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SENATE

{ REPORT
111-270

LAND CONVEYANCE IN THE LOS PADRES NATIONAL FOREST IN CALIFORNIA

AUGUST 5, 2010.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 129]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 129) to authorize the conveyance of certain National Forest System lands in the Los Padres National Forest in California, having considered the same, reports favorably thereon with an amendment and recommends that the Act, 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. DEFINITIONS.

In this Act:

- (1) FEDERAL LAND.—The term “Federal land” means the approximately 5 acres of National Forest System land in Santa Barbara County, California, as generally depicted on the map.
- (2) FOUNDATION.—The term “Foundation” means the White Lotus Foundation, a nonprofit foundation located in Santa Barbara, California.
- (3) MAP.—The term “map” means the map entitled “San Marcos Pass Encroachment for Consideration of Legislative Remedy” and dated June 1, 2009.
- (4) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

SEC. 2. LAND CONVEYANCE.

(a) IN GENERAL.—Subject to the provisions of this section, if the Foundation offers to convey to the Secretary all right, title, and interest of the Foundation in and to a parcel of non-Federal land that is acceptable to the Secretary—

- (1) the Secretary shall accept the offer; and
- (2) on receipt of acceptable title to the non-Federal land, the Secretary shall convey to the Foundation all right, title, and interest of the United States in and to the Federal land.

(b) APPLICABLE LAW.—The land exchange authorized under subsection (a) shall be subject to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(c) TIME FOR COMPLETION OF LAND EXCHANGE.—It is the intent of Congress that the land exchange under subsection (a) shall be completed not later than 2 years after the date of enactment of this Act.

(d) AUTHORITY OF SECRETARY TO CONDUCT SALE OF FEDERAL LAND.—If the land exchange under subsection (a) is not completed by the date that is 2 years after the date of enactment of this Act, the Secretary may offer to sell to the Foundation the Federal land for fair market value.

(e) ADDITIONAL TERMS AND CONDITIONS.—The land exchange under subsection (a) and any sale under subsection (d) shall be subject to—

- (1) valid existing rights;
- (2) the Secretary finding that the public interest would be well served by making the exchange or sale;
- (3) any terms and conditions that the Secretary may require; and
- (4) the Foundation paying the reasonable costs of any surveys, appraisals, and any other administrative costs associated with the land exchange or sale.

(f) APPRAISALS.—

(1) IN GENERAL.—The land conveyed under subsection (a) or (d) shall be appraised by an independent appraiser selected by the Secretary.

(2) REQUIREMENTS.—An appraisal under paragraph (1) shall be conducted in accordance with nationally recognized appraisal standards, including—

- (A) the Uniform Appraisal Standards for Federal Land Acquisitions; and
- (B) the Uniform Standards of Professional Appraisal Practice.

(g) DISPOSITION OF PROCEEDS.—

(1) IN GENERAL.—The Secretary shall deposit in the fund established under Public Law 90–171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) any amount received by the Secretary as the result of—

- (A) any cash equalization payment made under subsection (b); and
- (B) any sale carried out under subsection (d).

(2) USE OF PROCEEDS.—Amounts deposited under paragraph (1) shall be available to the Secretary, without further appropriation and until expended, for the acquisition of land or interests in land in the Los Padres National Forest.

(h) MANAGEMENT AND STATUS OF ACQUIRED LAND.—Any non-Federal land acquired by the Secretary under this Act shall be managed by the Secretary in accordance with—

- (1) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and
- (2) any laws (including regulations) applicable to the National Forest System.

PURPOSE

The purpose of H.R. 129 is to authorize the Secretary of Agriculture to convey certain National Forest System land in the Los Padres National Forest in California.

BACKGROUND AND NEED

The White Lotus Foundation is a non-profit organization that provides yoga training and practice and other services at a retreat on private land near Santa Barbara, California, adjacent to the Los Padres National Forest, and near other developed land within the forest. A number of longstanding improvements associated with the private property (e.g., rock retaining walls and storage sheds) were located without authorization on National Forest land by the previous owner of the private land. In addition, current access to the property across National Forest System land from the nearby public road is no longer in compliance with the authorizations that were originally issued by the Forest Service.

In 2008, the Forest Service informed the White Lotus Foundation that it would have to obtain special use permits for the unauthorized uses of the National Forest land, enter into a land exchange with the Forest Service, remove the improvements, or seek legislative relief. To resolve the conflict, H.R. 129 would authorize the

Forest Service to exchange or sell to the Foundation approximately 5 acres of land on which the unauthorized uses occur.

LEGISLATIVE HISTORY

H.R. 129 was sponsored by Representative Gallegly, and passed the House of Representative by a vote of 400–0 on July 16, 2009.

The Subcommittee on Public Lands and Forests held a hearing on the H.R. 129 on October 29, 2009 (S. Hrg. 111–223). The Committee on Energy and Natural Resources considered the bill and adopted an amendment in the nature of a substitute at its business meeting on June 16, 2010. The Committee ordered H.R. 129 favorably reported, as amended, at its business meeting on June 21, 2010.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a voice vote of a quorum present, recommends that the Senate pass H.R. 129, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of H.R. 129, the Committee adopted an amendment in the nature of a substitute. The amendment authorizes the Secretary to convey National Forest System Land to the White Lotus Foundation in an exchange carried out in accordance with section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716). Only if the land exchange cannot be completed within two years of the date of enactment would the Secretary be authorized to sell the Federal land. The amendment also clarifies and adds a number of definitions to the Act, clarifies provisions relating to applicable law, the appraisal of the property, additional terms and conditions, and the management and status of any acquired land. The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 defines key terms used in the Act.

