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106TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 106-476

CONVEYANCE OF LAND IN THE SAN BERNARDINO NATIONAL FOREST, CALIFORNIA

OCTOBER 3 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2111]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2111) to direct the Secretary of Agriculture to convey for fair market value 1.06 acres of land in the San Bernardino National Forest, California, to KATY 101.3 FM, a California corporation, 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. LAND CONVEYANCE AND SETTLEMENT, SAN BERNARDINO NATIONAL FOREST, CALIFORNIA

(a) CONVEYANCE REQUIRED.—Subject to valid existing rights and settlement of claims as provided in this section, the Secretary of Agriculture shall convey to KATY 101.3 FM (in this section referred to as “KATY”) all right, title and interest of the United States in and to a parcel of real property consisting of approximately 1.06 acres within the San Bernardino National Forest in Riverside County, California, generally located in the north ½ of section 23, township 5 south, range 2 east, San Bernardino meridian.

(b) LEGAL DESCRIPTION.—The Secretary and KATY shall, by mutual agreement, prepare the legal description of the parcel of real property to be conveyed under subsection (a), which is generally depicted as Exhibit A-2 in an appraisal report of the subject parcel dated August 26, 1999, by Paul H. Meiling.

(c) CONSIDERATION.—Consideration for the conveyance under subsection (a) shall be equal to the appraised fair market value of the parcel of real property to be conveyed. Any appraisal to determine the fair market value of the parcel shall be prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions and approved by the Secretary.

(d) SETTLEMENT.—In addition to the consideration referred to in subsection (c), upon the receipt of \$16,600 paid by KATY to the Secretary, the Secretary shall release KATY from any and all claims of the United States arising from the occupancy

and use of the San Bernardino National Forest by KATY for communication site purposes.

(e) ACCESS REQUIREMENTS.—Notwithstanding section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)) or any other law, the Secretary is not required to provide access over National Forest System lands to the parcel of real property to be conveyed under subsection (a).

(f) ADMINISTRATIVE COSTS.—Any costs associated with the creation of a subdivided parcel, recordation of a survey, zoning, and planning approval, similar expenses with respect to the conveyance under this section, shall be borne by KATY.

(g) ASSUMPTION OF LIABILITY.—By acceptance of the conveyance of the parcel of real property referred to in subsection (a) KATY, and its successors and assigns, will indemnify and hold harmless the United States for any and all liability to General Telephone and Electronics Corporation (also known as “GTE”), KATY, and any third party that is associated with the parcel, including liability for any buildings or personal property on the parcel belonging to GTE and any other third parties.

(h) TREATMENT OF RECEIPTS.—All funds received pursuant to this section shall be deposited in the fund established under Public Law 90–171 (16 U.S.C. 484a; commonly known as the Sisk Act), and the funds shall remain available to the Secretary, until expended, for the acquisition of lands, waters, and interests in land for the inclusion in the San Bernardino National Forest.

(i) RECEIPTS ACT AMENDMENT.—The Act of June 15, 1938 (Chapter 438:52 Stat. 699), as amended by the Acts of May 26, 1944 (58 Stat. 227), is further amended—

(1) by striking the comma after the words “Secretary of Agriculture”;

(2) by striking the words “with the approval of the National Forest Reservation Commission established by section 4 of the Act of March 1, 1911 (16 U.S.C. 513),”;

(3) by inserting the words “, real property or interests in lands,” after the word “lands” the first time it is used;

(4) by striking “San Bernardino and Cleveland” and inserting “counties of San Bernardino, Cleveland and Los Angeles”;

(5) by striking “county of Riverside” each place it appears and inserting “counties of Riverside and San Bernardino”;

(6) by striking “as to minimize soil erosion and flood damage” and inserting “for National Forest System purposes”; and

(7) after the “*Provided further, That*”, by striking the remainder of the sentence to the end of the paragraph, and inserting “twelve and one-half percent of the monies otherwise payable to the State of California for the benefit of San Bernardino County under the aforementioned Act of March 1, 1911 (16 U.S.C. 500) shall be available to be appropriated for expenditure in furtherance of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 2111 is to provide for the conveyance of a 1.06 acre parcel within and adjacent to the boundary of the San Bernardino National Forest in the State of California to the radio station KATY 101.3 FM for the continued use as an antenna site and for other purposes.

