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CHICKASAW NATIONAL RECREATION AREA LAND EXCHANGE ACT OF 2004

SEPTEMBER 28, 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. 2374]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2374) to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Chickasaw National Recreation Area Land Exchange Act of 2004".

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term "Federal land" means the Chickasaw National Recreational Area land and interests in the land, identified as Tract 102–25 on the Map.

(2) NON-FEDERAL LAND.—The term "non-Federal land" means the land and interests in the land formerly owned by the City of Sulphur, Oklahoma, and currently owned by the Chickasaw Nation, located adjacent to the existing boundary of Chickasaw National Recreation Area and identified as Tract 102–26 on the Map.

(3) MAP.—The term "Map" means the map entitled "Proposed Land Exchange and Boundary Revision, Chickasaw National Recreation Area", dated September 8, 2003, and numbered 107/800035a.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 3. CHICKASAW NATIONAL RECREATION AREA LAND CONVEYANCE.

(a) LAND CONVEYANCE.—Not later than 180 days after the Chickasaw Nation conveys all right, title, and interest in and to the non-Federal land to the United

States, the Secretary shall convey all right, title, and interest in and to the Federal land to the Chickasaw Nation.

(b) EQUAL VALUE OF LAND.—The value of the Federal land and the non-Federal land shall be of approximately equal value, as determined by the Secretary through an appraisal performed by a qualified appraiser and in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions.

(c) CONDITIONS.—

(1) IN GENERAL.—Notwithstanding subsection (a), the conveyance of the non-Federal land authorized under subsection (a) shall not take place until the completion of all provisions included in the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, except as provided in paragraph (2).

(2) EXCEPTION.—Completion of the provisions in section III.B.3. of the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, providing for the Federal land to be taken into trust for the benefit of the Chickasaw Nation shall not be required.

(d) ADMINISTRATION OF ACQUIRED LAND.—On completion of the land exchange authorized under subsection (a), the Secretary—

(1) shall revise the boundary of Chickasaw National Recreation Area to reflect the exchange; and

(2) shall administer the land acquired by the United States in accordance with applicable laws (including regulations).

PURPOSE OF THE MEASURE

As ordered reported, the purpose of S. 2374 is to authorize the Secretary of the Interior to enter into a land exchange with the Chickasaw Nation involving lands in the Chickasaw National Recreation Area, Oklahoma, and to revise the boundary of the recreation area accordingly.

BACKGROUND AND NEED

Provision 64 of the Agreement between the United States and the Choctaws and Chickasaws dated March 21, 1902 was approved by the Act of July 1, 1902 (chapter 1362) (32 Stat. 641, 655). This Act ceded 640 acres of property to the United States for the purpose of creating Sulphur Springs Reservation in Oklahoma. The purpose of setting aside the land, which later became known as the "Platt National Park," was to provide public access and to protect water and other resources.

In 1976, the Platt National Park, the Arbuckle Recreation Area, and additional lands were combined to create the Chickasaw National Recreation Area (NRA). The purpose for creating the NRA was twofold: to protect and expand water and other resources; and to memorialize the history and culture of the Chickasaw Nation.

To fulfill the purpose of the NRA, the environmental impact statement for the General Management Plan of the Chickasaw National Recreation Area examined several different locations for a proposed Chickasaw Nation Cultural Center. The Chickasaw Nation had recently expressed an interest in establishing a cultural center inside or adjadent to the NRA.

The general management plan, which was completed in 1994, determined that the best site for the Chickasaw Nation Cultural Center was located within the existing boundary of the NRA. The site was also suitable because it contained great historical and cultural significance to the people of the Chickasaw Nation. To facilitate the construction of the cultural center, the National Park Service proposed to convey this site, in trust, to the Chickasaw Nation in exchange for land of equal value and with an agreement to further

protect the watershed and riparian resources of the NRA. The City of Sulphur, Oklahoma, assisted the Chickasaw Nation by donating a parcel of land suitable for incorporation into the NRA. On July 16, 2002, the Secretary of the Interior, the Chickasaw Nation, and the City of Sulphur signed a preliminary agreement to exchange the land and allow the construction of a cultural center and to protect the watershed and riparian resources of the park.

S. 2374 would authorize the Secretary of the Interior to complete the land exchange with the Chickasaw Nation for the purpose of constructing a cultural center and to further protect the watershed and riparian resources of the NRA.

LEGISLATIVE HISTORY

Senators Nickles and Inhofe introduced S. 2374 on April 29, 2004. A companion measure, H.R. 4066 was introduced by Representative Cole on March 30, 2004. The Committee on Energy and Natural Resources' Subcommittee on National Parks held a hearing on S. 2374 on July 15, 2004. At the business meeting on September 15, 2004, the Committee on Energy and Natural Resources ordered S. 2374, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on September 15, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2374, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2374, the Committee adopted an amendment in the nature of a substitute. The amendment removed the section containing congressional findings and purpose and language requiring the Secretary of the Interior to place the land conveyed to the Chickasaw Nation in trust to be used for the construction of a cultural center and for the protection of watershed and riparian resources. The amendment also requires the Secretary to complete the land exchange with the Chickasaw Nation no later than six months after the date the Chickasaw Nation conveys its parcel to the United States. The amendment is described in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles this Act the "Chickasaw National Recreation Area Land Exchange Act of 2004."

