

Calendar No. 405

109TH CONGRESS
2D SESSION

H. R. 409

[Report No. 109-243]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2005

Received; read twice and referred to the Committee on Energy and Natural
Resources

APRIL 20, 2006

Reported under authority of the order of the Senate of April 7, 2006, by Mr.
DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To provide for the exchange of land within the Sierra
National Forest, California, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sierra National Forest
5 Land Exchange Act of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ~~FEDERAL LAND.~~—The term “Federal land”
 2 means the parcels of land and improvements thereon
 3 comprising approximately 160 acres and located in
 4 township 9 south, range 25 east, section 30,
 5 E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$, Mt. Diablo Meridian, Cali-
 6 fornia.

7 (2) ~~NON-FEDERAL LAND.~~—The term “non-Fed-
 8 eral land” means a parcel of land comprising ap-
 9 proximately 80 acres and located in township 8
 10 south, range 26 east, section 29, N $\frac{1}{2}$ NW $\frac{1}{4}$, Mt.
 11 Diablo Meridian, California.

12 (3) ~~SECRETARY.~~—The term “Secretary” means
 13 the Secretary of Agriculture.

14 **SEC. 3. LAND EXCHANGE, SIERRA NATIONAL FOREST, CALI-**
 15 **FORNIA.**

16 (a) ~~EXCHANGE AUTHORIZED.~~—

17 (1) ~~IN GENERAL.~~—If, during the one-year pe-
 18 riod beginning on the date of enactment of this Act,
 19 the owner of the non-Federal land offers the United
 20 States the exchange of the non-Federal land and a
 21 cash equalization payment of \$50,000, the Secretary
 22 shall convey, by quit claim deed, all right, title, and
 23 interest of the United States in and to the Federal
 24 land. The conveyance of the Federal land shall be

1 subject to valid existing rights and under such terms
2 and conditions as the Secretary may prescribe.

3 ~~(2) ACCEPTABLE TITLE.—Title to the non-Fed-~~
4 eral land shall conform with the title approval stand-
5 ards of the Attorney General applicable to Federal
6 land acquisitions and shall be acceptable to the Sec-
7 retary.

8 ~~(3) CORRECTION AND MODIFICATION OF LEGAL~~
9 DESCRIPTIONS.—The Secretary, in consultation with
10 the owner of the non-Federal land, may make cor-
11 rections to the legal descriptions of the Federal land
12 and non-Federal land. The Secretary and the owner
13 of the non-Federal land may make minor modifica-
14 tions to such descriptions insofar as such modifica-
15 tions do not affect the overall value of the exchange
16 by more than five percent.

17 ~~(b) VALUATION OF LAND TO BE CONVEYED.—For~~
18 purposes of this section, during the period referred to in
19 subsection (a)(1), the value of the non-Federal land shall
20 be deemed to be \$200,000 and the value of the Federal
21 land shall be deemed to be \$250,000.

22 ~~(c) ADMINISTRATION OF LAND ACQUIRED BY~~
23 UNITED STATES.—Once acquired, the Secretary shall
24 manage the non-Federal land in accordance with the Act
25 of March 1, 1911 (commonly known as the Weeks Act;

1 16 U.S.C. 480 et seq.), and in accordance with the other
 2 laws and regulations pertaining to National Forest System
 3 lands.

4 (d) ~~CONDITIONS ON CONVEYANCE OF FEDERAL~~
 5 ~~LAND.~~—The conveyance by the Secretary under sub-
 6 section (a) shall be subject to the following conditions:

7 (1) That the recipient of the Federal land con-
 8 vey all 160 acres of the Federal land to the Sequoia
 9 Council of the Boy Scouts of America not later than
 10 four months after the date on which the recipient re-
 11 ceives the Federal land from the Secretary under
 12 subsection (a).

13 (2) That, as described in section 5, the owner
 14 of the easement granted in section 4 have the right
 15 of first offer regarding any reconveyance of the Fed-
 16 eral land by the Sequoia Council of the Boy Scouts
 17 of America.

18 (e) ~~DISPOSITION AND USE OF CASH EQUALIZATION~~
 19 ~~FUNDS.~~—The Secretary shall deposit the cash equali-
 20 zation payment received under subsection (a) in the fund
 21 established by Public Law 90–171 (commonly known as
 22 the Sisk Act; 16 U.S.C. 484a). The cash equalization pay-
 23 ment shall be available to the Secretary until expended,
 24 without further appropriation, for the acquisition of lands

1 and interests in lands for the National Forest System in
 2 the State of California.

