheries, and the area's scenery.

This legislation uses Federal timber receipts as one of the assets for balancing the land values in the exchange. To ensure that sufficient timber is available to generate receipts, local conservationists and sportsmen have committed to work proactively with the Forest Service to review timber sales and resolve environmental concerns during the preparation of the sale rather, than waiting to file appeals.

#### LEGISLATIVE HISTORY

S. 1719 was introduced on March 6, 1998, by Senators Baucus and Burns. The Subcommittee on Forests and Public Land Management held a hearing on S. 1719 on March 25, 1998. At the business meeting on July 29, 1998, the Committee on Energy and Natural Resources ordered S. 1719, as amended, favorably reported.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 29, 1998, by unanimous vote of a quorum present recommends that the Senate pass S. 1719, if amended as described herein.

#### COMMITTEE AMENDMENT

During consideration of S. 1719, the Committee adopted an amendment in the nature of a substitute. The amendment adds two findings regard Big Sky Lumber Company (BSL) and other landowners and a definition of Eastside National Forests. It revises several other definitions. The amendment incorporates new provisions for implementing the land exchange, and for generating sufficient timber receipts to acquire the identified land. It extends the time to acquire the Taylor Fork lands. It adds geothermal rights to those to be included in the title review. The amendment adds a new section directing the Wapiti and Eightmile/West Pine land exchanges and encourages a land exchange for section 1 of the Taylor Fork. The amendment also adds provisions concerning boundary adjustments, compliance with the Option Agreement, conveyance of timber, and revocations. Finally, it provides the Secretary additional time to complete amendment of the land and resource management plans.

#### SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the bill.

Section 2 lists the findings of the bill.

Section 3 contains definitions.

Section 4(a)(1) states that, notwithstanding any other provision of law, and subject to the terms and conditions of the Option Agreement, if Big Sky Lumber Company (BSL) offers title of approximately 54,000 acres of land to the Secretary, the Secretary will accept a warranty deed to the land and a quit claim deed to agreed to mineral interests. In addition, the Secretary shall convey to BSL

fee title to the National Forest System land. It also directs the Secretary of the Interior to convey to BSL fee title to the BLM land.

Paragraph (2) states that, if BSL places title to land in the Taylor Fork area in escrow acceptable to the Secretary, the Secretary shall place identified Federal land in the escrow. This paragraph further requires the Secretary to purchase the BSL land in the Taylor Fork area for \$4.15 million plus interest, and to acquire land remaining in escrow with timber sale receipts if sufficient appropriated funds are not available.

Paragraph (3) states that, as funds or timber sale receipts are received by BSL, deeds of an equivalent value of BSL Taylor Fork land held in escrow will be conveyed to the Secretary; and that escrow of deeds to an equivalent value of Federal lands will be released to the Secretary. This paragraph further states that, if funds or receipts are not provided, BSL will receive patent and deeds to an equivalent value of the federal land held in escrow.

Subsection (b) requires that the property and other assets conveyed by BSL and the United States under subsection (a) be approximately equal in value and authorizes the Secretary to equalize the values if necessary.

Subsection (c)(1) directs the Secretary to implement a timber sale program to generate sufficient timber receipts to purchase certain portions of the BSL land in the Taylor Fork area in compliance with applicable laws and Option Agreement.

Paragraph (2) states that, in implementing the timber sale program, the Secretary shall: provide BSL with a proposed annual schedule of timber sales; deposit receipts generated in a special account; and adequately fund the program. This paragraph also states that receipts from the Gallatin National Forest shall not be subject to revenue-sharing payments as directed by the Act of May 23, 1908 (16 U.S.C. 500).

Subsection (d)(1) requires the Secretary, pursuant to the Federal Land Policy and Management Act of 1976, to convey to BSL rights-of-way over National Forest System land for access to the land acquired by BSL.

Paragraph (2) states that BSL shall convey to the United States rights-of-way over land owned by BSL.

