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SENATE

{ REPORT
{ 106-129

TERRY PEAK LAND CONVEYANCE ACT OF 1999

JULY 29, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 953]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 953) to direct the Secretary of Agriculture to convey certain land in the State of South Dakota to the Terry Peak Ski Area, 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. SHORT TITLE.

This Act may be cited as the “Terry Peak Land Transfer Act of 1999”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Certain National Forest System land located in the Black Hills National Forest in Lawrence County, South Dakota, is currently permitted to the Terry Peak Ski Area by the Secretary of Agriculture pursuant to section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

(2) The National Forest System land comprises only 10 percent of the land at the Ski Area, with the remaining 90 percent located on private land owned by the Ski Area operator.

(3) As the fractional Forest Service land holding at the Ski Area is also encumbered by ski lifts, ski trails, a base lodge parking lot and other privately owned improvements, it serves little purpose in continued public ownership, and can more logically be conveyed to the Ski Area to unify land management and eliminate permitting and other administrative costs to the United States.

(4) The Ski Area is interested in acquiring the land from the United States, but the Secretary does not have administrative authority to convey such land in a nonsimultaneous land exchange absent specific authorization from Congress.

(5) The Black Hills National Forest contains several small inholdings of undeveloped private land with multiple landowners which complicate National For-

est land management and which can be acquired by the United States from willing sellers if acquisition funds are made available to the Secretary.

(6) The proceeds from the Terry Peak conveyance can provide a modest, but readily available and flexible, funding source for the Secretary to acquire certain inholdings in the Black Hills National Forest from willing sellers, and given the small and scattered nature of such inholdings, and number of potential sellers involved, can do so more efficiently and quickly than through administrative land exchanges.

(7) It is, therefore, in the public interest to convey the National Forest System land at Terry Peak to the Ski Area at fair market value and to utilize the proceeds to acquire more desirable lands for addition to the Black Hills National Forest for permanent public use and enjoyment.

(b) PURPOSE.—It is the purpose of this Act to require the conveyance of certain National Forest System lands at the Terry Peak Ski Area to the Ski Area and to utilize the proceeds to acquire more desirable lands for the United States for permanent public use and enjoyment.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term “Secretary” means the Secretary of Agriculture, unless otherwise specified.

(2) The term “selected land” means land comprising approximately 41.42 acres and generally depicted as government lots 6 and 11, section 2, township 4 north, range 2 east, Black Hills meridian, on a map entitled “Terry Peak Land Conveyance”, dated March 1999; and

(3) the terms “Terry Peak Ski Area” and “Ski Area” mean the Black Hills Chairlift Company, a South Dakota Corporation, or its successors, heirs and assigns.

SEC. 4. LAND CONVEYANCE AND MISCELLANEOUS PROVISIONS.

(a) CONVEYANCE REQUIRED.—The Secretary of Agriculture shall convey the selected land to the Terry Peak Ski Area at fair market value, as determined by the Secretary.

(b) APPRAISAL.—The value of the selected land shall be determined by the Secretary utilizing nationally recognized appraisal standards, including to the extent appropriate, the Uniform Appraisal Standards For Federal Land Acquisitions (1992), the Uniform Standards of Professional Appraisal Practice, and other applicable law. The costs of the appraisal shall be paid for by the Ski Area.

(c) COMPLETION OF CONVEYANCE.—It is the sense of Congress that the conveyance to the Ski Area required by this Act be consummated no later than 6 months after the date of enactment of this Act, unless the Secretary and the Ski Area mutually agree to extend the consummation date. Prior to conveying the selected land to the Ski Area, the Secretary shall complete standard pre-disposal analyses and clearances pertaining to threatened and endangered species, cultural and historic resources, wetlands and floodplains, and hazardous materials.

(d) USE OF PROCEEDS BY THE SECRETARY.—All monies received by the Secretary pursuant to this Act shall be considered monies received and deposited pursuant to Public Law 90–171 (16 U.S.C. 484a; commonly known as the Sisk Act) and shall be retained and utilized by the Secretary until fully expended to acquire replacement land from willing sellers for addition to the Black Hills National Forest in South Dakota. Any lands so acquired shall be added to and administered as part of the Black Hills National Forest and, if any such land lies outside the exterior boundaries of the Forest, the Secretary may modify the boundary of the Forest to include such land. Nothing in this section shall be construed to limit the authority of the Secretary to adjust the boundaries of the Forest pursuant to section 11 of the Act of March 1, 1911 (16 U.S.C. 521; commonly known as the Weeks Act).

(e) CONVEYANCE SUBJECT TO VALID EXISTING RIGHTS, EASEMENTS.—The conveyance to the Ski Area required by this Act shall be subject to valid existing rights and to existing easements, rights-of-way, utility lines and any other right, title or interest of record on the selected land as of the date of transfer of the selected land to the Terry Peak Ski Area.

PURPOSE OF THE MEASURE

The purpose of S. 953 is to direct the Secretary of Agriculture to convey for an amount equal to the fair market value, certain land in South Dakota to the Terry Peak Ski Area in order to improve management of the Black Hills National Forest.

BACKGROUND AND NEED

S. 953 directs the Secretary of Agriculture to convey at fair market value, approximately 41.42 acres of National Forest System land in South Dakota to the Terry Peak Ski Area. The bill authorizes the use of the proceeds to acquire more desirable land for addition to the Black Hills National Forest for permanent public use and enjoyment.