3 (f) ~~COST COLLECTION FUNDS.~~—The owner of the
 4 non-Federal land shall be responsible for all direct costs
 5 associated with processing the land exchange under this
 6 section and shall pay the Secretary the necessary funds,
 7 which shall be deposited in a cost collection account.
 8 Funds so deposited shall be available to the Secretary
 9 until expended, without further appropriation, for the cost
 10 associated with the land exchange. Any funds remaining
 11 after completion of the land exchange, which are not need-
 12 ed to cover expenses, shall be refunded to the owner of
 13 the non-Federal land.

14 **SEC. 4. GRANT OF EASEMENT IN CONNECTION WITH HY-**
 15 **DROELECTRIC PROJECT NO. 67.**

16 (a) ~~PURPOSE.~~—A hydroelectric project, licensed pur-
 17 suant to the Federal Power Act (16 U.S.C. 791a et seq.)
 18 as Project No. 67, is located on a majority of the Federal
 19 land authorized for exchange under section 3. To protect
 20 the ability of the owner of Project No. 67 to continue to
 21 operate and maintain that hydroelectric project under the
 22 current and all future licenses or authorizations issued
 23 pursuant to the Federal Power Act or any other applicable
 24 law, this section is necessary.

1 (b) ~~EASEMENT REQUIRED.~~—Before conveying the
 2 Federal land under section 3, the Secretary shall grant
 3 an easement, without consideration, to the owner of
 4 Project No. 67 for the right to enter, occupy, and use for
 5 hydroelectric power purposes the Federal land currently
 6 within the licensed boundary for Project No. 67. The
 7 Project No. 67 owner shall hold harmless the Secretary
 8 for any claims against the owner due to the grant of ease-
 9 ment.

10 (c) ~~REQUIRED TERMS AND CONDITIONS.~~—The ease-
 11 ment granted under this section shall provide the fol-
 12 lowing: “The United States of America, hereinafter called
 13 ‘Grantor’, pursuant to a congressional authorization, here-
 14 by grants, transfers, and conveys unto the [insert name
 15 of Project No. 67 owner], its successors and assigns, here-
 16 inafter called ‘Grantee’, all those certain exclusive ease-
 17 ments and rights in, on, under, over, along, and across
 18 certain real property described in Exhibit A, attached
 19 hereto [attach description of real property subject to the
 20 easement] and incorporated herein (the ‘Property’), for
 21 any purpose or activity that Grantee deems convenient or
 22 necessary to the creation, generation, transmission, or dis-
 23 tribution of hydropower on and off the Property, includ-
 24 ing, but not limited to, the right to inundate the Property
 25 with water, reservoir management, and compliance with

1 legal obligations in accordance with the applicable Federal
2 Energy Regulatory Commission license and those non-ex-
3 clusive easements and rights to use, occupy, and enter the
4 Property, and to allow others to use, occupy, and enter
5 the Property, for other purposes related to hydropower
6 and reservoir management and use, such as recreation by
7 Grantee or the public, and regulation of any activities on
8 the Property that may impact such purposes, at any time
9 and from time to time. Grantor further grants, transfers,
10 and conveys unto the Grantee the right of assignment, in
11 whole or in part, to others, without limitation. Grantee
12 shall have the right to take such actions on the Property
13 as may be necessary to comply with all applicable laws,
14 rules, regulations, ordinances, orders and other govern-
15 mental, regulatory, and administrative authorities and re-
16 quirements, or that may be necessary for the economical
17 entry, occupancy, and use of the Property for hydropower
18 purposes. Grantor, its successors and assigns, shall not
19 deposit or permit or allow to be deposited, earth, rubbish,
20 debris or any other substance or material on the Property,
21 or so near thereto as to constitute, in the opinion of the
22 Grantee, an interference or obstruction to the hydropower
23 and reservoir purposes. No other easements, leases, or li-
24 censes shall be granted on, under or over the Property
25 by Grantor to any person, firm or corporation without the

1 previous written consent of Grantee, which consent shall
 2 not be unreasonably withheld. The terms, covenants and
 3 conditions of this Grant of Easement shall bind and inure
 4 to the benefit of the successors and assigns of Grantor
 5 and the successors and assigns of Grantee.”.

6 **SEC. 5. RIGHT OF FIRST OFFER FOR SUBSEQUENT CONVEY-**
 7 **ANCE OF FEDERAL LAND.**

8 (a) RIGHT OF FIRST OFFER.—As a condition on the
 9 conveyance of the Federal land under section 3 and its
 10 reconveyance to the Sequoia Council of the Boy Scouts
 11 of America, as required by section 3(d)(1), the Secretary
 12 shall require that the Council agree to provide the owner
 13 of the easement granted under section 4 the right of first
 14 offer to obtain the Federal land, or any portion thereof,
 15 that the Council ever proposes to sell, transfer, or other-
 16 wise convey.