Subsection (e)(1) requires the Secretary to: review the title for the BSL land described in subsection (a); determine whether the applicable title standards have been satisfied; ensure that all draft conveyances and closing documents have been received and approved; and confirm that a current title commitment verifying compliance with applicable title standards has been issued. The Secretary must also determine that the title includes both the surface and subsurface estates, including mineral, timber, water, geothermal, and other interests.

Paragraph (2) states that, if the quality of title does not meet Federal standards, the Secretary shall advise BSL regarding corrective actions. This paragraph further states that title to the subsurface estate will be conveyed by BSL to the Secretary in the same form that estate is received by BSL from Burlington Resources Oil & Gas Company Inc. and Glacier Park Company.

Subsection (f) directs the Secretary to: accept the conveyance of land described in subsection (a) within 45 days after verifying qual-

ity of title; make timber receipts described in subsection (a)(3) available within five years from December 31 of the year of enactment, and complete the purchase of BSL land within 30 days of the date when funds are made available and quality of title verified.

Subsection 5(a) requires the Secretary to enter into the Wapiti and Eightmile/West Pine land exchanges if the Secretary determines that the values of the lands to be exchanged are equal.

Subsection (b) encourages the Secretary to pursue a land exchange with the owner of section 1 of the Taylor Fork land and requires the Secretary to report to Congress on implementation within 180 days of enactment.

Section (6)(a)(1) states that, if the Secretary and BSL agree, minor corrections may be made, and supplemental provisions may be added to the Option Agreement.

Paragraph (2) requires the Secretary to notify specified Congressional Committees and Members of Congress if changes are made to the Option Agreement.

Paragraph (3) provides for the boundary adjustment of the Gallatin National Forest and contains a map reference. It states that this subsection does not limit the authority of the Secretary under the Weeks Act of 1911 and directs that, for purposes of the Land and Water Conservation Act of 1965, the boundaries of the Gallatin National Forest are those which existed on January 1, 1965.

Subsection (b) specifies that the Option Agreement will be available for public inspection in the office of the Supervisor of the Gallatin National Forest and requires it to be filed with the county clerk of the specified Montana counties.

Subsection (c) requires the Secretary of Agriculture, the Secretary of the Interior, and BSL to comply with the terms and conditions of the Option Agreement unless there is a conflict with this legislation.

Subsection (d) requires the Secretary convey to BSL one million board feet of timber from roaded land in the Gallatin National Forest. This subsection further states that this timber will be treated as reserved timber under Department of Agriculture regulations and will not be considered as part of the appraisal value of the land exchanged under this Act.

Subsection (e) states that all land conveyed to the United States under this Act shall be added to the Gallatin and Deerlodge National Forests.

Subsection (f) requires the Secretary, within 30 days of completing the land-for-land exchange, to initiate a public process to amend the Gallatin and Deerlodge National Forest plans to integrate the acquired land into the plans and complete the amendment process within 540 days. This subsection further states that the amended management plan will not permit access to oil and gas rights or provide for exploration or development of oil and gas. Pending completion of the forest plan amendment, this subsection requires the Secretary to manage the acquired land under the standards and guidelines in the applicable land and resource management plans and maintain all existing public access.

Subsection (g) requires the Secretary to implement a program, which includes reforestation and watershed enhancements, to bring the acquired land and surrounding national forest land into compli-

ance with Forest Service standards and guidelines. This subsection also requires the Secretary, when practicable, to enter into partnerships with state and local conservation crops.

Subsection (h) requires the Secretary to ensure that sufficient funds are made available.

Subsection (i) states that, notwithstanding other laws, public orders withdrawing lands identified in the Option Agreement from all forms of appropriation under public land laws, are revoked upon conveyance of the lands.

Section 7 authorizes appropriations.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 11, 1998.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1719, the Gallatin Land Consolidation Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria V. Heid (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

##### *S. 1719—Gallatin Land Consolidation Act of 1998*

Summary: S. 1719 would facilitate an exchange of assets between the federal government and several private parties involving land and timber in the state of Montana, federal timber receipts, and other federal cash payments.