The Terry Peaks Ski Area operates under a ski area permit in the Black Hills National Forest in Lawrence County, South Dakota. The permitted land is 10 percent of the land of the Ski Area, and the operator owns the other 90 percent. The land to be conveyed is encumbered by lifts, trails, a base lodge and other improvements. The conveyance will eliminate the need for a permit and related costs to administer these lands. This bill gives specific authority for the Secretary to convey the parcel in exchange for a modest amount of funds that can then be used to acquire, from willing sellers, scattered inholdings within the forest. The conveyance will improve the management of National Forest System lands.

LEGISLATIVE HISTORY

S. 953 was introduced by Senators Johnson and Daschle on May 4, 1999. The Subcommittee on Forests and Public Land Management held a hearing on S. 953 on June 23, 1999. At the business meeting on June 30, 1999, the Committee on Energy and Natural Resources ordered S. 953, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 30, 1999, by unanimous voice vote of a quorum present recommends that the Senate pass S. 953, if amended as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the bill's short title as the "Terry Peak Land conveyance Act of 1999."

Section 2 presents findings and purposes of the bill.

Section 3 defines terms used in the bill.

Section 4(a) directs the Secretary to convey the land to the Ski Area at a fair market value.

Subsection (b)(1) directs the Secretary to determine the value of the land by using nationally recognized appraisal standards.

Paragraph (2) requires the Ski Area to pay the costs of the appraisal.

Subsection (c) directs that the conveyance must occur within 180 days after the date of enactment of the Act unless a postponement is mutually agreed to.

Subsection (d) mandates that the Secretary will perform the standard environmental analyses for permits and clearances prior to completing the conveyance.

Subsection (e) prescribes that the proceeds received from the conveyance shall be used to acquire replacement land from willing sellers for addition to the Black Hills National Forest.

Subsection (f) directs that any land acquired shall be added to, and administered as, National Forest Systems lands.

Subsection (g) requires that the conveyance directed in subsection (a) will be subject to all valid existing rights.

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, July 7, 1999.

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. 953, the Terry Peak Land Conveyance Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria Heid Hall.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 953—Terry Peak Land Conveyance Act of 1999

CBO estimates that implementing S. 953 would not have a significant impact on the federal budget. Because S. 953 would affect direct spending, pay-as-you-go procedures would apply; however, we estimate that the effect on direct spending would be insignificant. This bill would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 953 would direct the Secretary of Agriculture to convey about 41 acres in the Black Hills National Forest, South Dakota, to the Terry Peak Ski Area. The bill provides that the conveyance be at fair market value. The cost to appraise the land would be paid by the ski area. S. 953 would give the Secretary the authority to spend any money from the sale to acquire replacement land for the Black Hills National Forest.

Based on information from the Forest Service, CBO estimates that selling the land to the ski area would generate new offsetting receipts (a credit against direct spending) of less than \$125,000. The agency would subsequently spend those funds to acquire other land. The sale receipts and subsequent spending would net zero over the 2000–2004 period. The ski area currently pays annual fees to the Forest Service for use of the land, and the Forest Service shares those receipts with the state of South Dakota. Thus, conveying the land to the ski area would result in both a loss of income from fees and lower payments to the state. We expect that the net loss to the federal government would total less than \$10,000 each year.

On July 7, 1999, CBO prepared a cost estimate for H.R. 2079, the Terry peak Land Conveyance Act of 1999, as ordered reported by the House committee on Resources on June 30, 1999. The two bills are identical, as are the two cost estimates.

The CBO staff contact is Victoria Heid Hall. This estimate was 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. 953.

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. 953, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 30, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations on S. 953. These reports had not been received at the time the report on S. 953 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 at the Subcommittee hearing follows:

STATEMENT OF DENNY BSCHOR, DIRECTOR, RECREATION,
HERITAGE, AND WILDERNESS RESOURCES, FOREST SERVICE,
DEPARTMENT OF AGRICULTURE

Thank you for your invitation to testify on S. 953, the "Terry Peak Land Conveyance Act of 1999", S. 1088, the "Arizona National Forest Improvement Act of 1999", and S. 503, the "Spanish Peaks Wilderness Act of 1999".

S. 953, "Terry Peak Land Transfer Act of 1999"

The Administration supports S. 953 because, (1) this conveyance will reduce significant administrative duties and costs for a 40 acre parcel of National Forest land within the Terry Peak Ski Area and, (2) the Forest Service will receive fair market value compensation for this land.

Ski area facilities authorized under a special use permit are located on this parcel, which private lands border on three sides. Instead of retaining the parcel, the public would be better served by using the fair market value of this land to acquire private inholdings from willing sellers to add to the Black Hills National Forests.

Conveyance of the 40 acre parcel, which is less than 10% of the ski area, would eliminate Forest Service costs of administering a special use permit for the ski area facilities located on this land. Compensation for this land would be considered monies received and deposited pursuant to the Sisk Act and the Forest Service would use them to acquire private inholdings from willing sellers within the Black Hills National Forest for public use and enjoyment.

The Forest Service, however, recommends a technical amendment to Section 4(e) to clarify that the proceeds from the sale of the 40 acres be available without further appropriation for the acquisition of lands or interests in lands from willing sellers for addition to the Forest.

CHANGE 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. 953, as ordered reported.