Section 2 defines key terms used in the Act.

Section 3 (a) authorizes the Secretary to convey to the Chickasaw Nation all right, title and interest to Federal land described in section 3(2) not later than six months after the receipt from the Chickasaw Nation of the title to the non-Federal land described in section 3(3).

Subsection (b) directs the Secretary to determine through an appraisal in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions that the non-Federal land and the Federal land to be exchanged are of approximate equal value.

Subsection (c) requires that the land exchange may not take place until all items identified in the Preliminary Exchange Agreement (July 16, 2002) among the city of Sulphur, Oklahoma, the Chickasaw Nation and the Secretary have been completed.

Subsection (d) directs the Secretary to incorporate the non-Federal land acquired under this Act into the Chickasaw National Recreation Area and to manage the land in accordance with laws applicable to the National Park System and directs the Secretary to revise the boundary of the Chickasaw National Recreation Area to reflect acquisition of the non-Federal land once it has been conveyed to the United States.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

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S. 2374 would direct the National Park Service (NPS) to convey to the Chickasaw Nation about 29 acres of land within the Chickasaw National Recreation Area (NRA) in exchange for about 39 acres of nearby tribal property. Once acquired by the NPS, the new property would be added to the NRA.

Based on information provided by the NPS, CBO estimates that implementing S. 2374 would have no significant impact on the federal budget and would not affect revenues or direct spending. For this estimate, CBO assumes that the properties to be exchanged would be determined by NPS to be roughly equal in value.

S. 2374 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 exchange authorized by this bill would benefit the Chickasaw Nation and the city of Sulphur, Oklahoma. Their participation in the exchange would be voluntary.

On September 16, 2004, CBO transmitted a cost estimate for H.R. 4066, the Chickasaw National Recreation Area Land Exchange Act of 2004, as ordered reported by the House Committee on Resources on September 15, 2004. S. 2374 and H.R. 4066 are very similar, and the estimated cost of the two bills are identical.

The CBO staff contacts for this estimate are Deborah Reis (for federal costs) and Marjorie Miller (for the state, local, and tribal impact). 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. 2374.

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. 2374.

EXECUTIVE COMMUNICATIONS

On June 24, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2374. These reports had not been received when this report was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing on S. 2374 follows:

STATEMENT OF A. DURAND JONES, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on S. 2374. This bill would authorize a land exchange among the Chickasaw National Recreation Area, the Chickasaw Nation and the City of Sulphur, Oklahoma.

The Department supports S. 2374 with amendments. The bill would authorize the Secretary of the Interior to exchange Federal land in a three-way agreement between the Chickasaw Nation, the National Park Service, and the City of Sulphur, Oklahoma. This bill would authorize the Secretary to convey approximately 29 acres of land owned by the National Park Service to the Chickasaw Nation in exchange for approximately 39 acres of land donated to the Chickasaw Nation by the City of Sulphur, Oklahoma and direct the Secretary to place the land conveyed to the Chickasaw Nation in trust for the benefit of the Chickasaw Nation; allow the Chickasaw Nation to construct a cultural center on the trust land; and protect the watershed and riparian resources of Chickasaw National Recreation Area.

The Chickasaw Nation has expressed an interest in establishing a cultural center inside or adjacent to the park. The cultural center would include a performing arts theater, plaza area, administration/cultural education center, visitor center, stickball field, village, agricultural field, amphitheater, and parking lots. In 2000, the NPS Intermountain Regional Director signed a letter of support to work with the Chickasaw Nation and the City of Sulphur to investigate the possibility of a land exchange to allow the construction of the cultural center on a site that includes property currently within the park's boundary, after that property has been exchanged for a property of equal value.

This bill would provide the following benefits to the National Park Service, the Chickasaw Nation, and the City of Sulphur:

• The NPS would enhance its ability to protect scenic values and reduce potential land use encroachments on both the east and west boundaries of the park through close cooperative efforts with the Chickasaw Nation and

the City of Sulphur. The Chickasaw National Recreation Area, through a partnership with the Chickasaw Nation, would provide access to the culture and history of the Chickasaw Nation, in a way that allows the Nation to tell their story to the millions of park visitors. The addition of Tract 102–26 to Chickasaw National Recreation Area would help to protect Wilson Creek and its drainage, a major tributary to Veterans Lake located within current park boundaries.