BACKGROUND AND NEED

S. 2111 directs the Secretary of Agriculture to sell at fair market value a 1.06 acre parcel of public domain land lying within the exterior boundary of San Bernardino National Forest to KATY 101.3 FM so that it may continue to be used as an antenna site by the radio station.

In 1988, Mr. and Mrs. Cliff and Katy Gill received a construction permit from the Federal Communication Commission for a radio station to serve Idyllwild, California, a community of approximately 3,000 residents, located at 5,200 feet in the San Jacinto Mountains. The community is surrounded by mountains and public land, including the San Bernardino National Forest and State and local parkland. The combination of the rugged terrain and limited amount of private land severely limited the availability of antenna

sites that would provide a signal capable of reaching the entire community of Idyllwild, neighboring mountain communities, and Highway 74, the route that connects the communities to the valley below. No private land site proved suitable, although KATY did begin broadcasting in December 1989 with a weak signal and fragmented coverage from a temporary antenna on a time-shared campground.

The Gills continued to search for a more suitable antenna site. They learned of a location on the San Bernardino National Forest that had been operated as a communications site for more than 30 years by the General Telephone and Electronics Corporation under a special use permit from the Forest Service, United States Department of Agriculture. This site is located on a geographical feature known as Inspiration Point, adjacent to the exterior boundary of the National Forest and a private subdivision. GTE offered to sublease space to KATY on its wooden antenna tower and within its cinder block equipment shed. The Gills signed a sublease with GTE and attached their station's antenna to the GTE tower in 1995.

The value of the station and the antenna site was promptly established. KATY signed an agreement with the local, limited coverage, emergency broadcast station, WNKI, to carry WNKI's emergency bulletins. The FCC and the California State Office of Emergency Services designated KATY as the Local Primary Station to broadcast emergency information during disasters. In 1996, KATY aired nearly 200 announcements concerning the Bee Canyon fire, including the mandatory evacuation order and safe return notice for Idyllwild. Two years later, KATY broadcast another mandatory order to evacuate a second community also threatened by wildlife.

However, KATY found its continued use of the National Forest site jeopardized when the local district ranger addressed a letter to Mr. Gill informing him that KATY was in trespass because GTE had no authority under its special use permit to sublease the site to the radio station. KATY was ordered to vacate the site.

Following written correspondence from the then Chairman and ranking minority member of this Committee (Senators Murkowski and Johnston) with the Secretary of Agriculture and the Chief of the Forest Service, Senate conferees offered, and the conference committee agreed to insert, a provision in the Omnibus Parks and Public Lands Management Act of 1996 (section 1037, P.L. 104-333) that directed the Secretary to determine whether the continued presence of the KATY antenna on the GTE communications site was in the public interest and to report his determination to this Committee and the Committee on Resources, House of Representatives.

Instead of submitting the report to Congress, the Forest Service approached KATY about the willingness of the station to purchase the site. KATY agreed to buy the 1.06 acre parcel for fair market value and to commission a survey and appraisal acceptable to the agency. In return for a release of KATY from any and all claims the United States might have against the station arising from the station's occupancy and use of the National Forest site, KATY also agreed to pay to the Forest Service the rent it would otherwise have owed to the agency had it received a special use permit for the site.

SUMMARY OF MAJOR PROVISIONS

S. 2111 directs the Secretary of Agriculture to sell to KATY the 1.06 acre parcel in the San Bernardino National Forest for fair market value upon the Secretary's approval of an appraisal that conforms with the Uniform Appraisal Standards for Federal Land Acquisition. It also provides the release to KATY for claims of the United States upon payment by the station of \$16,600—the amount equivalent to the rent the Forest Service calculated it would have charged KATY under a special use permit.

