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WALLOWA FOREST SERVICE COMPOUND CONVEYANCE ACT

MARCH 2, 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 S. 1139]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1139) to require the Secretary of Agriculture to enter into a property conveyance with the city of Wallowa, Oregon, and for other purposes, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Wallowa Forest Service Compound Conveyance Act”.

SEC. 2. CONVEYANCE TO CITY OF WALLOWA, OREGON.

(a) DEFINITIONS.—In this Act:

(1) CITY.—The term “City” means the city of Wallowa, Oregon.

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(3) WALLOWA FOREST SERVICE COMPOUND.—The term “Wallowa Forest Service Compound” means the approximately 1.11 acres of National Forest System land that—

- (A) was donated by the City to the Forest Service on March 18, 1936; and
- (B) is located at 602 First Street, Wallowa, Oregon.

(b) CONVEYANCE.—On the request of the City submitted to the Secretary by the date that is not later than 1 year after the date of enactment of this Act and subject to the provisions of this Act, the Secretary shall convey to the City all right, title, and interest of the United States in and to the Wallowa Forest Service Compound.

(c) CONDITIONS.—The conveyance under subsection (b) shall be—

- (1) by quitclaim deed;
- (2) for no consideration; and
- (3) subject to—
 - (A) valid existing rights; and
 - (B) such terms and conditions as the Secretary may require.

(d) USE OF WALLOWA FOREST SERVICE COMPOUND.—As a condition of the conveyance under subsection (b), the City shall—

(1) use the Wallowa Forest Service Compound as a historical and cultural interpretation and education center;

(2) ensure that the Wallowa Forest Service Compound is managed by a non-profit entity; and

(3) agree to manage the Wallowa Forest Service Compound with due consideration and protection for the historic values of the Wallowa Forest Service Compound.

(e) REVERSION.—In the quitclaim deed to the City, the Secretary shall provide that the Wallowa Forest Service Compound shall revert to the Secretary, at the election of the Secretary, if any of the conditions under subsection (c) or (d) are violated.

PURPOSE

The purpose of S. 1139 is to provide for the conveyance of a Forest Service administrative site to the city of Wallowa, Oregon.

BACKGROUND AND NEED

In 1936, the city of Wallowa donated to the Forest Service approximately one acre of land in downtown Wallowa where the Forest Service sought to construct a ranger station and associated buildings. The Civilian Conservation Corps subsequently built a ranger station, bunkhouse, warehouse, storage building, and gas house on the site. The Wallowa Ranger Station was listed on the National Register of Historic Places on October 28, 2009.

The site was used for many decades by the Forest Service, but now sits vacant and has accumulated hundreds of thousands of dollars in deferred maintenance needs. The Forest Service recently identified the property for sale under the Forest Service Facility Realignment and Enhancement Act, which requires fair market value for any conveyance.

The Maxville Heritage Interpretive Center has proposed using the compound for local historical and cultural preservation, interpretation, and education. The Center is a nonprofit organization whose mission is to collect, preserve, and interpret the rich early 1900's history of the multicultural railroad logging community of Maxville, Oregon, and similar communities in the Pacific Northwest. However, the Forest Service needs legislative authorization to convey the property for anything less than its fair market value.

LEGISLATIVE HISTORY

S. 1139 was introduced by Senator Wyden on May 21, 2009. The Subcommittee on Public Lands and Forests held a hearing on the bill on June 17, 2009 (S. Hrg. 111–65). At its business meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered S. 1139 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on December 16, 2009, by a voice vote of a quorum present, recommends that the Senate pass S. 1139, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1139, the Committee adopted an amendment in the nature of a substitute. The amendment includes a number of technical changes and new provisions subjecting the conveyance to various conditions. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title for the bill.

Section 2(a) provides the definitions for the bill. Subsection (b) directs the Forest Service to convey the Wallowa Forest Service Compound to the city of Wallowa, if the city requests the conveyance within 1 year after the date of enactment of the bill. Subsection (c) requires the conveyance to be made by quitclaim deed for no consideration and subject to valid existing rights and such terms and conditions as the Secretary may require. Subsection (d) includes a number of conditions for the use of the compound by the city, and subsection (e) provides the Secretary with discretion to exercise a reversionary interest if the conditions in subsections (c) and (d) are not followed.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1139—Wallowa Forest Service Compound Conveyance Act

S. 1139 would direct the Forest Service to convey, without consideration, about 1 acre of land in Oregon to the city of Wallowa. Based on information provided by the Forest Service, CBO estimates that implementing the bill would have no net effect on the federal budget. Because the affected land (and related structures) would probably have been sold under existing authority, enacting the bill would reduce offsetting receipts, but the loss in receipts would be offset by lower direct spending of a similar amount. (CBO estimates that the value of the land would be less than \$500,000.) Enacting the bill would not affect revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, 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. 1139.