Section 2(a) authorizes the Secretary to convey approximately 5 acres of National Forest System land in exchange for non-Federal land that is acceptable to the Secretary.

Subsection (b) specifies that the land exchange must be carried out in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Subsection (c) provides that it is the intent of Congress that the land exchange be completed within two years after the date of the enactment of the Act.

Subsection (d) authorizes the Secretary to sell the National Forest System land to the White Lotus Foundation for fair market value if a land exchange is not completed within two years of the date of enactment. Neither subsection (c) nor (d) precludes the Secretary from conveying the Federal land by exchange after two years from the date of enactment; subsection (d) merely provides additional discretion to the Secretary to convey the Federal land by sale after that period.

Subsection (e) states that the conveyance is subject to valid existing rights, a finding by the Secretary that the conveyance of the Federal land is in the public interest, and such terms and conditions as the Secretary considers appropriate. It also requires the Foundation to pay the survey, appraisal, and any other administrative costs of the conveyance.

Subsection (f) requires the land to be appraised by an independent appraiser in accordance with nationally-recognized appraisal standards.

Subsection (g) directs the Secretary to deposit any proceeds from the conveyance in the Sisk Act fund (16 U.S.C. 484a) to acquire other land or interests in land in the Los Padres National Forest.

Subsection (h) directs the Secretary to manage the non-Federal land acquired from the Foundation in accordance with the Weeks Law (16 U.S.C. 480 et seq.) and any laws applicable to the National Forest System.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 129—An act to authorize the conveyance of certain National Forest System lands in the Los Padres National Forest in California

H.R. 129 would authorize the exchange of 5 acres of land in the Los Padres National Forest for unspecified lands owned by the White Lotus Foundation. If the land exchange does not occur within two years, the federal land could be sold to the foundation, and the proceeds could be spent without further appropriation. Based on information from the Forest Service, CBO estimates that enacting H.R. 129 would have no significant net impact on the federal budget.

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. If the Forest Service sold the affected land to the foundation, H.R. 129 would increase offsetting receipts (a credit against direct spending) and associated direct spending; therefore, pay-as-you-go procedures would apply. However, CBO estimates that enacting the legislation would have no significant net impact on direct spending. Enacting the legislation would not affect revenues.

On June 26, 2009, CBO transmitted a cost estimate for H.R. 129, as ordered reported by the House Committee on Natural Resources on June 10, 2009. Both versions of the legislation would authorize the sale of federal land; however, the Senate version would authorize the Forest Service to sell the affected land if the agency cannot complete a land exchange within two years of the enactment of the legislation.

H.R. 129 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no cost on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Sam Papenfuss, Unit Chief for Income Security and Education Cost Estimates Unit, Budget Analysis Division.

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 H.R. 129.

The Act 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 H.R. 129, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 129, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at the October 29, 2009, subcommittee hearing on H.R. 129 (S. Hrg. 111–223), which is printed below:

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Barrasso, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to provide the Department's views on H.R. 129, regarding conveyance with consideration of National Forest System lands located in the Los Padres National Forest.

This legislation would authorize the Secretary to convey, subject to valid existing rights with consideration, all right, title, and interest in National Forest System land up to 5 acres within the Los Padres National Forest located in Santa Barbara County, California. The Department appreciates this Committee's efforts to resolve this issue; however, we do not support H.R. 129 because there would be limited benefit to the public from this conveyance. This legislation would serve only a small, select group of citizens, the White Lotus Foundation. In addition, the conveyance would legitimize the Foundation's long-standing encroachments on lands in the Los Padres National Forest by allowing the Foundation to acquire them through legislation for the Foundation's private use and enjoyment.

Adjacent landowners with similar long-standing encroachments on National Forest System lands in the Los Padres National Forest would not receive a remedy. These landowners are following H.R. 129 with interest, as the model for resolving their encroachment cases. Resolving the White Lotus Foundation encroachments through H.R.

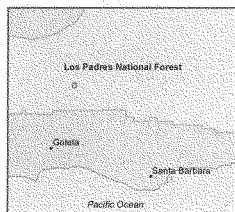
129 would therefore set a precedent for resolution of other encroachment cases through case-specific legislation.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I am happy to answer any questions that you or Members of the Committee may have.

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 Act H.R. 129, as ordered reported.

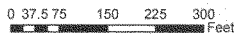
San Marcos Pass Encroachment for Consideration of Legislative Remedy
 Subject to Valid Existing Rights in SE1/4, S. 22, T. 5N R. 28 W, SBM



References

Map prepared by the USDA Forest Service, Region 5 Geospatial Services Staff. For more information about this map contact USDA Forest Service, Region 5 Geospatial Services Program Manager.

Data Source: USDA Forest Service, Geospatial Services, Vallejo, CA.



Map Creation Date: June 1, 2009

- PLSS Lines
- Arterial Road
- State Highway
- Proposed White Lotus Encroachment Remedy
- USDA Forest Service