CBO estimates that implementing S. 1719 would increase discretionary outlays by about \$9 million over the 1999–2003 period, assuming appropriation of the necessary amounts. Because enacting S. 1719 would affect direct spending (including offsetting receipts), pay-as-you-go procedures would apply to the bill; however, CBO estimates no significant effect on direct spending over the 1999–2003 period.

S. 1719 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). As a result of the authorized exchange, however, the state of Montana would lose certain federal payments over the 1999–2003 period.

Description of the bill's major provisions: S. 1719 provides for an exchange of assets between the federal government and several private parties. According to the Forest Service, the agency has gen-

eral authority under current law to complete such exchanges. However, S. 1719 would:

- Direct the Secretary of Agriculture to complete these specific exchanges;

- Waive the requirement to comply with certain environmental laws with regard to certain land to be exchanged;

- Restrict the mandatory trust fund allocations that could be deducted from certain timber receipts; and

- Reduce payments to the state of Montana from certain receipts from the sale of timber from the Gallatin National Forest otherwise mandated under current law.

*Exchange with Big Sky Lumber Company*

S. 1719 would authorize an exchange of assets between the federal government and Big Sky Lumber Company (BSL) involving land, timber, federal timber receipts, and other cash payments. The land and timber that would be exchanged are located in the state of Montana. The terms and conditions of the proposed exchange would be governed by an option agreement dated July 29, 1998, subject to minor corrections and supplemental provisions if mutually agreed to by the Secretary of Agriculture and BSL.

Under the proposed exchange, BSL would offer to convey to the federal government approximately 54,000 acres, including land in the Taylor Fork Area. In exchange, the Secretary would be required to convey to BSL about 31,000 acres of federal land and cash payments of almost \$9 million from a combination of federal timber receipts and appropriated funds. The bill requires that the receipts from federal timber harvests be made available to BSL no later than the end of the fifth full calendar year after enactment.

S. 1719 would specify a process for federal acquisition of some of BSL's Taylor Fork lands. Those lands comprise about 7,360 acres out of the approximately 54,000 total acres to be conveyed by BSL to the Secretary. The bill provides that if BSL places in escrow title to 11.5 sections (a section consists of 640 acres) of BSL land in the Taylor Fork area that is acceptable to the Secretary, the Secretary would be required to place in escrow title to four sections of federal land within the Gallatin National Forest.

Of the BSL's Taylor Fork land in escrow, the bill would direct the Secretary to purchase 7.5 sections for about \$4 million using appropriated funds. The option agreement provides that any payments made after closing or December 15, 1998, whichever is later, shall include an interest payment. Discretionary outlays for Taylor Fork lands could not exceed \$6.5 million.

The bill would direct the Secretary to purchase the other four sections using federal timber receipts from certain national forests in Montana. The option agreement specifies that the amount of payments from timber receipts would be \$4.5 million. S. 1719 would direct the Secretary to implement a timber sale program in the Gallatin National Forest, and potentially other national forests in Montana, to generate sufficient timber receipts to purchase some of BSL's Taylor Fork land. Timber receipts from the sales in the Gallatin National Forest dedicated to completing the exchange with BSL would not be subject to the normal process of sharing 25 percent of the receipts with Montana.

S. 1719 further provides that if appropriations are not available to purchase the BSL's Taylor Fork land put in escrow under the bill, the Secretary would be authorized to use timber receipts to acquire those lands. Therefore, the Secretary could purchase all of BSL's Taylor Fork land using receipts from federal timber harvests. If the Forest Service fails to generate sufficient timber receipts within five years to complete the exchanges, the bill would entitle BSL to receive the escrowed federal land and allow the exchange to be completed on a land-for-land basis.

