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109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109-146

BETTY DICK RESIDENCE PROTECTION ACT

OCTOBER 19, 2005.—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. 584]

The Committee on Energy and Natural Resources, to which was referred the Act (S. 584) to require the Secretary of the Interior to permit continued occupancy and use of certain lands and improvements within Rocky Mountain National Park, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

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 “Betty Dick Residence Protection Act”.

SEC. 2. PURPOSE.

The purpose of this Act is to require the Secretary of the Interior to permit the continued occupancy and use of the property described in section 4(b) by Betty Dick for the remainder of her natural life.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the agreement between the National Park Service and Fred Dick entitled “Settlement Agreement” and dated July 17, 1980.

(2) MAP.—The term “map” means the map entitled “RMNP Land Occupancy” and dated September 2005, which identifies approximately 8 acres for the occupancy and use by the tenant.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) TENANT.—The term “tenant” means Betty Dick, widow of George Fredrick Dick, who held a 25-year reservation of occupancy and use at a property within the boundaries of Rocky Mountain National Park.

SEC. 4. RIGHT OF OCCUPANCY.

(a) IN GENERAL.—The Secretary shall allow the tenant to continue to occupy and use the property described in subsection (b) for the remainder of the natural life of the tenant, subject to the requirements of this Act.

(b) DESCRIPTION OF PROPERTY.—The property referred to in subsection (a) is the land and any improvements to the land within the boundaries of Rocky Mountain National Park identified on the map as “residence” and “occupancy area”.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this Act, the occupancy and use of the property identified in subsection (b) by the tenant shall be subject to the same terms and conditions specified in the Agreement.

(2) PAYMENTS.—

(A) IN GENERAL.—In exchange for the continued occupancy and use of the property, the tenant shall annually pay to the Secretary an amount equal to $\frac{1}{25}$ of the amount specified in section 3(B) of the Agreement.

(B) ADVANCE PAYMENT REQUIRED.—The annual payments required under subparagraph (A) shall be paid in advance by not later than May 1 of each year.

(C) DISPOSITION.—Amounts received by the Secretary under this paragraph shall be—

(i) deposited in a special account in the Treasury of the United States; and

(ii) made available, without further appropriation, to the Rocky Mountain National Park until expended.

(3) PUBLIC ACCESS.—The public shall have access to both banks of the main channel of the Colorado River.

(d) TERMINATION.—The right of occupancy and use authorized under this Act—

(1) shall not be extended to any individual other than the tenant; and

(2) shall terminate—

(A) on the death of the tenant;

(B) if the tenant does not make a payment required under subsection

(c)(2); or

(C) if the tenant otherwise fails to comply with the terms of this Act.

(e) EFFECT.—Nothing in this Act—

(1) allows the construction of any structure on the property described in subsection (b) not in existence on November 30, 2004; or

(2) applies to the occupancy or use of the property described in subsection (b) by any person other than the tenant.

PURPOSE OF THE MEASURE

The purpose of S. 584 is to require the Secretary of the Interior to allow the continued occupancy and use of certain land and improvements within Rocky Mountain National Park.

BACKGROUND AND NEED

Mrs. Betty Dick resides in a summer cabin within the boundary of Rocky Mountain National Park in the west unit near the town of Grand Lake. She is 83 years old and wishes to continue residing in the park for the remainder of her life. She acquired the right to use and occupy the property through inheritance from her late husband Fred Dick. The parcel she resides on was the object of a divorce settlement and partial acquisition by the National Park Service in 1977. The National Park Service (NPS) subsequently entered into a 25-year reservation of use and occupancy with the late Mr. Dick, which expired on July 16th, 2005. The NPS has agreed to allow Mrs. Dick to continue residing in her cabin for this summer. Mrs. Dick disputes the circumstances of the 25-year agreement and would like the NPS to grant her a life estate that she believes was the original intent of the 1980 agreement, notwithstanding the specific terms of the document. This legislation would grant Mrs. Dick that life estate.

