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2d Session }

SENATE

{ REPORT
108-234

BARRY AND STONE COUNTIES, MISSOURI

MARCH 9, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 1167]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1167) to resolve boundary conflicts in Barry and Stone Counties in the State of Missouri, 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. RESOLUTION OF BOUNDARY CONFLICTS, VICINITY OF MARK TWAIN NATIONAL FOREST, BARRY AND STONE COUNTIES, MISSOURI.

(a) DEFINITIONS.—In this section:

(1) The term “appropriate Secretary” means the Secretary of the Army or the Secretary of Agriculture.

(2) The term “boundary conflict” means the situation in which the private claim of ownership to certain lands, based on subsequent Federal land surveys, overlaps or conflicts with Federal ownership of the same lands.

(3) The term “Federal land surveys” means any land survey made by any agency or department of the Federal Government using Federal employees, or by Federal contract with State-licensed private land surveyors or corporations and businesses licensed to provide professional land surveying services in the State of Missouri for Table Rock Reservoir.

(4) The term “original land surveys” means the land surveys made by the United States General Land Office as part of the Public Land Survey System in the State of Missouri, and upon which Government land patents were issued conveying the land.

(5) The term “Public Land Survey System” means the rectangular system of original Government land surveys made by the United States General Land Office and its successor, the Bureau of Land Management, under Federal laws providing for the survey of the public lands upon which the original land patents were issued.

(6) The term “qualifying claimant” means a private owner of real property in Barry or Stone County, Missouri, who has a boundary conflict as a result of good faith and innocent reliance on subsequent Federal land surveys, and as a result of such reliance, has occupied or improved Federal lands administered by the appropriate Secretary.

(7) The term “subsequent Federal land surveys” means any Federal land surveys made after the original land surveys that are inconsistent with the Public Land Survey System.

(b) RESOLUTION OF BOUNDARY CONFLICTS.—The Secretary of the Army and the Secretary of Agriculture shall cooperatively undertake actions to rectify boundary conflicts and landownership claims against Federal lands resulting from subsequent Federal land surveys and correctly reestablish the corners of the Public Land Survey System in Barry and Stone Counties, Missouri, and shall attempt do so in a manner which imposes the least cost and inconvenience to affected private landowners.

(c) NOTICE OF BOUNDARY CONFLICT.—

(1) SUBMISSION AND CONTENTS.—A qualifying claimant shall notify the appropriate Secretary in writing of a claim that a boundary conflict exists with Federal land administered by the appropriate Secretary. The notice shall be accompanied by the following information, which, except as provided in subsection (e)(2)(B), shall be provided without cost to the United States:

(A) A land survey plat and legal description of the affected Federal lands, which are based upon a land survey completed and certified by a Missouri State-licensed professional land surveyor and done in conformity with the Public Land Survey System and in compliance with the applicable State and Federal land surveying laws.

(B) Information relating to the claim of ownership of the Federal lands, including supporting documentation showing that the landowner relied on a subsequent Federal land survey due to actions by the Federal Government in making or approving surveys for the Table Rock Reservoir.

(2) DEADLINE FOR SUBMISSION.—To obtain relief under this section, a qualifying claimant shall submit the notice and information required by paragraph (1) within 15 years after the date of the enactment of this Act.

(d) RESOLUTION AUTHORITIES.—In addition to using existing authorities, the appropriate Secretary is authorized to take any of the following actions in order to resolve boundary conflicts with qualifying claimants involving lands under the administrative jurisdiction of the appropriate Secretary:

(1) Convey by quitclaim deed right, title, and interest in land of the United States subject to a boundary conflict consistent with the rights, title, and interest associated with the privately-owned land from which a qualifying claimant has based a claim.

(2) Confirm Federal title to, and retain in Federal management, any land subject to a boundary conflict, if the appropriate Secretary determines that there are Federal interests, including improvements, authorized uses, easements, hazardous materials, or historical and cultural resources, on the land that necessitates retention of the land or interests in land.

