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SENATE

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### DEAFY GLADE LAND EXCHANGE ACT

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. 1043]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1043) to provide for a land exchange involving certain National Forest System lands in the Mendocino National Forest in the State of California, and for other purposes, 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. SHORT TITLE.

This Act may be cited as the “Deafy Glade Land Exchange Act”.

#### SEC. 2. LAND EXCHANGE, MENDOCINO NATIONAL FOREST, CALIFORNIA.

(a) DEFINITIONS.—In this section:

(1) COUNTY.—The term “County” means Solano County, California.

(2) FEDERAL LAND.—The term “Federal land” means the parcel of approximately 82 acres of land—

(A) known as the “Fouts Springs Ranch”; and

(B) generally depicted as the “Fouts Springs Parcel” on the map.

(3) MAP.—The term “map” means the map entitled “Fouts Springs-Deafy Glade: Federal and Non-Federal Lands” and dated July 17, 2008.

(4) NON-FEDERAL LAND.—The term “non-Federal land” means the 4 parcels of land comprising approximately 160 acres that are generally depicted as the “Deafy Glade Parcel” on the map.

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

(b) LAND EXCHANGE REQUIRED.—Subject to subsections (c) through (f), if the County conveys to the United States such right, title, and interest in and to the non-Federal land that is acceptable to the Secretary, the Secretary shall convey to the County such right, title, and interest to the Federal land that the Secretary considers to be appropriate.

(c) APPLICABLE LAW.—Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) shall apply to the land exchange under this section.

- (d) SURVEY; ADMINISTRATIVE COSTS.—
- (1) IN GENERAL.—The exact acreage and legal description of the land to be exchanged under subsection (b) shall be determined by a survey satisfactory to the Secretary.
  - (2) COSTS.—The costs of the survey, appraisal, and any other administrative costs relating to the land exchange shall be paid by the County.
- (e) MANAGEMENT OF ACQUIRED LAND.—The non-Federal land acquired by the Secretary under subsection (b) shall be—
- (1) added to, and administered as part of, the Mendocino National Forest; and
  - (2) managed in accordance with—
    - (A) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and
    - (B) the laws (including regulations) applicable to the National Forest System.
- (f) ADDITIONAL TERMS AND CONDITIONS.—The land exchange under subsection (b) shall be subject to any additional terms and conditions that the Secretary may require, including such terms and conditions as are necessary to ensure that the use of the Federal land does not adversely impact the use of the adjacent National Forest System land.

#### PURPOSE

The purpose of H.R. 1043 is to provide for the exchange of approximately 82 acres of National Forest System land in the Mendocino National Forest in the State of California for approximately 160 acres of land owned by Solano County, California.

#### BACKGROUND AND NEED

Solano County has operated the Fouts Springs Youth Correctional Facility (“Facility”) to house, counsel, and educate troubled youth from counties throughout California for over 50 years. The Facility is located on Mendocino National Forest land to the east of the San Francisco Bay Area pursuant to a special use permit that authorizes the Facility to use 74 acres through 2030. The area adjacent to the Facility is a heavily-developed off-highway vehicle area that is managed by the Forest Service and receives about 76,000 recreation visits each year (30% of the total recreation use on the Mendocino National Forest; 55% of the forest’s off-highway vehicle use).

The Facility is in need of significant repairs, but Solano County is reluctant to continue to make capital improvements to the Facility when it does not own the land on which it is built. Based on discussions with the Forest Service, Solano County purchased 4 parcels of environmentally-sensitive private land in the Mendocino National Forest—known as the Deafy Glade parcels—in an effort to pursue a land exchange with the Forest Service.

In June of 2006, the Forest Service prepared a Feasibility Analysis on a proposed Fouts Springs Land Exchange whereby Solano County would exchange the Deafy Glade parcels for the National Forest land it occupies at Fouts Springs. The analysis determined that “the subject appraisals . . . demonstrate the potential for an equal value exchange” and that “the hazardous fuels program would benefit from the exchange.” Moreover, the land the Forest Service would acquire from Solano County is wilderness-quality, it borders the Snow Mountain Wilderness Area, and it has been identified by the Forest Service as a priority for land acquisition for decades. However, the analysis ultimately concluded that the proposed land exchange was not in the best interest of the public or the Federal government because, on the one hand, the Facility

could continue to successfully operate on Federal land under a long-term special use permit and, on the other, conveying the Federal land to Solano County might result in some conflicts with the use of the adjacent off-highway vehicle staging area.

#### LEGISLATIVE HISTORY

H.R. 1043 was introduced by Representative George Miller on February 12, 2009, and was passed by the House of Representatives on a voice vote on September 8, 2009. Senator Feinstein introduced a similar bill (S. 1571) on August 4, 2009. The Subcommittee on Public Lands and Forests held a hearing on the bills on April 28, 2010.

The Committee on Energy and Natural Resources considered H.R. 1043 and adopted an amendment in the nature of a substitute at its business meeting on June 16, 2010. The Committee ordered H.R. 1043, as amended, favorably reported at its business meeting on June 21, 2010.