LEGISLATIVE HISTORY

S. 584 was introduced by Senator Salazar on March 9, 2005. A companion bill, H.R. 432, introduced by Representative Mark Udall, passed the House of Representatives on June 29, 2005.

The Subcommittee on National Parks held a hearing on S. 584 on July 28, 2005. At its business meeting on September 28, 2005, the Committee on Energy and Natural Resources ordered S. 584 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 September 28, 2005, by a voice vote of a quorum present, recommends that the Senate pass S. 584, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 584, the Committee adopted an amendment in the nature of a substitute. The amendment reduces the amount of land to be retained for use by Mrs. Dick from approximately 23 acres to 8 acres and ensures that the public shall have access to both banks of the main channel of the Colorado River. The amendment makes other technical and conforming changes and is described in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the “Betty Dick Residence Protection Act.”

Section 2 sets forth congressional findings.

Section 3 states the purpose of the Act is to require the Secretary of the Interior to permit Betty Dick to continue occupancy and use of the property for the remainder of her natural life.

Section 4 defines key terms.

Section 5 subsection (a) states the Secretary of the Interior shall allow Betty Dick to continue to occupy and use the property for the remainder of her life.

Subsection (b) describes the property to be occupied and used by Betty Dick.

Subsection (c) defines terms and conditions and specifies terms of payment for continued use and occupancy.

Subsection (d) states that nothing in the Act will allow construction on the property and limits the occupancy of the property solely to Betty Dick.

COST AND BUDGETARY CONSIDERATIONS

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

S. 584—Betty Dick Residence Protection Act

S. 584 would permit continued occupancy and the use of certain lands within Rocky Mountain National Park. Specifically, the bill would require the National Park Service (NPS) to extend the lease of 8 acres of public land to Betty Dick. CBO estimates that enact-

ing those changes would have no significant impact on the federal budget.

Under a 1980 Settlement Agreement, Betty Dick's right to lease the land in the Rocky Mountain National Park expired after 25 years on July 16, 2005. However, Ms. Dick is currently living on the property and is expected to leave for the winter in late October. S. 584 would require the NPS to allow Ms. Dick to lease part of the original property, which includes a seasonal residence and out-buildings, for the remainder of her life at a below market rental price of \$300 per year.

The NPS currently receives no payments for the property, although it received \$7,500 in 1980 for a 25-year lease. NPS expects that the property could generate around \$6,300 in annual rental receipts if the property was leased at market rates. Under current law, proceeds from rental agreements are available for the agency to spend without appropriation action. Thus, CBO estimates that enacting S. 584 would have no significant effect on the federal budget.

S. 584 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 May 23, 2005, CBO transmitted a cost estimate for H.R. 432, the Betty Dick Residence Protection Act, as ordered reported by the House Committee on Resources on May 18, 2005. The two pieces of legislation are similar and the cost estimates are identical.

The CBO staff contact for this estimate is Matthew Pickford. 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. 584. 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. 584, as ordered reported.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 584 were included in testimony received by the Committee at a hearing on the bill on July 28, 2005 and in a letter from the Director of the National Park Service dated September 22, 2005:

STATEMENT OF STEPHEN P. MARTIN, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 584 and H.R. 432, bills that would require the Secretary of the

Interior to permit continued occupancy and use of certain lands and improvements within Rocky Mountain National Park.

The Department supports the general goal of S. 584 and H.R. 432 to allow the National Park Service (NPS) to resolve the merits of Mrs. Betty Dick's desire to continue to live in the home inside Rocky Mountain National Park where she has lived for more than 25 years. Currently, the NPS does not have clear statutory authority to address these unique situations. In this testimony, we recommend certain amendments that will address both Mrs. Dick's needs while recognizing the public's purchase and ownership of this property.

As drafted, the pending legislation will only address Mrs. Dick's unique situation. The Department also would be willing to work with the Committee to develop a broader solution, one that would provide NPS with clear statutory authority to address expiring reservations of use and occupancy in other situations with similar merit. We look forward to working with the Committee on this issue.