If the land, timber, and other assets exchanged by BSL and the United States are not approximately equal in value, as determined by the Secretary, the bill would permit the values to be equalized using one or more of several methods: additional federal appropriations or federal timber receipts to acquire BSL's Taylor Fork land, sale of Taylor Fork land to conservation groups, conveyance of additional federal land identified by the Forest Service, reservation of timber on BSL's Gallatin lands that currently have roads, withdrawal of BSL parcels from the land to be conveyed to the federal government (except for the Taylor Fork lands), and use of other public or private funds.

#### *Other land exchanges*

S. 1719 would direct the Secretary of Agriculture to enter into two land exchanges in the Gallatin National Forest if the private landowners are willing. The Wapiti land exchange would involve the conveyance of about 247 acres of federal land in exchange for about 320 acres of nonfederal land. The Eightmile/West Pine land exchange would involve the conveyance of about 644 acres of federal land in exchange for about 640 acres of nonfederal land.

In addition, S. 1719 would encourage the Secretary to pursue a land exchange with the owner of section 1 of the Taylor Fork land, and would require the Secretary to report to the Congress on implementation of that exchange.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1719 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and the environment) and 900 (general government).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Spending Under Current Law:						
Budget authority <sup>1</sup> .....	4	0	0	0	0	0
Estimated outlays .....	0	4	0	0	0	0
Proposed Changes:						
Estimated authorization level .....	0	8	1	0	0	0
Estimated outlays .....	0	2	2	2	2	1
Spending Under S. 1719:						
Estimated authorization level <sup>1</sup> .....	4	8	1	0	0	0
Estimated outlays .....	0	6	2	2	2	1
<b>CHANGES IN DIRECT SPENDING</b>						
Estimated budget authority .....	0	( <sup>2</sup> )				
Estimated outlays .....	0	( <sup>2</sup> )				

<sup>1</sup>The 1998 level is the amount appropriated for that year.

<sup>2</sup>Less than \$500,000.

*Basis of estimate*

Spending Subject to Appropriation. CBO estimates that implementing S. 1719 would cost about \$9 million over the 1999–2003 period, subject to appropriation of the necessary amounts.

Restoration of land to be acquired. S. 1719 would require the Secretary of Agriculture to make reforestation and watershed enhancements on land acquired in the exchange, some of which has already been harvested. The Forest Service estimates that costs for such restoration work would total about \$7 million over the next five years. This restoration work would not be necessary in the absence of the proposed exchange.

Timber program on the Gallatin National Forest. S. 1719 would require the Secretary to provide sufficient funds to the Gallatin National Forest to implement the bill, including operating a timber program that would generate the necessary timber receipts to complete the exchange. Based on information from the Forest Service, in the absence of this proposed exchange the Gallatin National Forest would operate a timber program of about 5 million board feet per year (excluding timber harvested for personal use). If this proposed exchange were implemented, the Forest Service would roughly double the timber program in the Gallatin Forest during fiscal years 1999 and 2000. As a result, discretionary outlays to operate the timber sale program in the Gallatin also would increase.

The Department of the Interior and Related Agencies Appropriations Act, 1999 (S. 2237), as approved by the Senate Committee on Appropriations, would provide about \$700,000 of budget authority for the Gallatin National Forest to implement the larger timber program that would be necessary to complete the exchange with BSL. CBO estimates that an additional appropriation of the same amount also would be required in fiscal year 2000.

Amending forest plans. The bill would provide for a public process to amend the forest plans for the Gallatin and Deerlodge National Forests to integrate the acquired lands, and it would require that the amended plans prohibit surface occupancy of the acquired lands for exploring or developing oil or gas. The Forest Service estimates that discretionary costs to amend the plans would total about \$120,000 in fiscal year 1999.

Acquiring certain of BSL's Taylor Fork lands. The bill would direct the Secretary to purchase about 4,800 acres of BSL's Taylor Fork land for about \$4 million, using appropriated funds. The option agreement provides that any payments made after closing or December 15, 1998, include an interest payment. The option agreement would set the maximum amount of such discretionary outlays for Taylor Fork lands at \$6.5 million.