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. 1139, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1139, as 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 a hearing on S. 1139 on June 17, 2009, which is provided below.

STATEMENT OF JOEL HOLTROP, 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 to provide the Department of Agriculture's views on two bills that would legislate land transactions: S.409, would provide for an exchange of federal land containing a proposed copper mine for non-federal land containing riparian areas in Arizona and S.1139, would convey an administrative site in Wallowa, Oregon. We defer to the Department of the Interior on provisions relating to lands to be managed by the BLM.

S. 409—RESOLUTION COPPER EXCHANGE

S. 409 is a complex bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper), lands on the Tonto National Forest if certain conditions are met. The federal lands to be exchanged may contain a sizeable copper ore body and are adjoining an existing copper mine. In exchange the bill provides the Forest Service certain lands in the state of Arizona. The Department has not completed its analysis of this complex bill and the Administration will provide its views and concerns to the Committee upon completion of this work. Nevertheless, there are still a number of preliminary concerns with the bill as introduced.

The bill requires the agency to conduct an environmental impact statement after the agency no longer owns the property on which the mine would be located. The purpose of the National Environmental Policy Act (NEPA) is to inform the decision maker about potential impacts prior to making a decision. Given the current language, we would assume that we would only be analyzing impacts from mining activities on the surrounding National Forest land, not the land to be conveyed. Consistent with Administration policy, NEPA should be done before moving forward on the land exchange.

The bill proposes to use any cash equalization payment for multiple purposes including management. Any equali-

zation payment by the exchange proponent should be deposited into the Federal Land Disposal Account.

The bill proposes that Resolution Copper replace the Oak Flat Campground. We have been unable to locate a suitable replacement site for a campground in the vicinity. Funding provided in the bill to replace the campground provided to the Tonto National Forest should instead address deferred maintenance needs of existing recreation facilities.

The bill directs Resolution Copper to convey a parcel of land known as “the Pond parcel.” We are concerned about recreation related liability issues, access, and facilities needed to manage this parcel. A public interest determination analysis under NEPA should be required and provide the basis for determining whether to proceed with the conveyance.

We understand there are concerns about management of the Apache Leap area and in addition, the acreage that would be added to this area. We are concerned about adding another planning process as prescribed in the bill because it is duplicative of an ongoing Tonto National Forest Planning process which can analyze and provide for, if necessary and appropriate, a special management area.

Many of the lands to be exchanged in the bill hold significant cultural value to Indian Tribes. In particular, the Apache Leap area, the Oak Flat Campground, and Devil’s Canyon are culturally significant to the San Carlos Apache Tribe and the Fort McDowell Yavapai Nation. There are also other neighboring Tribes with cultural interests in the area. We will continue to work with these Tribes as we move forward with the analysis.

The bill states that Resolution Copper will surrender the right to commercially extract minerals under Apache Leap “or” the Pond parcel but not both. This language should be clarified by changing the word “or” to “and.”

The bill would provide that it is the sense of Congress that the exchange to be completed in one year. We appreciate the sponsors’ interest in expediting this project. However, if an environmental impact statement is required on the mining operation on the parcel to be conveyed, prior to conveyance, we will most likely exceed this time frame. We anticipate that there will be considerable concern with any decision and there is a likelihood of administrative appeal and litigation.

S. 1139—WALLOWA CONVEYANCE

S. 1139 would require the Secretary of Agriculture to enter into a property conveyance with the City of Wallowa, Oregon to convey without consideration the Wallowa Ranger Station located at 602 West First Street, Wallowa, Oregon. The Department appreciates the Committee’s efforts to assist the City of Wallowa, Oregon with historic, cultural and economic development. However, we have significant concerns with conveyance of the Compound with-

out compensation to the taxpayer and would ask the committee defer consideration of this conveyance at this time.

The Forest Service has identified the Wallowa Forest Service Compound as a site that should be sold under the Forest Service Facility Realignment and Enhancement Act (FSFREA), allowing the proceeds from the sale to be used to address other administrative site needs. Therefore, conveyance without consideration would remove the proceeds from the sale. In addition, the Forest Service has expended funds to repair and improve the Compound, as required by the FSFREA. The Forest Service desires to re-invest proceeds from the sale in other deteriorating infrastructure on the forest as provided for in the Act.

In addition, S. 1139 includes a requirement for reversion to the Secretary if the facility is used for other purposes or managed by the City of Wallowa in a manner that is inconsistent with an interpretative center or non-profit status. Further, this bill would set a precedent for conveyance of similar properties across the nation contrary to the intent of the Facilities Realignment and Enhancement Act. Finally we would request that the subcommittee defer consideration of this bill while we continue to explore options with the City of Wallowa, in an attempt to address their interests.

This concludes my statement and I would be happy 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, the Committee notes that no changes in existing law are made by the bill S. 1139, as ordered reported.