17 (b) NOTICE AND OFFER.—If the Council proposes to
 18 sell, transfer, or otherwise convey the Federal land or a
 19 portion thereof, the Council shall give the easement owner
 20 written notice specifying the terms and conditions on
 21 which the conveyance is proposed and offering to convey
 22 to the easement owner, on the same terms and conditions,
 23 the Federal land or the portion thereof proposed for con-
 24 veyance.

1 (c) **ACCEPTANCE OR REJECTION OF OFFER.**—Within
 2 90 days after the easement owner receives the notice re-
 3 quired by subsection (b) and all available documents nec-
 4 essary to perform reasonable due diligence on the pro-
 5 posed conveyance, the easement owner shall either accept
 6 or reject the offer. If the easement owner accepts the offer,
 7 the closing of the sale shall be governed by the terms of
 8 the offer in the notice.

9 (d) **EFFECT OF REJECTION.**—If the hydropower
 10 easement owner rejects an offer under subsection (b) or
 11 fails to respond to the offer before the expiration of the
 12 90-day period provided in subsection (c), the Council may
 13 convey the property covered by the notice to any other per-
 14 son on the same terms and conditions specified in the no-
 15 tice. If those terms and conditions are subsequently al-
 16 tered in any way, then the notice and offer shall again
 17 be made to the easement owner under subsection (b). The
 18 rejection by the easement owner of one or more of such
 19 offers shall not affect its right of first offer as to any other
 20 proposed conveyance by the Council.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Sierra National Forest*
 23 *Land Exchange Act of 2006”.*

24 **SEC. 2. DEFINITIONS.**

25 *In this Act:*

1 (1) *COUNCIL*.—The term “Council” means the
2 *Sequoia Council of the Boy Scouts of America*.

3 (2) *FEDERAL LAND*.—The term “Federal land”
4 means the parcel of land comprising 160 acres and
5 located in $E^{1/2}SW^{1/4}$ and $W^{1/2}SE^{1/4}$, sec. 30, T. 9 S.,
6 R. 25 E., Mt. Diablo Meridian, California.

7 (3) *NON-FEDERAL LAND*.—The term “non-Fed-
8 eral land” means a parcel of land comprising ap-
9 proximately 80 acres and located in $N^{1/2}NW^{1/4}$, sec.
10 29, T. 8 S., R. 26 E., Mt. Diablo Meridian, Cali-
11 fornia.

12 (4) *PROJECT NO. 67*.—The term “Project No. 67”
13 means the hydroelectric project licensed pursuant to
14 the Federal Power Act (16 U.S.C. 791a et seq.) as
15 Project No. 67.

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

18 **SEC. 3. LAND EXCHANGE, SIERRA NATIONAL FOREST, CALI-**
19 **FORNIA.**

20 (a) *EXCHANGE AUTHORIZED*.—

21 (1) *IN GENERAL*.—If, during the 1-year period
22 beginning on the date of enactment of this Act, the
23 owner of the non-Federal land offers to convey to the
24 United States title to the non-Federal land and to
25 make a cash equalization payment of \$50,000 to the

1 *United States, the Secretary shall convey to the owner*
2 *of the non-Federal land, all right, title, and interest*
3 *of the United States in and to the Federal land, ex-*
4 *cept as provided in subsection (d), subject to valid ex-*
5 *isting rights, and under such terms and conditions as*
6 *the Secretary may require.*

7 (2) *CORRECTION AND MODIFICATION OF LEGAL*
8 *DESCRIPTIONS.—*

9 (A) *IN GENERAL.—The Secretary, in con-*
10 *sultation with the owner of the non-Federal land,*
11 *may agree to make corrections to the legal de-*
12 *scriptions of the Federal land and non-Federal*
13 *land.*

14 (B) *MODIFICATIONS.—The Secretary and*
15 *the owner of the non-Federal land may agree to*
16 *make minor modifications to the legal descrip-*
17 *tions if the modifications do not affect the overall*
18 *value of the exchange by more than 5 percent.*

19 (b) *VALUATION OF LAND TO BE CONVEYED.—For pur-*
20 *poses of this section, during the period referred to in sub-*
21 *section (a)(1)—*

22 (1) *the value of the non-Federal land shall be*
23 *considered to be \$200,000; and*

24 (2) *the value of the Federal land shall be consid-*
25 *ered to be \$250,000.*

1 (c) *ADMINISTRATION OF LAND ACQUIRED BY UNITED*
 2 *STATES.—On acquisition by the Secretary, the Secretary*
 3 *shall manage the non-Federal land in accordance with—*