The fiscal year 1998 appropriation for Forest Service land acquisitions included about \$1.5 million for land acquisition in the Gallatin National Forest. The Forest Service has requested permission to allocate another \$2.5 million of the fiscal year 1998 appropriation for acquisition in the greater Yellowstone area. Assuming that \$4 million of the fiscal year 1998 appropriation is made available for this BSL exchange, funds would be available before December 15, 1998, and no additional appropriations for land acquisition would be required to purchase this Taylor Fork acreage. However, if land acquisition funds are not allocated to this purpose, if the

Forest Service cannot generate sufficient timber receipts to complete the exchange with BSL, or if the option agreement is amended to provide for further purchases of BSL land using discretionary funds, additional appropriations would be required.

Other potential effects on discretionary spending. As discussed below, S. 1719 would dedicate to BSL a portion of the federal timber receipts that under current law would be deducted from gross receipts and spent out of mandatory trust funds. Such expenditures are typically for reforestation and wildlife projects, preparation for sales of salvage timber, and overhead costs. Depending on how the Forest Service chooses to manage the area, certain projects and related indirect costs could be eliminated. Overhead costs could be paid for out of other timber sales, or paid for from additional discretionary funding, subject to appropriation action. However, the Forest Service does not expect to request additional appropriations related to the change in allowable deductions from the timber receipts dedicated to the BSL exchange. For purposes of this estimate, CBO assumes that the agency would eliminate projects other than essential reforestation and cover any other overhead costs using existing funds, so that there would be no effect on either discretionary or direct spending from changes in forest management and related activities. In other words, based on information from the Forest Service, CBO expects that the new activities required by S. 1719 will be paid for by reducing costs for other activities—specifically, by completing fewer projects elsewhere on the affected Forest Service lands.

The land exchange under S. 1719 would consolidate the current checkerboard pattern of federal and private land ownership in the area. The consolidation could reduce costs to administer the area, particularly for fire suppression and right-of-way easements. Any overall decrease in discretionary spending would depend on how the Forest Service uses appropriated funds and on future appropriation action by the Congress. But CBO estimates that no significant overall change in spending for general management activities would result from this consolidation.

*Direct spending (including offsetting receipts)*

S. 1719 would affect direct spending (including offsetting receipts) because of provisions affecting the amount of timber harvested on federal land, restrictions on receipts allocated to mandatory trust funds, and reduced payments to Montana from certain federal timber receipts. CBO estimates that these changes would have no significant effect on direct spending over the 1999-2003 period.

Federal timber harvests. According to the Forest Service, the federal land that would be conveyed to BSL and other private parties under S. 1719 includes about \$45 million board feet that, under current law, would likely be harvested over the next 20 years. It is unlikely that any of the timber on the land that would be acquired from BSL would be harvested by the Forest Service, at least over the next ten years. Therefore, enacting S. 1719 would reduce the volume of timber harvested on federal land over the next ten years. We estimate that the reduction in offsetting receipts from

this forgone timber harvest would total roughly \$2 million over the 1999–2003 period.

This change would have little net effect on direct spending because such harvests typically do not result in net income to the Treasury. That is, most or all of such collections are spent, resulting in little or no net budgetary impact. In fact, according to the Forest Service, timber sales on the Gallatin National Forest and other national forests in Montana often result in small net costs to the Treasury under current law. Virtually all timber receipts are available to the Forest Service and allocated to mandatory trust funds, such as the Knutson-Vandenberg reforestation trust fund, out of which the agency can spend any deposited receipts without further appropriation. In addition to such spending, an amount equal to 25 percent of gross receipts is paid to Montana and another 10 percent is allocated to the Roads and Trails Fund. The result is often no net receipts to the Treasury. Thus, transferring federal land with timber to BSL would probably have no significant net effect on direct spending over the 1999–2003 period.