Other provisions of S. 2111 make clear that KATY is responsible for any subdivision, recordation, and zoning costs related to continued use of the parcel after conveyance and that the Forest Service is not required to grant access across national forest land to the site; provide that KATY, upon acceptance of title, holds harmless the United States from any third party claims associated with the parcel; and authorizes use of the funds received from KATY under the bill for acquisition of other land for inclusion in the San Bernardino National Forest.

Finally, the bill amends the Receipts Act of 1938 to redirect one-half of the twenty-five percent payments from the San Bernardino National Forest. Currently, San Bernardino County receives the payments, and this section directs one-half of the payments to San Bernardino National Forest for land acquisition. This would provide the same treatment for San Bernardino County that is currently enjoyed by the counties of Los Angeles, Kern, San Diego, and Riverside. The impact on San Bernardino County revenues would be minimal because only a very small part of its budget is derived from receipt sharing payments from National Forest system lands.

At the same time, there are numerous parcels of underdeveloped, private land within the San Bernardino National Forest, many of which are suitable for subdivision and development. If these tracts are developed, the manageability of adjacent National Forest system lands will decrease. Public ownership of key private land parcels would help the forest manage threaten, endangered and sensitive plant and animal species, improve recreation opportunities, and maintain open space that is scarce in southern California.

Additionally, acquisition of these parcels will reduce the prospect of increased urban-wildland interface areas in and around the San Bernardino National Forest as a consequence of new subdivision construction. Using current fiscal year figures, it is estimated that approximately \$150,000 would be available for land acquisition within that portion of the San Bernardino National Forest located in San Bernardino county.

LEGISLATIVE HISTORY

S. 2111 was introduced by Senator Feinstein on February 28, 2000. The Subcommittee on Forests and Public Land Management held a hearing on the measure on June 8, 2000. At its business meeting on September 20, 2000, the Committee on Energy and Natural Resources ordered S. 2111 reported favorably with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a voice vote of a quorum present, recommends that the Senate pass S. 2111 with amendment.

COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes several technical and clarifying changes to the language of S. 2111, as introduced. It also includes two new provisions: subsection (g) concerning KATY's assumption of liability and subsection (i) amending the 1938 Receipts Act, as explained in the Summary of Major Provisions section above.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report becomes available the Chairman will request that it be printed in the Congressional Record for the advice of the Senate. A copy of the CBO report on the companion measure in the House (H.R. 3657) follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 15, 2000.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3657, a bill to provide for the conveyance of a small parcel of public domain land in the San Bernardino National Forest in the state of California, and for other purposes.

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

Sincerely,

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

Enclosure.

H.R. 3657—A bill to provide for the conveyance of a small parcel of public domain land in the San Bernardino National Forest in the State of California, and for other purposes.

CBO estimates that enacting this legislation would have no significant net affect on the federal budget. Because the bill would affect direct spending, pay-as-you-go procedures would apply, but the impact on direct spending would be negligible. H.R. 3657 contains 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.

Since 1995, KATY 101.3 FM (KATY), a small radio station, has operated a communication tower on approximately 1 acre of land that it leases within the San Bernardino National Forest in Cali-

ifornia. H.R. 3657 would direct the Secretary of Agriculture to convey that property to KATY in return for a payment equal to the land's appraised full market value. The bill also would require the Secretary, upon receipt of a payment by KATY of \$16,600 (the estimated amount of arrears owed by KATY to the federal government), to release KATY from all claims arising from its lease of the site. Under the bill, the Secretary would not be required to provide access to the site. KATY would bear all administrative costs associated with the conveyance and would have to agree to indemnify the United States against future claims regarding the property.

H.R. 3657 would authorize the Secretary to spend, without further appropriation, funds received from KATY to acquire other property for the San Bernardino National Forest. Based on information from the Forest Service, CBO expects that the federal government would receive as much as \$150,000 from KATY in 2001. Those payments would be recorded as offsetting receipts (a credit against direct spending), and would be spent over the 2001–2002 period.