(3) Compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management pursuant to paragraph (2).

(e) CONSIDERATION AND COST.—

(1) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of land under subsection (d)(1) shall be made without consideration.

(2) COSTS.—The appropriate Secretary shall—

(A) pay administrative, personnel, and any other costs associated with the implementation of this section by his or her Department, including the costs of survey, marking, and monumenting property lines and corners; and

(B) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this section.

(3) VALUATION.—Compensation paid to a qualifying claimant pursuant to subsection (d)(3) for land retained in Federal ownership pursuant to subsection (d)(2) shall be valued on the basis of the contributory value of the tract of land to the larger adjoining private parcel and not on the basis of the land being a separate tract. The appropriate Secretary shall not consider the value of any Federal improvements to the land. The appropriate Secretary shall be responsible for compensation provided as a result of subsequent Federal land surveys conducted or commissioned by the appropriate Secretary’s Department.

(f) PREEXISTING CONDITIONS; RESERVATIONS; EXISTING RIGHTS AND USES.—

(1) PREEXISTING CONDITIONS.—The appropriate Secretary shall not compensate a qualifying claimant or any other person for any preexisting condition

or reduction in value of any land subject to a boundary conflict because of any existing or outstanding permits, use authorizations, reservations, timber removal, or other land use or condition.

(2) EXISTING RESERVATIONS AND RIGHTS AND USES.—Any conveyance pursuant to subsection (d)(1) shall be subject to—

(A) reservations for existing public uses for roads, utilities, and facilities; and

(B) permits, rights-of-way, contracts and any other authorization to use the property.

(3) TREATMENT OF LAND SUBJECT TO SPECIAL USE AUTHORIZATION OR PERMIT.—For any land subject to a special use authorization or permit for access or utilities, the appropriate Secretary may convert, at the request of the holder, such authorization to a permanent easement prior to any conveyance pursuant to subsection (d)(1).

(4) FUTURE RESERVATIONS.—The appropriate Secretary may reserve rights for future public uses in a conveyance made pursuant to subsection (d)(1) if the qualifying claimant is compensated for the reservation in cash or in land of equal value.

(5) HAZARDOUS SUBSTANCES.—The requirements of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) shall not apply to conveyances or transfers of jurisdiction pursuant to subsection (d), but the United States shall continue to be liable for the cleanup costs of any hazardous substances on the lands so conveyed or transferred if the contamination by hazardous substances is caused by actions of the United States or its agents.

(g) RELATION TO OTHER CONVEYANCE AUTHORITY.—Nothing in this section affects the Quiet Title Act (28 U.S.C. 2409a) or other applicable law, or affects the exchange and disposal authorities of the Secretary of Agriculture, including the Small Tracts Act (16 U.S.C. 521c), or the exchange and disposal authorities of the Secretary of the Army.

(h) ADDITIONAL TERMS AND CONDITIONS.—The appropriate Secretary may require such additional terms and conditions in connection with a conveyance under subsection (d)(1) as the Secretary considers appropriate to protect the interests of the United States.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

2. Amend the title so as to read: “A bill to resolve boundary conflicts in Barry and Stone Counties in the State of Missouri.”.

PURPOSE

The purpose of S. 1167 is to provide a process for the Forest Service and the U.S. Army to resolve boundary disputes with private landowners around the Mark Twain National Forest in Missouri. The bill would give property owners who have ownership disputes with the two agencies 15 years to notify the Federal Government of their claims. Upon receipt of a valid claim, the appropriate agency is authorized to convey the disputed property to the private owners or confirm federal ownership and compensate the private owners for the value of the disputed land. The Secretaries are authorized to convey the land without consideration for certain survey costs, to pay associated administrative costs incurred by their Departments, and to reimburse the landowner.