On April 14, 2005, the Department testified in opposition to H.R. 432 at a hearing before the House Subcommittee on National Parks. However, since that time, the Department has recognized the need for a broader solution in light of the several hundred reservations of use and occupancy that will expire over the next 10 years. Some of these existing reservations may present circumstances similar in merit to Mrs. Dick's.

S. 584 and H.R. 432 would allow the continued use and occupancy of land within Rocky Mountain National Park by Betty Dick for the remainder of her life. The bills also state that the use and occupancy of the land would be governed by the conditions stated in the 1980 settlement agreement. Under these conditions, Betty Dick would be required to make an annual payment of \$300 to the Secretary of the Interior and she would be prohibited from constructing any new structures on the property.

We regret the difficult situations that sometimes arise from the expiration of private use and occupancy leases located within National Parks. Mrs. Dick has been a model tenant in Rocky Mountain National Park. The park has always enjoyed, and continues to enjoy, a congenial relationship with her, and she is a familiar summer resident of the Grand Lake community opening her home to park staff and residents of the community alike. Park staff always feel welcome in Mrs. Dick's home and have frequently stopped by to discuss this issue and other items of mutual interest relating to the park.

The situation that is the subject of these bills is the result of a commitment made by Mr. Dick, Mrs. Dick's late husband, to vacate the property that he sold to the NPS 25 years ago. We understand and appreciate that this commitment has caused anxiety and stress for Mrs. Dick.

In 1977, the NPS purchased 66.5 acres from Marilyn Dick, the ex-wife of George Fredrick Dick for \$214,000.

The title company that handled the transaction overlooked the fact that Mr. Dick had retained a right of first refusal to purchase the property if his ex-wife ever decided to sell. Mr. Dick sued the NPS and his former wife in U.S. District Court. In a legally binding Memorandum of Settlement Agreement, signed by the parties in 1980, the NPS retained ownership of the property and agreed to lease approximately 23 acres to Mr. Dick and his heirs for a period of 25 years for \$7,500, which equates to \$300 per year. Mr. Dick died in 1992. His second wife, Betty Dick, survives him and now occupies the premises during the summer months. As the heir of Mr. Dick, Betty Dick had a leasehold interest in the property that expired July 16, 2005.

Mrs. Dick has contacted the NPS about extending her use and occupancy on a preferential basis for the remainder of her life. The NPS lacks the authority to grant such an extension either through existing leasing authority or special use permit authority. NPS does have the authority to issue leases competitively in most circumstances; issuing leases noncompetitively is limited to leases to units of government or non-profit organizations under certain circumstances. NPS is also required to charge rent at least equal to fair market value, and the rent payment is kept by the park.

NPS cannot issue special use permits to extend use and occupancy for a life term under current authorities. However, NPS does have authority under certain circumstances to issue a two-year special use permit, with the possibility of re-issuance as long as the justifying circumstances apply, that would allow an individual with an expired use and occupancy to remain on the premises. Some of the criteria include situations in which NPS would be unable to remove the structure for a significant period of time (e.g., because of the need to complete planning requirement or the lack of available funds); the structure has or may have historical significance that would be endangered if vacated; or termination of residency would create undue hardship to the occupant (this provision requires the structure to be the primary residence of the individual). Special use permits also may only be issued for rent equal to the fair market value rent for the property, and the rent would be deposited in the U.S. Treasury. Under our current authority, we have offered Mrs. Dick such a special use permit that allows her to remain on her property for a period of time while NPS conducts a planning process to consider the options and determine an appropriate use for the property taking into account the interests of American taxpayers and park visitors, and park resources.

Mrs. Dick has verbally indicated that she will not accept the offer of a special use permit because it does not address her request for a life estate. A written offer has been sent to her that asks for her reconsideration of the NPS offer. While she has not yet responded to the request for reconsideration, she has accepted our offer to remain at

her summer home for the remainder of this season as we await the outcome of the pending legislation. In accepting this offer, Mrs. Dick has stated her appreciation to park staff for allowing her to continue her normal routine for this summer.