Net receipts paid to BSL. S. 1719 provides that \$4.5 million in net receipts from federal timber harvests be paid to BSL to complete a portion of the exchange. The option agreement identifies timber in the Gallatin National Forest that could be used to complete the exchange, and the bill would allow timber harvests in certain other national forests in Montana to be used as well. The net effect on direct spending would be less than \$1 million, however, because the payments to BSL would be offset by a combination of increased federal receipts from more timber sales and a reduction in Forest Service direct spending by eliminating certain projects that otherwise would be completed under current law.

The bill would effectively dedicate to BSL that portion of federal timber receipts from the Gallatin National Forest that the Forest Service would, under current law, allocate to mandatory trust funds and spend for items other than essential planting. According to the Forest Service, virtually all timber receipts in the Gallatin National Forest are currently allocated to and later spent from mandatory trust funds, whereas under S. 1719, between 10 percent and 20 percent of these timber receipts would be set aside for essential planting. The remainder would be used to pay BSL.

The projects other than essential planting that would be conducted under current law might be eliminated, paid for from other timber sales, or paid for out of additional appropriations, depending on how the Forest Service chooses to manage the area. In any case, the reduction in direct spending from mandatory trust funds would be offset by the payments to BSL to complete the exchange.

S. 1719 would reduce direct spending slightly because it provides that no 25-percent payments be made to Montana based on timber harvested from the Gallatin National Forest and dedicated to the BSL exchange. The amount of forgone payments to the state would be no more than \$250,000 for each fiscal year. CBO estimates the net effect on direct spending of enacting S. 1719 would total less than \$1 million over the 1999–2003 period.

S. 1719 would allow BSL to retain one million board feet of timber on the land BSL would convey the federal government. This provision would not affect direct spending because the federal gov-

ernment would not harvest this privately owned timber under current law in any case.

Pay-as-you-go considerations: The Balanced budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that the net change in direct spending would total less than \$1 million over the 1999–2003 period and would be less than \$500,000 each year. The bill would not affect governmental receipts.

Estimated impact on state, local, and tribal governments: S. 1719 contains no intergovernmental mandates as defined in UMRA. The bill would, however, reduce payments to the state of Montana that are based on timber sales within the state. CBO estimates that the state would lose payments totaling roughly \$1 million over the 1999–2003 period. This loss would be partially offset by an increase in payments in lieu of taxes (PILT) made to the affected Montana counties. Enactment of this bill would not, in itself, result in an overall increase in PILT, but rather would increase the share of these payments going to the affected Montana counties. PILT is a discretionary program and the actual amount of PILT received by these counties, as well as other jurisdictions, will depend on the total amount appropriated by the Congress each year.

Under current law, states generally receive an amount equal to 25 percent of timber harvest receipts from national forests within their borders. These receipts are to be used to benefit the counties in which the forests are located. Enactment of S. 1719 would reduce payments to Montana both because national forest system lands would be transferred to private ownership and because the state would receive no payments from the harvests on the Gallatin National Forest dedicated to compensating BSL. The formula used to determine each county's share of PILT takes into account other federal payments benefitting those counties. As a result, the reduced payments from timber harvests would trigger an increase in PILT received by the affected counties.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Comparison with other estimates: On July 28, 1998, the Forest Service completed an appraisal of the lands to be exchanged with BSL. Based on that appraisal, the value of the federal lands to be conveyed to BSL is a little less than \$35 million. The cash payments of a little less than \$9 million bring the total value of the assets to be conveyed to BSL to a little more than \$43 million. The value of the BSL lands that would be conveyed to the federal government is about \$44 million. According to the Forest Service, the difference of about \$700,000 is equalized by the provision in the Option Agreement allowing BSL to reserve timber on BSL's land in the Gallatin Roded Area that would be conveyed to the federal government.

According to the Forest Service, the value of the lands to be exchanged in the Wapiti and Eightmile/West Pine land exchanges is approximately equal, with both the federal land and the private land that would be exchanged valued at about \$2 million.