BACKGROUND AND NEED

During the 1970's, the U.S. Army Corps of Engineers, through various private land surveyors, surveyed this area around Table Rock Lake in Missouri. The land involving these disputed property lines is located in the vicinity of the Cassville District of the Mark Twain National Forest in Barry and Stone Counties adjacent to Table Rock Lake. In its surveys, the Corps found that most of the original “corner monuments” or boundary lines laid out by the U.S.

General Land Office (GLO) in its original land surveys performed in the 1840's were either lost, stolen or had eroded over the years. Because of this, Corps surveyors used existing de-facto land markers in the vicinity of the original GLO monuments as the basis for its new survey.

More recently, the USFS performed new land surveys, and claims that the boundary lines in its surveys conflict with the boundary lines established in the previous Corps of Engineers surveys. The USFS also believes that the Corps surveys are incorrect and that the property lines in the area are incorrectly located.

To date the Corps of Engineers and the Forest Service have been unable to agree on a resolution to this problem. In the meantime, the lives of many of these Missouri residents continue to be disrupted due to clouded titles.

The legislation authorizes the Secretaries of Agriculture and the Army to convey to the private land owners, without consideration, title to land on which there is a boundary conflict with adjoining Federal land, if the landowner can demonstrate that they occupied or improved Federal lands because they relied innocently and in good faith on a subsequent land survey approved by the Federal Government.

LEGISLATIVE HISTORY

S. 1167 was introduced on June 2, 2003 by Senator Bond. Senator Talent is a co-sponsor. The Subcommittee on Public Lands and Forests held a hearing on S. 1167 on November 18, 2003. S. Hrg. 108-321. H.R. 2304, a companion bill, passed the House of Representatives by voice vote on November 17, 2003. At the business meeting on February 11, 2004, the Senate Committee on Energy and Natural Resources ordered S. 1167, favorably reported, with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on February 11, 2004, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1167, if amended as described herein.

The rollcall vote on reporting the measure was 23 yeas, 0 nays, as follows:

YEAS

NAYS

Mr. Domenici
Mr. Nickles
Mr. Craig
Mr. Campbell*
Mr. Thomas
Mr. Alexander
Ms. Murkowski
Mr. Talent
Mr. Burns
Mr. Smith*
Mr. Bunning
Mr. Kyl*
Mr. Bingaman
Mr. Akaka

Mr. Dorgan*
 Mr. Graham of Florida*
 Mr. Wyden*
 Mr. Johnson*
 Ms. Landrieu*
 Mr. Bayh*
 Mrs. Feinstein*
 Mr. Schumer*
 Ms. Cantwell

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 1167, the Committee adopted an amendment in the nature of a substitute. The substitute adopts most of the language of H.R. 2304, strikes the findings and purpose section from the bill, and adds a sections to address hazardous substances to make a clear statement that the Secretary of the Army and the Secretary of Agriculture shall take actions to rectify the boundary conflicts.

SECTION-BY-SECTION ANALYSIS

Section 1(a) provides definitions.

Section 1(b) directs the Secretaries to cooperatively work to resolve boundary conflicts in Barry and Stone Counties.

Section 1(c) sets forth the process for filing a claim.

Section 1(d), in addition to using existing authorities, authorizes the Secretary:

(1) to convey by quitclaim deed all right, title, and interest of the United States in land for which there is a boundary conflict; or

(2) to confirm Federal title to and retain in Federal management any land subject to a boundary conflict, if there are Federal interests such as improvements, authorized uses, easements, hazardous materials, historical and cultural resources; and

(3) to compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained by the Federal Government.

Section 1(e) directs the appropriate Secretary to waive consideration for the value of the Federal land conveyed pursuant to subsection(d)(1), and to pay administrative, personnel and any other costs incurred by his or her Department, and to reimburse qualifying claimants for reasonable out-of-pocket survey costs necessary to establish a claim pursuant to subsection (c).

Paragraph 3 directs the appropriate Secretary to value the land retained by the Federal Government pursuant to subsection (d)(3) on the basis of the contributory value of the tract of land to the larger adjoining private parcel. It also provides for each Department to be responsible for funding any compensation necessitated by that Department's erroneous surveys.