4 (1) *the Act of March 1, 1911 (commonly known*
 5 *as the “Weeks Act”) (16 U.S.C. 480 et seq.); and*

6 (2) *any other laws (including regulations) appli-*
 7 *cable to the National Forest System.*

8 (d) *CONDITIONS ON CONVEYANCE OF FEDERAL*
 9 *LAND.—The conveyance by the Secretary under subsection*
 10 *(a) shall be subject to the conditions that—*

11 (1) *the recipient of the Federal land convey all*
 12 *160 acres of the Federal land to the Council not later*
 13 *than 120 days after the date on which the recipient*
 14 *receives title to the Federal land;*

15 (2) *in accordance with section 4(a), the Sec-*
 16 *retary grant to the owner of Project No. 67 an ease-*
 17 *ment; and*

18 (3) *in accordance with section 4(b), the owner of*
 19 *Project No. 67 has the right of first refusal regarding*
 20 *any reconveyance of the Federal land by the Council.*

21 (e) *DISPOSITION AND USE OF CASH EQUALIZATION*
 22 *FUNDS.—*

23 (1) *IN GENERAL.—The Secretary shall deposit*
 24 *the cash equalization payment received under sub-*
 25 *section (a)(1) in the fund established by Public Law*

1 90–171 (commonly known as the “Sisk Act”) (16
2 U.S.C. 484a).

3 (2) *USE.*—Amounts deposited under paragraph
4 (1) shall be available to the Secretary until expended,
5 without further appropriation, for the acquisition of
6 land and any interests in land for the National For-
7 est System in the State of California.

8 (f) *COST COLLECTION FUNDS.*—

9 (1) *IN GENERAL.*—The owner of the non-Federal
10 land shall pay to the Secretary all direct costs associ-
11 ated with processing the land exchange under this sec-
12 tion.

13 (2) *COST COLLECTION ACCOUNT.*—

14 (A) *IN GENERAL.*—Any amounts received
15 by the Secretary under paragraph (1) shall be
16 deposited in a cost collection account.

17 (B) *USE.*—Amounts deposited under sub-
18 paragraph (A) shall be available to the Secretary
19 until expended, without further appropriation,
20 for the costs associated with the land exchange.

21 (C) *REFUND.*—The Secretary shall provide
22 to the owner of the non-Federal land a refund of
23 any amounts remaining in the cost collection ac-
24 count after completion of the land exchange that

1 *are not needed to cover expenses of the land ex-*
 2 *change.*

3 (g) *LAND AND WATER CONSERVATION FUND.*—For
 4 *purposes of section 7 of the Land and Water Conservation*
 5 *Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of*
 6 *the Sierra National Forest shall be considered to be the*
 7 *boundaries of the Sierra National Forest as of January 1,*
 8 *1965.*

9 **SEC. 4. GRANT OF EASEMENT AND RIGHT OF FIRST RE-**
 10 **FUSAL.**

11 (a) *EASEMENT REQUIRED.*—

12 (1) *IN GENERAL.*—As part of the exchange au-
 13 *thorized by this Act, the Secretary shall, without con-*
 14 *sideration, grant to the owner of Project No. 67 an*
 15 *easement for the right to enter, occupy, and use for*
 16 *hydroelectric power purposes the Federal land cur-*
 17 *rently within the licensed boundary for Project No.*
 18 *67.*

19 (2) *REQUIRED TERMS AND CONDITIONS.*—The
 20 *easement granted under paragraph (1) shall contain*
 21 *such terms and conditions as are agreed to by the*
 22 *Secretary, the Council, and the owner of Project No.*
 23 *67.*

24 (b) *RIGHT OF FIRST REFUSAL.*—As a condition of the
 25 *conveyance of the Federal land under section 3(a)(1) and*

1 *the reconveyance of the Federal land to the Council, the*
2 *Council shall provide to the owner of Project No. 67, under*
3 *such terms and conditions as are agreed to by the Council*
4 *and the owner of Project No. 67, a right of first refusal*
5 *to obtain the Federal land, or portion of the Federal land,*
6 *that the Council proposes to sell, transfer, or otherwise con-*
7 *vey.*

8 ***SEC. 5. EXERCISE OF DISCRETION.***

9 *In exercising any discretion necessary to carry out this*
10 *Act, the Secretary shall ensure that the public interest is*
11 *well served.*

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109TH CONGRESS
2D Session

H. R. 409

[Report No. 109-243]

AN ACT

To provide for the exchange of land within the Sierra National Forest, California, and for other purposes.

APRIL 20, 2006

Reported with an amendment