

Subcommittee on Federal Lands

Tom McClintock, Chairman

Hearing Memorandum

September 4, 2018

To: All Subcommittee on Federal Lands Members

From: Majority Committee Staff— Brandon Miller and Leah Baker
Subcommittee on Federal Lands (x6-7736)

Hearing: Legislative hearing on **H.R. 6682 (Rep. Scott Tipton)**, To amend the Federal Land Policy and Management Act of 1976 to improve transparency and oversight of land conveyances involving disposal or acquisition of National Forest System lands or Bureau of Land Management public lands, to provide protections and certainty for private landowners related to resurveying such public lands, and for other purposes.
September 6, 2018, 10:00 AM; 1324 Longworth House Office Building

H.R. 6682, “Protection and Transparency for Adjacent Landowners Act”

Summary of the Bill

H.R. 6682, introduced by Representative Scott Tipton (R-CO-03), would require the federal government to provide written notification to each adjacent landowner of any parcel of land that is to be exchanged. This bill would also require the Bureau of Land Management (BLM), in the event of a land resurvey, to provide notification to all property owners with land that neighbors the federal land identified for a resurvey at least 30 days before the process begins. This legislation also provides protection for landowners if BLM determines that property previously believed to be private property should be reclassified as federal land.

Witnesses

The Honorable Scott R. Tipton
Member of Congress, Colorado’s 3rd District

Background

The federal government manages roughly 640 million acres of land throughout the United States.¹ A majority of this land is in the Western states, where the federal government controls over 50 percent of the surface.² The federal land management agencies in charge of administering these lands frequently acquire, convey, or exchange these lands with willing private individuals, entities, as well as State and local governments. The notification and oversight process have long been a source of frustration for many landowners with land adjacent to federal lands. These neighboring landowners have often raised concerns over insufficient

¹ Vincent, Carol Hardy. “Federal Land Ownership: Overview and Data.” Congressional Research Service. March 3, 2017.

² Vincent, Carol Hardy. “Federal Land Ownership: Overview and Data.” Congressional Research Service. March 3, 2017.

transparency as well as seemingly arbitrary implementation of land conveyances. This inconsistency and lack of adequate notification has caused considerable frustration for many land owners who have seen their land uses and property values negatively impacted by these conveyances.

Resurveys carried out by BLM have also been problematic, with BLM citing inaccurate existing boundaries as it has reclassified lands that were previously thought to be private, as federal lands. One specific example of the negative impact caused by these reclassifications took place in 2009, when BLM conducted a resurvey of federal land in Mesa County, Colorado.³ The resurvey resulted in the reclassification of land, originally thought to be owned by a private owner as federal land. The BLM subsequently charged that individual with trespassing and the illegal removal of sand and gravel from federal lands, which resulted in a fine of over \$250,000.⁴ Similar reclassifications have created other conflicts throughout the United States, with private land owners being forced to relinquish property believed to be their own without proper notification or just compensation.

H.R. 6682 institutes much needed transparency and oversight to the federal land exchange process by requiring land management agencies to provide written notification to landowners with land adjacent to any parcel that is set to be exchanged. Additionally, this legislation requires BLM, in the event of a land resurvey, to notify property owners with land that abuts the federal land identified for resurvey. This bill will also protect landowners from instances when BLM determines that land, previously believed to be private, should be reclassified as federal land. If enacted, the bill provides that landowners are given the right of first refusal to purchase the subject land for fair market value, or to be reimbursed for any significant improvements they made to the land. This bill also prevents private landowners from being punished for trespassing unless they used the land after they had been properly notified that the land was owned by the federal government.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

The Administration's position is currently unknown.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 6682

[text to be added highlighted in yellow; text to be deleted is bracketed and highlighted in blue]

Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715)

³ Herald, P. M. (n.d.). Tipton slams federal land managers. *The Durango Herald*. Retrieved from <https://durangoherald.com/articles/76357>

⁴ *Id.*

§1715. Acquisitions of public lands and access over non-Federal lands to National Forest System units

(a) Authorization and limitations on authority of Secretary of the Interior and Secretary of Agriculture

Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Conformity to departmental policies and land-use plan of acquisitions

Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) Status of lands and interests in lands upon acquisition by Secretary of the Interior; transfers to Secretary of Agriculture of lands and interests in lands acquired within National Forest System boundaries

Except as provided in subsection (e), lands and interests in lands acquired by the Secretary pursuant to this section or [section 1716 of this title](#) shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to [section 315 of this title](#), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Status of lands and interests in lands upon acquisition by Secretary of Agriculture

Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

(e) Status and administration of lands acquired in exchange for lands revested in or reconveyed to United States

Lands acquired by the Secretary pursuant to this section or [section 1716 of this title](#) in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.

(f) NOTICE TO ADJACENT LANDOWNERS.—As part of the acquisition of a parcel of non-Federal lands under this section, [section 206](#), or other applicable law that will become public lands or National Forest System lands, the Secretary or the Secretary of Agriculture, as the case may be, shall provide advance written notification to each owner of land that is adjacent to the

parcel of land to be acquired. To assist in identifying adjacent landowners, the Secretary concerned should use the most recently available tax records.

(g) OVERSIGHT OF USE OF THIRD-PARTY FACILITATORS.— (1) If the acquisition process for a parcel of non-Federal lands under this section, section 206, or other applicable law that will become public lands or National Forest System lands involves the use of a third-party facilitator, the Secretary or the Secretary of Agriculture, as the case may be, shall require, as a condition of the approval of the acquisition—

(A) submission of all purchase contracts and related agreements held by the third-party facilitator related to the parcel to be acquired; and

(B) supervisor review of such purchase contracts and related agreements, the purpose of the acquisition, and other terms and conditions of the acquisition.

(2) In this subsection, the term ‘third-party facilitator’ means any entity (other than an agent of the United States) whose role in a real estate transaction is to assist the buyer or seller, or both, in reaching agreement in the transaction.

Section 208 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1718)

§1718. Documents of conveyance; terms, covenants, etc.

(a) ISSUANCE OF PATENT AND OTHER CONVEYANCE DOCUMENTS.—The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act.

(b) OTHER TERMS AND CONDITIONS.—The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 1716(b) of this title shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided*, That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further*, That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs.

(c) NOTICE TO ADJACENT LANDOWNERS.—As part of the conveyance of a parcel of public lands or National Forest System lands by sale, exchange, or other disposal method under section 203 or 206 or other applicable law, the Secretary or the Secretary of Agriculture, as the case may be, shall provide advance written notification to each owner of land that is adjacent to the parcel of land to be conveyed. To assist in identifying adjacent landowners, the Secretary concerned should use the most recently available tax records.

(d) OVERSIGHT OF USE OF THIRD-PARTY FACILITATORS.— (1) If the process by which a parcel of public lands or National Forest System lands will be conveyed by sale, exchange, or other disposal method under section 203 or 206 or other applicable law, involves the use of a third-party facilitator, the Secretary or the Secretary of Agriculture, as the case may be, shall require, as a condition of the approval of the conveyance—

(A) submission of all purchase contracts and related agreements held by the third-party facilitator related to the Federal land to be conveyed;

(B) submission to appraisers of contact information for prospective end owners of the Federal land to be conveyed; and

(C) supervisor review of such purchase contracts and related agreements, the purpose of the conveyance, and other terms and conditions of the conveyance.

(2) In this subsection, the term ‘third-party facilitator’ means any entity (other than an agent of the United States) whose role in a real estate transaction is to assist the buyer or seller, or both, in reaching agreement in the transaction.