Because the federal budget is on a cash basis, the budgetary impact of the proposed exchange is measured by its effect on the government's cash flow, such as changes in offsetting receipts from

timber harvesting and associated mandatory payments to states and other spending, discussed above.

Estimate prepared by: Federal costs: Victoria V. Heid; impact on state, local, and tribal governments: Majorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy 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. 1719.

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. 1719.

#### EXECUTIVE COMMUNICATIONS

Legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations on S. 1719 were unavailable at the time the report on S. 1719 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service and the BLM at the Subcommittee hearing follows:

#### STATEMENT OF ELEANOR TOWNS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the Administration's view on S. 1719.

*S. 1719, to authorize an exchange of land between the Secretary of Agriculture and Secretary of the Interior and Big Sky Lumber Company*

S. 1719 authorizes an exchange of assets between the Secretary of Agriculture and the Secretary of the Interior and Big Sky Lumber Company within the Gallatin, deerlodge, Flathead, Lolo and Lewis and Clark National Forests.

While the Administration supports the objectives of S. 1719, that will allow consolidation of lands and other interests in the Gallatin National Forest, Montana. We, however, cannot support the bill as introduced because of the language waiving applicable Federal laws for the land exchange components of the conveyance and the prohibition of judicial remedies to the public after timber harvest rights are granted.

Significant public involvement, including ten public meetings, and analysis has been completed and docu-

mented in the "Report to the Montana Congressional Delegation on the Proposed Gallatin Land Consolidation between USDA Forest Service, USDI Bureau of Land Management, and Big Sky Lumber Co., in Montana" that was provided to the delegation in September 1997. This report discusses the proposed conveyance along with its potential effects on natural resources, recreation, public access, and local economics.

We also have a number of technical concerns with the legislation as drafted. These are addressed in the attached Supplemental Statement C. Among our concerns is the inclusion of the "Option Agreement." The Option Agreement that is incorporated in the bill reflects Big Sky's offer to the United States Government but does not reflect the Government's response. At this time some provisions of the Option Agreement are unacceptable. We would propose that the bill be rewritten to reflect a negotiated agreement that should be signed prior to any bill becoming law. The negotiated agreement is required to assure Administration support if the public involvement concerns are addressed.

S. 1719 provides for the full implementation of the Gallatin Range Consolidation and Protection Act of 1993 by authorizing the exchange of Federal and private land and mineral interests to enhance land management capabilities, recreational opportunities, and environmental and wildlife protection. The 1993 Act directed the Secretary to acquire by purchase or exchange certain, primarily checkerboard railroad grant, lands owned by Big Sky in the Gallatin Range, Porcupine area, Taylor Fork area and Bridger Mountains within the Gallatin National Forest.

S. 1719 employs three distinct methods of land acquisition to accomplish its overall goal. First, there is a land-for-land exchange component between the Forest Service and Big Sky for which approximately 29,000 acres of Federal land would be offered. Second, there is a purchase component, whereby the Forest Service will acquire up to \$6.5 million of Big Sky lands utilizing appropriated Land and Water Conservation and other funds. Third, there is a timber-for-land component whereby the Forest Service would grant up to 20 million board feet of Federal timber harvest rights to Big Sky and acquire an equal value share of the Big Sky lands in return. The timber values that may be granted amount to approximately \$3.4 million. OMB advises that the bill would have a pay-as-you-go increase of this amount net the value of resources on the lands to be acquired. Resource value appraisals are still underway and shall be completed prior to completion of the negotiated agreement.

Approximately 36,800 acres of land in the Taylor Fork, Gallatin Range and Bridger Mountains identified in the 1993 Act still remain to be acquired. In addition to these lands, S. 1719 provides for the acquisition of approximately 17,000 acres lands in the Buck Ridge, Spanish Peaks, Bridgers, Bangtail and Tobacco Roots areas that

also include significant wildlife habitats and wetlands, productive lands for future multiple use management and a broad spectrum of recreation opportunities. Upon full implementation of this Act, a total of approximately 91,000 acres of public ownership within the Gallatin National Forest will have been consolidated. It is important to note that the Rocky Mountain Elk Foundation and Montana Fish, Wildlife and Parks Department have been key partners, along with Big Sky, in these consolidation efforts.