Section 1(f) provides direction for the Federal Government's treatment of preexisting conditions, reservations, and existing rights and uses.

Paragraph (1) directs the Federal Government to not pay compensation for any preexisting condition or reduction in value of any land which is subject to a boundary conflict.

Paragraph (2) protects certain valid existing rights and uses on lands conveyed pursuant to subsection (d)(1).

Paragraph (3) provides for treatment of land subject to a special use authorization or permit for access or utilities.

Paragraph (4) provides for reserving rights for future public uses in a conveyance if the qualifying claimant is compensated in cash or land.

Paragraph (5) further provides that section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) shall not apply to conveyances or transfers of jurisdiction under this Act except that the United States shall continue to be liable for the cleanup costs of any hazardous substances if the contamination by hazardous substances is caused by actions of the United States or its agents.

Section 1(g) reserves certain valid existing rights and uses and describes the responsibility of the claimants to establish that they have a valid claim.

Section 1(h) describes that nothing in this section affects other applicable law or authorities for exchange or disposal of the Secretaries of Agriculture or Army.

Section 1(i) authorizes appropriations.

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, February 24, 2004.

Hon. PETE V. DOMENICI,
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. 1167, a bill to resolve boundary conflicts in Barry and Stone counties in the state of Missouri.

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

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1167—A bill to resolve boundary conflicts in Barry and Stone counties in the state of Missouri

S. 1167 would provide a process for the Forest Service and the U.S. Army to resolve boundary disputes with private landowners around the Mark Twain National Forest. The bill would give property owners who have ownership disputes with the two agencies 15 years to notify the federal government of their claims. Upon receipt of a valid claim, the appropriate agency would then either convey the disputed property to the private owners or confirm federal own-

ership and compensate the private owners for the value of the disputed land. In the first case, the agencies could convey the land without consideration and pay associated administrative costs and reimbursements to the landowner.

Based on information provided by the Forest Service, CBO estimates that implementing S. 1167 would cost less than \$500,000 annually, assuming the availability of appropriated funds. The claims process that would be established by the legislation could expedite the resolution of ongoing boundary disputes at the Mark Twain National Forest, but the remedies that would be authorized are the same as those that the agencies could provide under existing law. Under the bill, the agencies could incur additional costs to survey disputed tracts and reimburse landowners for their out-of-pocket expenses.

S. 1167 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.

On November 5, 2003, CBO transmitted a cost estimate for H.R. 2304, similar legislation, as ordered reported by the House Committee on Agriculture on October 29, 2003. The two bills are substantively similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, 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. 1167. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses, and instead establishes a voluntary program to relieve boundary conflicts.

Private land owners seeking to establish claims under this program may need to provide information supporting their claims.

Little, if any, additional paperwork would result from the enactment of S. 1167, as ordered reported.

EXECUTIVE COMMUNICATIONS

On February 12, 2004, the Senate Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the Department of Agriculture, and the Office of Management and Budget setting forth executive views on S. 1167. These reports had not been received at the time the report on S. 1167 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 U.S. Forest Service at the Subcommittee hearing follows:

STATEMENT OF TOM THOMPSON, DEPUTY CHIEF, NATIONAL
FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I would like to present the Department's views on S. 1167, to resolve boundary conflicts in Barry and Stone Counties, in the State of Missouri. The Department objects to S. 1167 unless the bill is amended to address the concerns identified in my testimony.

S. 1167—the Mark Twain National Forest Boundary Adjustment

S. 1167 would authorize the Secretary of Agriculture or the Secretary of the Army to resolve boundary conflicts with certain landowners in Barry and Stone Counties, Missouri, who have innocently and in good faith relied on land surveys which they believed to have been correct and have, as a result, occupied, improved or claimed portions of adjoining Federal land based on such surveys.