#### COMMITTEE RECOMMENDATION

The 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. 1043, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of H.R. 1043, the Committee adopted an amendment in the nature of a substitute. The amendment provides additional flexibility for the Secretary to carry out an equal value land exchange in a manner that addresses the concerns raised in the Department's testimony and earlier feasibility analysis, as well as those of Solano County and other interested stakeholders. For example, the amendment permits the Secretary to retain an interest in the Fouts Spring parcel—or to otherwise condition the exchange—to access adjacent National Forest land. The Secretary similarly may retain rights or impose conditions to ensure continued stream flows in Stony Creek. The amendment does not require Solano County to use the Fouts Springs land only for the purposes listed in its special use permit, but it does permit the Secretary to include terms and conditions that require the future use of the Fouts Springs land to not conflict with the off-highway vehicle and other uses of the adjacent National Forest land. 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 Act.

*Section 2(a)* defines key terms used in the Act.

Subsection (b) provides for a land exchange between the Secretary and Solano County, subject to the provisions in subsections (c) through (f).

Subsection (c) requires the exchange to be carried out in accordance with section 206 of the Federal Land Policy and Management Act of 1976.

Subsection (d) requires Solano County to pay for a survey, legal description, and other administrative costs of the land exchange.

Subsection (e) provides for the management of the non-Federal lands acquired by the United States.

Subsection (f) requires the land exchange to be subject to such additional terms and conditions as the Secretary determines to be appropriate to protect the interests of the United States.

#### COST AND BUDGETARY CONSIDERATIONS

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

##### *H.R. 1043—Deafy Glade Land Exchange Act*

H.R. 1043 would authorize the Secretary of Agriculture to exchange 82 acres of land in the Mendocino National Forest for 160 acres owned by Solano County, California. Based on information from the Forest Service, CBO expects that enacting the legislation would increase direct spending; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that such effects would be negligible. Enacting the legislation would not affect revenues.

Under current law, Solano County pays the Forest Service about \$6,000 per year for the use of certain Forest Service lands. Under the bill, those lands would be conveyed to the county. Thus, CBO estimates that enacting the legislation would reduce offsetting receipts (a credit against direct spending) by about \$70,000 over the 2010–2020 period. Because the law would require the county to pay the administrative costs associated with the land exchange, CBO estimates that implementing the bill would not have a significant impact on discretionary spending.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 1043 would reduce offsetting receipts; therefore, pay-as-you-go procedures would apply. However, CBO estimates that the increase in direct spending would not be significant in any year and over the 2010–2020 period.

H.R. 1043 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 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. 1043.

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. 1043, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

H.R. 1043, 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.

STATEMENT OF FAYE KRUEGER, ACTING ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Barrasso, Members of the Subcommittee, I appreciate the opportunity to appear before you today to provide the Department of Agriculture's views on S. 1571, regarding the exchange of certain lands in the Mendocino National Forest (MNF).

The Department supports S. 1571 because it would consolidate four parcels (approximately 162 acres) of private lands, that possess national forest character, partially within, and immediately adjacent to, the Snow Mountain Wilderness area of the Grindstone Ranger District, Mendocino National Forest for approximately 82 acres of National Forest System lands that have been developed by Solano County for their youth facility at Fouts Springs. The National Forest System lands, where the Fouts Springs Youth Facility is located have lost their national forest character because of the development of classrooms, culinary facilities, dormitories, maintenance and administrative facilities associated with the youth facility.

We respectfully suggest that S. 1571 be amended to ensure any necessary protection of the interests of the United States relating to the water rights associated with the National Forest parcel to be conveyed, to provide for survey of, and public access across, the land to be conveyed to the County, and to address other technical issues related to the exchange.

The National Forest System (NFS) lands to be conveyed are located within the Grindstone Ranger District. Those lands were acquired as part of a land exchange with the Setzer Box Company in 1944 and are currently occupied by the Fouts Springs Youth Facility (FSYF) under a special use authorization. A 30-year special use authorization allows Solano County to operate a 162 bed youth correctional facility. The current permit area is approximately 74 acres. The NFS land adjacent to the Fouts Springs Youth Facility is a heavily developed off-highway vehicle area managed by the Forest Service.

The non-federal lands to be conveyed are also located within the Grindstone Ranger District of the MNF. They are known as the Deafy Glade parcels totaling approximately 161.7 acres. The four parcels are adjacent to the southerly boundary of the Snow Mountain Wilderness Area.

## AMENDMENTS

We would appreciate the opportunity to work with the Committee to address any concerns regarding the transfer of water rights to the County as part of the exchange. At present, with the water right held by the United States, there is adequate in-stream flow in Stony Creek. If the Fouts Spring Youth Facility were to convey to Solano County, we want to ensure that an adequate in-stream flow is maintained in Stony Creek.

The NFS parcel to be conveyed has to be delineated and described by a Cadastral survey approved by the Bureau of Land Management.

Providing for a right-of-way across the parcel conveyed to the county would ensure access to the surrounding national forest for Forest Service administration and for wildfire suppression.

We also would appreciate the opportunity to work with the Committee on several technical aspects of the bill to require that the County provides acceptable title for the land it conveys, to refer specifically to the cash equalization provision in the reference to section 206 of Federal Land Policy Management Act, to require the County to pay appraisal costs, and to provide more specificity regarding the conditions on the use of the land after it is conveyed to the County.

Mr. Chairman, Ranking Member Barrasso, this concludes our prepared testimony. Thank you for the opportunity to present the Administration's views on S. 1571. I would welcome any questions you might 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. 1043, as ordered reported.