The Department would support S. 584 and H.R. 432, if amended in a way that balances the merits of Mrs. Dick's situation with the public's interest in this property, which was purchased and is owned for the benefit of the American people. First, the Department would recommend that the bills be amended to reduce the acreage she occupies from 23 acres to approximately three to five acres that contain the house and outbuildings and her access to the Colorado River. The balance of the property would then be available for park visitors, including access to the river. This would require producing a new map, which we would be happy to provide to Mrs. Dick and to the public.

In addition, we suggest that Mrs. Dick's continued occupancy of the property should be subject to fair market value rent, based upon an appraisal of the property, with the rent being retained by the park.

Finally, we suggest that the bill be amended to name Mrs. Dick as the sole beneficiary of the legislation, and that language be added to allow the termination of the lease in the event that Mrs. Dick is no longer able to use the property in the summer or is unable or unwilling to pay the annual fees. We would be happy to work with the Subcommittee staff to develop these amendments.

Throughout the country, there are many instances where the NPS has purchased private inholdings and permitted former landowners to remain on the property for a period of time, usually 25 years, through a "Reservation of Use and Occupancy." The United States pays a reduced purchase price to account for the value of the retained use. This acquisition tool saves taxpayer dollars and allows the former owner to continue to enjoy the property for a set period of time. As we noted earlier, the Department also would like to work with the Committee to develop a broader solution—one that would provide the NPS with clear statutory authority to address the expiring reservations of use and occupancy in situations where there is merit. We look forward to working with the Committee on this effort.

That concludes my remarks. Mr. Chairman, I would be happy to answer any questions you or other members of the Subcommittee may have.



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

SEP 22 2005

Honorable Craig Thomas
Chairman,
Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510-6252

Dear Mr. Chairman:

We are writing as a follow-up to our testimony before the Senate Energy and Natural Resources Subcommittee on National Parks on July 28, 2005, regarding H.R. 432 and S. 584, both entitled, the Betty Dick Residence Protection Act. At the hearing, as a result of the points you and other members of the Colorado delegation raised with us, the Department testified in support of efforts to resolve the merits of Betty Dick's desire to continue her use and occupancy of her summer home within Rocky Mountain National Park.

While we appreciate that the property clause of the Constitution gives to Congress the authority to determine the terms upon which federal property or interests in federal property is disposed, we believe that there are legitimate policy concerns that should be addressed in any legislative solution. In our testimony, the Department recommended that H.R. 432 and S. 584 be amended to balance Betty Dick's situation with the public's existing ownership of the property. We have enclosed specific amendments for your consideration.

We also reiterated in our testimony that the National Park Service (NPS) currently does not have clear statutory authority to extend reservations of use and occupancy and expressed an interest in working on a broader solution for meritorious situations that might exist with regard to the several hundred reservations that will expire over the next 10 years. We also look forward to working with you on such an effort.

The summer home at issue was owned by George Frederick Dick and his first wife, Marilyn Dick. When they divorced, Marilyn Dick retained the property and George Dick retained a right of first refusal if she ever decided to sell. In 1977, Marilyn Dick sold the property to the National Park Service for \$214,000. The title company that handled the transaction overlooked George Dick's right of first refusal. In March of 1978, George Dick married Betty Harmon Dick, and that November, George Dick filed the complaint for Civil Action No. 78-W-1256 against Marilyn Dick and the United States for her sale of the property. Betty Dick was not included as a co-plaintiff and thus, only George Dick

signed the settlement agreement on July 2, 1980, that provided for a 25-year reservation of occupancy and use.

In Betty Dick's testimony, she indicated that she believed that she and her husband, George Dick, had negotiated a life estate to settle his case, but that the final settlement agreement instead included a 25-year reservation. She further states that she was a party to the settlement, but she never signed or agreed to the settlement agreement with the 25-year reservation, and thus, the government owes her a life estate. In other words, George Dick's interest was fulfilled by the settlement agreement, but her interest was not. This, as well as some of the preliminary documents drafted prior to the settlement agreement, is the rationale offered in support of Betty Dick's request to extend the use and occupancy for the entire 23 acres at a cost of \$300 per year for the remainder of her life.