S. 1167 would authorize the Secretaries to convey and quitclaim all right, title, and interest of the United States in land for which there is a boundary conflict; or to confirm Federal title to and retain in Federal management any land for which there is a boundary conflict where there are Federal interests, and to compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management, provided that a claim is filed within 15 years of the date of enactment of the Act. S. 1167 also authorizes the Secretaries to: (1) waive consideration for the value of the Federal land conveyed and quitclaimed upon a finding that the boundary conflict was the result of the innocent detrimental reliance by the qualifying claimant; (2) pay administrative, personnel, and any other costs associated with the implementation of this Act, including the costs of survey, marking and monumental property lines and corners; and (3) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this Act.

The basic facts do not appear to be in dispute. Surveyors under contract to the U.S. Army Corps of Engineers (Corps) in the 1970's, who conducted a series of cadastral surveys in the area around the Table Rock Reservoir in Missouri, failed to properly locate and monument a number of the original Public Land Survey System (PLSS) corners. Subsequent private land surveys, which relied on the incorrectly located corners, have confused landowners in Barry and Stone Counties regarding the location of private boundaries adjoining National Forest System lands, and we believe Corps lands as well. Unfortunately, this has led some of the affected adjoining landowners to believe they own certain parts of federally managed public land.

The administration shares Senator Bond's concern that we need to find an equitable way to resolve the problems facing these landowners. For the Committee's information, I have attached to my testimony, a January 22, 2003, letter from Missouri State Land Surveyor to the Supervisor of the Mark Twain National Forest describing the situation in Barry and Stone Counties and the efforts of the Forest Service and the Corps to correct the problems.

S. 1167, while attempting to resolve the boundary and landownership issues with private adjoining landowners and the Federal government, does not aid other private landowners in the area with potential title claims and questionable boundaries with adjoining private landowners. The unresolved private title claims and questionable boundary locations between numerous private landowners relying on federal land surveys will encumber private land and title as long as the corners are not corrected.

We would like to work with the Subcommittee to address our concerns so that corrective land surveys are conducted and correct boundaries can be established for all potentially affected private land owners in Barry and Stone Counties, as well as for agencies of the Federal Government. However, the Department objects to the approach to this problem that S. 1167 would provide.

Our principal concern is that S. 1167 would transfer Federal land, which is the property of all U.S. citizens, at no cost. Since the passage in 1983 of the Small Tracts Act (Pub. L. 97-465, Stat. 2535; 16 U.S.C. 521c-521i)(STA), the Forest Service has had and has exercised the authority to resolve innocent encroachments on National Forest System lands based on erroneous land surveys or title opinions. With certain modifications addressing the specific situation in this case, we believe that the STA should be controlling here. Therefore, we urge the Committee to amend S. 1167 to provide that the affected landowners should apply to the Forest Service or the Corps, as appropriate, to resolve their claims.

In the case of boundary conflicts on National Forest Systems lands, under the STA, the Secretary has the authority to sell, exchange, or interchange by quitclaim deed parcels of forty acres or less which are interspersed with or adjacent to lands which are determined by the Secretary, because of location or size, not to be subject to efficient administration; or parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached, or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title, search, or other land description indicating that there was not such encroachment. The STA allows the Forest Service to collect all reasonable costs (appraisals, surveys, title research, etc.), as determined by the Secretary, from the claimant for completing the STA application, including the market value of the federal lands to be conveyed to the claimant.

The Forest Service may waive the payment of all reasonable costs, except the market value of the federal lands to be conveyed, when there is private encroachment of federal lands in those cases in which the Secretary determines it would be in the public interest.

Finally, while the matter of which Federal agency erred may not be of particular concern to the affected landowners, we believe any corrective legislation should appropriately apportion responsibility for the problem. At this point, we believe that the Corps should take the necessary actions to correctly establish Public Land Survey System corners and the Forest Service and the Corps should work together to resolve tract-by-tract boundary conflicts in Barry and Stone counties concurrently with the Corps' progress in correcting the original surveys.

This concludes my statement. I would be pleased to answer any questions that you may have.

CHANGES TO 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. 1167, as ordered reported.