The CBO staff contact is Megan Carroll. This estimate was approved by Robert A. Sunshine, 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 that would be incurred in carrying out S. 2111.

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 enactment of S. 2111, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 26, 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 views on S. 2111. These reports had not been received at the time the report on S. 2111 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 JACK CRAVEN, DIRECTOR OF LANDS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mister Chairman and Members of the Subcommittee, thank you for the opportunity to present the Administration's views on S. 2111, a bill to direct the Secretary of Agriculture to convey for fair market value 1.06 acres of land in the San Bernardino National Forest, California, to

KATY 101.3 FM, a California corporation. We do not object to this bill if it is as suggested.

S. 2111 would direct the Secretary of Agriculture to convey for fair market value 1.06 acres of national forest system land within the San Bernardino National Forest to KATY 101.3 FM, a California corporation. It would resolve a four-year dispute between the Forest Service and KATY-FM over their unauthorized use and occupancy of national forest system land.

This bill will provide the public with payment of the fair market value of the subject parcel and with accrued land use rental fees for its use as a broadcast site over the past four years. The Administration does not object to this bill but recommends that it be amended with a provision that directs KATY to assume any liability of any building or personal property belonging to any third party and existing on the subject parcel of national forest system land to be conveyed. Amending S. 2111 in this manner will protect the United States against possible claims by any third parties who may have an interest in the facilities located on this parcel.

This concludes my testimony. I would be glad to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2111, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT To further amend the Act of June 5, 1938 (52 Stat. 699), as amended by the Act of May 26, 1944 (58 Stat. 227), which authorizes the appropriation of receipts from certain national forests for the purchase of lands within the boundaries of such forests, to provide for the purchase of lands, real property or interests in lands in certain additional areas.

The Secretary of Agriculture~~[,]~~ ~~【with the approval of the National Forest Reservation Commission established by section 4 of the Act of March 1, 1911 (16 U.S.C. 513),】~~ is hereby authorized to acquire by purchase any lands, *real property or interests in lands*, within the boundaries of the ~~【San Bernardino and Cleveland】~~ *counties of San Bernardino, Cleveland and Los Angeles* National Forests, in the ~~【county of Riverside】~~ *counties of Riverside and San Bernardino*, State of California, which, in his judgment, should become the property of the United States in order that they may be so managed with other lands of the United States ~~【as to minimize soil erosion and flood damage】~~ *for National Forest System purposes*, and to pay for said lands from those proportions of the receipts derived from the sale of natural resources, other than mineral, and the occupancy of publicly owned lands within said national forests which are equal to the proportions of the net areas of said national forests situated in the ~~【county of Riverside】~~ *counties of Riverside and San Bernardino*, State of California, which receipts are hereby authorized to be appropriated for expenditure for that purpose until said lands have been acquired; all lands so ac-

quired thereafter to be subject to and administered under the laws applicable to lands acquired under the provisions of said Act of March 1, 1911 (16 U.S.C. 519, 520, 521), as amended: *Provided*, That the provisions of sections 500 and 501 of title 16 of the United States Code shall not be applicable to receipts so appropriated and expended, but any appropriated amounts which are, or which heretofore have been, unexpended and unobligated at the close of the fiscal year for which appropriated shall be transferred to the national-forest receipts of that fiscal year, and amounts so transferred and such portions of the receipts of any fiscal year as are not, or heretofore have not been, appropriated, for the ensuing fiscal year shall be disposed of in the same manner as other national forest receipts: *Provided further*, [That the amounts to which the county of Riverside would otherwise be entitled under section 500 of title 16 of the United States Code shall be reduced by the amounts by which payments to the State for distribution to counties under that section are reduced pursuant to the above proviso.] *Twelve and one-half percent of the monies otherwise payable to the State of California for the benefits of San Bernardino County under the aforementioned Act of March 1, 1911 (16 U.S.C. 500) shall be available to be appropriated for expenditure in furtherance of this Act.*