- The Chickasaw Nation would establish an important research, education, and museum facility to document and extend understanding of their culture to its members and visitors on lands that hold significant historical connection to the Chickasaw Nation.
- The City of Sulphur and the surrounding Murray County communities would contribute to the protection of land resources within the county, while providing additional economic development potential to the local economies.
- Enactment of this bill would acknowledge and support the long and vibrant partnership among the National Park Service, the Chickasaw Nation, and the citizens of Oklahoma.

Set aside as Sulphur Springs Reservation in 1902, Chickasaw National Recreation Area has gone through several expansions and name changes. The Chickasaw Nation, fearful that Seven Springs now "Pavilion Springs" would end up in the hands of private developers, agreed to cede the springs to the Federal government. Amending the Treaty of Atoka of 1897, the Chickasaw and the Choctaw ceded a tract of 640 acres containing the springs to the Federal government for $20 an acre. The government set aside the 640 acres as the Sulphur Springs Reservation in 1902. In 1904, 218 acres were added and Sulphur Springs Reservation was opened to the public. Renamed Platt National Park in 1906 in honor of Senator Orville H. Platt of Connecticut, it carried that name for the next 70 years.

In the mid 1960's, a series of events occurred including the construction of Arbuckle Dam and Lake, the formation and management of the Arbuckle Recreation Area by the NPS, and the addition of land along Rock Creek to connect the recreation area to Platt National Park. In 1976, Platt National Park, the Arbuckle Recreation Area, and additional lands were combined and renamed Chickasaw National Recreation Area to protect and expand water and other resources, to memorialize the history and culture of the Chickasaw Nation, and to provide for public outdoor recreation.

From prehistoric times to the present, access to the combination of cool water, mineral springs, cool breezes, shade, and wildlife has created at Chickasaw National Recreation Area an experience that sets it apart from the surrounding environment. The springs and streams of Chickasaw come from a complex geological and hydrological feature and these resources have been eco-

nomically and environmentally significant throughout the history of the region, and are valuable for scientific research.

The park holds a vast diversity of natural resources. These unique flora, fauna, waters, and geological formations have withstood the external pressures of man made and natural changes.

The Secretary, the Chickasaw Nation and the City have completed all required environmental compliance and have signed a preliminary agreement to effect the land exchange to allow the construction of a cultural center. The value of the federal land and non-federal land is approximately equal, as determined by the Secretary through an appraisal performed by a qualified appraiser and in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions. Through the signed preliminary agreement, the Chickasaw Nation has agreed to bear all costs associated with this transfer, including environmental surveys, appraisals, boundary surveys, title examinations, and closing costs.

The land to be conveyed to the Chickasaw Nation holds significant historical and cultural connections for the people of the Nation, and the proposed use by the Nation is consistent with protecting park values.

The Department proposes two amendments following this statement. First, we are concerned that the bill does not specify what duties and responsibilities are required of the Secretary in taking the land into trust. The Department has devoted a great deal of time to trust reform discussions. The nature of the trust relationship is now often the subject of litigation, and much of the current controversy over trust stems from the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. As Trustee, the Secretary may face a variety of issues, including land use and zoning issues. Accordingly, the Secretary's trust responsibility to manage the land should be addressed with clarity and precision.

The Department has an established regulatory process for taking land into trust that would provide such clarification. Before land is taken into trust through this process, the Secretary considers important issues such as the use of the land and the potential impact upon the relationship between the tribe and local residents. If Congress directs the Secretary to take land into trust, as it does in the bill, we feel that Congress should clarify what that relationship means. Both the Executive Branch and the Judicial Branch are faced with the question of what exactly does Congress intend when it puts land into trust status. Congress should decide these issues, not the courts.

Therefore, we recommend the Committee set forth in the bill the specific trust duties it wishes the United States to assume with respect to the acquisition of these lands for the Chickasaw. For example, the bill should be more specific about the use of the trust property. We understand

that the Chickasaw Nation, the State of Oklahoma, the City of Sulfur and the National Park Service have worked to address some of these issues, including the use of the trust land. An amendment that in part reflects this agreement is provided at the end of this testimony. The benefits of either the Department's regulatory approach or Congress providing more specific direction concerning the Secretary's trust duties are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided to tribal members.

Second, we would like to clarify that the boundary of Chickasaw National Recreation Area will be adjusted to reflect the exchange of the two parcels.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or other members of the subcommittee may have.

Proposed amendments

Page 5, line 6 strike "to allow the construction of a cultural center and to protect" and insert "for the exclusive purposes of constructing and operating a tribal cultural center to interpret the culture and history of the Chickasaw Nation and for protecting".

Page 6, line 8 strike all after "Boundary Revision.—" and insert "Upon completion of the conveyance of the non-Federal land to the Secretary pursuant to this Act, the Secretary shall revise the boundary of Chickasaw National Recreation Area to reflect the exchange with the Chickasaw Nation.".

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. 2374 as ordered reported.

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