Much of the land being acquired is within the Greater Yellowstone Grizzly Bear Recovery Zone. These lands contain resident grizzly bear populations and habitat components of over 11,000 acres and are considered essential for the recovery of grizzly bear. These lands also provide important habitat for elk, moose and mule deer which migrate from Yellowstone National Park. The consolidation of these lands would also enhance the conservation efforts to restore Westslope Cutthroat Trout within the Gallatin River drainage and improve conservation of the Yellowstone Cutthroat Trout populations in the Bridger and Bangtail Mountains and Gallatin Range. Recreation opportunities, like hunting and fishing, hiking, camping, and backpacking are enhanced by improved access to bigger blocks of National Forest System lands.

The Administration appreciates the efforts of the delegation in support of this conveyance. We would like to work with Congressman Hill, the rest of the Montana delegation, and the Committee to facilitate this land exchange while assuring that the public is involved in the decision making process.

#### STATEMENT OF THE BUREAU OF LAND MANAGEMENT

This bill would authorize an exchange of lands among the Secretary of Agriculture, Secretary of the Interior, and the Big Sky Lumber Company. The Department of the Interior supports this bill.

The bill directs the Secretary of the Interior to convey to Big Sky, by patent, subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed to by the Secretary of the Interior and Big Sky, fee title to approximately 3,000 acres of public land. We provide a correction to this acreage in the Specific Comments of this Statement.

#### BACKGROUND

The 1993 "Gallatin Range Consolidation and Protection Act" directed the Forest Service (FS) to acquire, by purchase and exchange, the Big Sky Lumber Company lands in the Gallatin Range, Porcupine, Taylor Fork, and Bridger Mountains. Since 1993, two phases of land consolidation have been completed. In the first phase (Gallatin I), the public acquired by exchange about 37,700 acres of Big Sky Lumber Company lands in the Gallatin and Absaroka

Ranges. In Gallatin II, the public acquired another 8,100 acres of Big Sky Lumber Company lands. These lands, located in the Porcupine and South Cottonwood areas, were acquired in a partnership among the FS, Rocky Mountain Elk Foundation, and State of Montana Fish, Wildlife and Parks.

S. 1719, and the companion Bill H.R. 3381, provides for additional acquisition to meet the goals of the Gallatin Land Consolidation Act. The Big Sky Lumber Company is offering about 54,200 acres of their lands for public acquisition in the Gallatin, Taylor Fork, Buck Ridge, Spanish Peaks, Bridger Mountains, and Bangtail Mountains. To complete this acquisition, a mixture of federal assets is proposed for exchange, including about 24, 144 acres of National Forest lands and 1,860 acres of public domain administered by the BLM. The FS will make additional compensations, which they can address.

#### GENERAL COMMENTS

Passage of S. 1719 would:

1. Eliminate checkerboard ownership throughout the National Forests of this region;
2. Help conserve healthy ecosystems;
3. Sustain productivity of a variety of resources;
4. Protect critical habitats, including wetlands, winter range and grizzly bear habitat;
5. Enhance recreation opportunities; and,
6. Ensure public access on many roads and trails across private lands.

#### SPECIFIC COMMENTS

The BLM supports this legislation, but suggest one change to the bill. The acreage figure in the bill under Section 3 Definitions, should be approximately 1,860 acres rather than the 3,000 acres shown. Negotiations are underway to increase the public land acres to 2,500 acres through the mutual agreement of all parties. The current 1,860 acres are the only lands identified to convey as part of this exchange by the Secretary of the Interior.

#### CONCLUSION

The Department of the Interior supports S. 1719, and we believe these actions will serve the public well. We support the Forest Service's efforts to improve public administration of National Forest lands.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1719, as ordered reported.