We have not previously addressed this rationale as it was not mentioned in other correspondence that we have located on this issue. We have now reviewed at least some of the preliminary documents relating to the settlement agreement, and they do include various provisions not reflected in the final settlement agreement, including a life estate for both Betty and George Dick, a limitation of the reservation of use and occupancy to 10 acres (the settlement agreement provided for 23 acres), and a requirement that the public be able to continue to access the Colorado River (the settlement agreement was silent on this issue).

These preliminary documents also raise questions about the basis for the amount of the payments for the reserved life estate. Without any explanation, a letter of February 14, 1980, from counsel for the United States to counsel for George Dick appears to refer to a total payment of \$22,500, of which George Dick's share was \$7,500, and also that the payment was for only "75% of the value of the life estate of Mr. and Mrs. Dick in the property and the improvements thereon." Additional payments of \$7,500 each were also to be paid by Marilyn Dick and Transamerica (which we assume was the title insurer for the transaction). Although this letter clearly refers to a life estate that would include Betty Dick, it does not state or suggest that Betty Dick would become a "party" to the settlement. This would have been unusual in that Betty Dick was not a party to the litigation brought by George Dick against Marilyn Dick and the United States. Indeed, the settlement agreement signed by George Dick, as the only plaintiff, provides: "this memorandum shall be binding and inure to the benefit of the parties hereto, their heirs, and successors and assigns."

Unfortunately, a quarter of a century has passed since this settlement was executed and we see nothing in the record that explains why these provisions were modified in the actual signed settlement agreement, to the apparent disadvantage of both Betty Dick and the United States. Thus, while we are sympathetic to Betty's situation, we do not have a legitimate basis for supporting her request for an additional reservation of use and occupancy for the same amount of property at the same price. This would require us to reopen a settlement agreement in a case that had been dismissed with prejudice in October 1980 in order to extend rights to a person not a party to that agreement. Rule

60(b) of the Federal Rules of Civil Procedure sets out the instances where taking such an action is allowable, and this situation does not fall within any of those instances.

Our reason for mentioning these circumstances is not to assign blame, question anyone's integrity, or rewrite history in any way. It is to explain why we believe that the terms settling the case with George Dick have been fulfilled and why we believe that new, reasonable conditions for an extension of the reservation of use and occupancy are a fair compromise that would balance Betty Dick's situation with the public's existing ownership of the property.

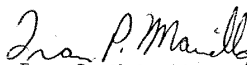
We appreciate Betty Dick's connection to her summer home and the congenial relationship she has with the park and the Grand Lake community. Because of Betty Dick's age and the NPS' lack of firm plans for use of this property in the near future, we would like to accommodate Betty Dick's continued use and occupancy of this summer home. The Department also has, however, a clear duty to the public - the American taxpayers - on behalf of whom NPS purchased George and Marilyn Dick's property 25 years ago. It is based on this commitment that NPS policies clearly specify payment of fair market value rent for property owned by the United States. To make exception to this long-standing policy does create an unfavorable precedent in all our land transactions and would effectively result in the transfer of taxpayer dollars to the specific individual involved. The Department cannot support such a precedent.

Another condition that would balance Betty Dick's individual interest with the public's interest is to provide Betty Dick continued use and occupancy of the buildings and maintain her access to the Colorado River, while allowing the public to use the balance of the property. Thus, Betty Dick would occupy 3 to 5 acres, and the rest of the 18 to 20 acres, including access to the Colorado River, could be opened to use by many of the park's visitors who come to enjoy and recreate in the park. The Department believes this is a fair compromise to the visiting public.

Finally, we suggest that the bill name Betty Dick as the sole beneficiary of the extended reservation of use and occupancy. We believe that the reservation should terminate in the event Betty Dick is no longer able to use the property or chooses not to continue to pay fair market value rent for the summer home.

Thank you for your consideration of these amendments. We look forward to working with the Committee to find a solution that balances Betty Dick's interest with the interest of the public.

Sincerely,


Fran P. Mainella
Director

Enclosures

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. 584, as ordered reported.

